(2001) 10 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE COMPANY LIMITED — APPELLANT

Vs

SHAH CLOTH HOUSE — RESPONDENT

Date of Decision : 17-10-2001

Acts Referred:

Citation : 2002 1 CPJ 467

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna , Rachna J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the judgment and order dated 24.11.2000 passed by District Consumer Forum, Kanpur Dehat in Complaint Case No. 970/1999. The facts of the case in brief are that the complainant carries on business of cloth in Shop No. 746, Kartar Singh Market, Harjender Nagar, Kanpur. The complainant had got an insurance done of the shop for the period 20.11.1992 to 19.11.1993. During the riot which took place in December, 1992 the shop of the complainant was looted and destroyed by the rioters on 10.12.1992 and the damage was caused to the complainant to the tune of Rs. 2,74,750/-. The riot took place due to the demolition of the structure of Babri Masjid on 6.12.1992. The complainant informed the Insurance Company and also lodged F.I.R. A Surveyor was appointed by the Insurance Company who after investigation submitted the report. The State Government in view of the situation granted Rs. 5,000/- as compensation to the complainant. Inspite of the several reminders the Insurance Company has not finalised the claim. The complainant has, therefore, filed this complaint praying Rs. 2,74,750/- as damages along with interest and Rs. 1,50,000/- on account of mental torture.

2. THE opposite party National Insurance Company has alleged in the written argument that no riot took place. Only the glow sign which was fixed outside the shop were damaged. THE shutter of the shop was not broken. THE Surveyor of the Insurance Company surveyed the shop and came to the conclusion that no damage has been caused to the complainant. It is further alleged that FIR was not lodged immediately but it was lodged after seven days of the incident. THE

amount of compensation awarded by the State Government will not have effect on the case of the complainant before the District Forum. It is also alleged that the complaint is barred by agreement of arbitration. The parties led evidence before the District Forum who after considering the facts of the case came to the conclusion that there was deficiency in service on behalf of National Insurance Company and decreed a claim of Rs. 2,69,750/- along with interest @ 12% p.a. w.e.f. 24.10.1994 till the date of payment. Rs. 500/- was also granted as cost.

Aggrieved against the said judgment and order passed by District Consumer Forum, the opposite party Insurance Company has come in appeal.

3. WE have heard the Counsel for the parties. According to learned Counsel for the appellant the Surveyor has surveyed the property and found that only glow sign was damaged and no other damages were caused to the shop of the complainant. The FIR was also not lodged immediately but the same was lodged after a period of one week which shows that no damages were caused. A perusal of the records shows that incident took place on 10.12.1992. Thereafter curfew was imposed in the area and after lifting of the curfew the report was lodged on 17.12.1992. The complainant also sent a telegram to the S.S.P., Kanpur on 12.12.1992 and District Magistrate, Kanpur on the same day of this incident. Therefore, the complainant had taken all the steps possible during the curfew. No adverse inference can be drawn against the complainant for the same. As regards the damages done to the property of the complainant, Surveyor was appointed by the National Insurance Company. The first Surveyor who had gone on the spot and has assessed the loss is Sri Arun Kumar Jajoo, who submitted a report on 10.12.1993. A copy of this report was not filed before the District Forum. The report of other Surveyor was filed before the District Forum by the Insurance Company. By doing so the Insurance Company has suppressed the report of the first Surveyor Arun Kumar Jajoo in which report he reported that incident had taken place and complainant had suffered loss to the extent of Rs. 1,03,000/-. The second Surveyor was Ravindra Pandey who submitted his report on 25.8.1994. According to his report rioters did not damage any property in the shop of the complainant. This is highly objectionable on the part of Insurance Company to have suppressed the first report of Arun Kumar Jajoo who has reported that such incident had taken place and damages had been caused. The Insurance Company purposely appointed second Surveyor Ravendra Pandey who has reported that only one glow sign bulb and electric meter were damaged but no loss was caused to the shop of the complainant. He has come to this conclusion on the basis of the statement of certain persons. Insurance Company has not filed statement of those persons along with affidavit to show that no such damage was caused to the shop of the complainant as has been alleged by the Insurance Company. This report is one-sided and has been given by the Surveyor purposely to support the case of the Insurance Company. The Surveyor is not expected to give report in favour of Insurance Company. He has to work independently. When the second Surveyor was appointed he should have first gone through the report of the first Surveyor who has categorically stated that

there was damage to the property of the complainant. This shows that this Surveyor has given a false report knowingly that the damage was caused to the shop of the complainant by the rioters. This act of the Surveyor is highly condemned and also the act of the Insurance Company is also condemned in view of the fact that they did not work honestly. Not only this, Mohan Agarwal & Company, Chartered Accountant, was also appointed by the Insurance Company, a copy of whose report dated 24.1.1994 is on record. He has also reported that the incident has affected insured shop for external fittings part only. He has not attached any evidence or statement which were taken by him from the persons who had stated that no damage was caused to the insured shop. Unless the report is supported by any evidence it cannot be accepted. Now we come to the report of Arun Kumar Jajoo dated 10.12.1993. He visited the shop on 19.12.1993. He has rejected the contention of the complainant that books of accounts have been looted by the rioters when the riot had taken place and have been damaged. When the riot takes place the rioters do to think as to what damage they are doing and upto what extent they have to damage the property. They have only one aim that is to damage the property. Therefore, it cannot be said that the books of account would not have been looted by the rioters. As this report was not placed before the District Forum, therefore, District Forum had no opportunity to consider the same. As such we cannot place much reliance on this report. The learned District Forum has come to the conclusion that a damage of Rs. 2,69,750/- was caused to the complainant and we do not find that there is any infirmity in the judgment and order passed by District Forum do not call for any interference. The appeal is, therefore, liable to be dismissed. ORDER The appeal is dismissed. The judgment and order passed by District Consumer Forum are confirmed. The appellant shall pay a sum of Rs. 2,000/- to the respondent towards cost. Let compliance of the order be made within a period of two months from the date of this order. Let copy as per rules be made available to the parties. Appeal dismissed.