
(2010) 02 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE COMPANY LIMITED

APPELLANT

Vs

Srinivasa Cotton Traders

RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

Citation : 2010 2 CPJ 164

Hon'ble Judges : R.C.Jain , Anupam Dasgupta J.

Final Decision : Appeal allowed

Judgement

1. MR. Anupam Dasgupta, Member-The respondent here (hereafter, "the complainant") filed a complaint before the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (hereafter, "the State Commission") alleging that the opposite party (appellant here), the National Insurance Company Limited (hereafter, the "OP") committed deficiency in service in repudiating the insurance claim of the complainant in respect of the loss suffered by the former to its insured stock of cotton (lint) which was damaged due to a fire that erupted due to an electrical short circuit in the insured godown in the wee hours (0106 a.m.) of 11.5.1998. The OP denied the allegations in the complaint and sought to support its case with documents. The State Commission, on consideration of the matter, allowed the complaint partly and directed the OP to pay to the complainant the sum of Rs. 4,90,000, i.e., the amount of loss as assessed by the Surveyor appointed by the OP in this case, with interest @ 9% per annum from the date of the complaint, i.e., 10.8.1999 till actual payment and cost of Rs. 10,000. Aggrieved, the OP has preferred this appeal.

2. (i) The material facts like the occurrence of the fire, validity of the (fire) insurance Policy covering the complainant's stock of cotton on the date of the Peril, the complainant reporting the fire to both the local Fire Brigade and the Police, the Fire Brigade dousing the fire and reporting it to be a case of electrical short-circuit (a conclusion also supported by the local Electrical Inspector as well as the Police in its final report), appointment of a Surveyor by the OP and the

Surveyor's visit to the affected Premises on 12.5.1998, assessment of the loss by the Surveyor at Rs. 4.90 lakh and the complainant's consent thereto (vide his report dated 6.1.1999), etc., are undisputed. (ii) Also undisputed is that while at the site of the Peril, the Surveyor collected a sample of the burnt cotton lint, divided it into three Parts, sealed each Part in a separate Polythene bag and after jointly signing the sealed Packets, left one Packet with the complainant. The report of the Surveyor, however, states that on receipt of advice from the Regional Office of the OP to the effect that it might be a case of arson, he collected the samples from the Branch Office and sent the sample Packets to the Indian Institute of Chemical Technology (IICT), Hyderabad. (iii) It is also not disputed that by its letter dated 24.9.1998, the IICT reported inter alia the following to the Surveyor:

"Fuels generally used for setting fire are Petrol, diesel and kerosene. These have been subjected to GLC analysis. Figure II gives the chromatogram of Petrol by GLC technique. Figure III gives extraction obtained by using CCl₄ solvent from burnt cotton. From the Printout it could be seen that Petrol has been used for setting the fire. Therefore, it looks that the fire was not natural but Petrol has been used for setting the fire."

(iv) In view of the foregoing report of the IICT, the Surveyor, who had assessed the loss at Rs. 4.90 lakh and obtained the complainant's concurrence therein, reported the complainant's claim as "untenable" and the OP accordingly repudiated the claim by its letter dated 9.2.1999. (v) It is further undisputed that the complainant, in turn, represented against the ground of repudiation and finally, under intimation to the OP, sent the sample left with him to the Central Institute for Research on Cotton Technology (CIRCT), Mumbai for analysis. The relevant Part of the report dated 3.5.1999 of the said Institute read, inter alia, as under: "Method: Three Pure cotton samples were separately sprayed with kerosene, diesel and Petrol and then extracted with carbon tetrachloride (CCl₄) and then chromatograms were obtained by GLC. The damaged (burnt) cotton sample was similarly extracted with CCl₄ and chromatogram of the extract recorded along with that of the Pure solvent. The chromatogram of the damaged cotton sample did not show any hydrocarbon Peak (Peak? - supplied) belonging to kerosene, Petrol or diesel. The Peaks (?) obtained were those of the solvent used for extraction. About the sample: It may be noted that the burnt cotton sample submitted to us was contained in a heat-sealed transparent Polythene bag. The sample is still in water-wet state. The bag also contained a thick Paper label bearing what was told to us as the signatures of the Insurance Company official and the Proprietor of Sri Srinivasa Cotton Traders. On account of wetting, the signatures are not readable or identifiable. The bag has since been heat-sealed by us after the required quantity of burnt fibre was taken out for the tests."

After he received this report the complainant approached the State Commission with the complaint, which led to the impugned order.

3. WE have heard Mr. Atul Nanda, learned Counsel for the appellants-OP and

Mrs. K. Radha, learned Counsel for the complainant and carefully considered the material brought on record by the parties.

4. BEFORE us, Mr. Nanda relies mainly on the test of "deficiency in service" as laid down in the judgment and order of the Apex Court in the case of *Ravneet Singh Bagga v. KLM Royal Dutch Airlines*, III (1999) CPJ 28 (SC)=IX (1999) SLT 311=(2001) 1 SCC 66. In this case, the Apex Court, while considering an appeal against the order of this Commission in a complaint involving alleged negligence on the part of the above-mentioned Airline, agreed with the view taken by this Commission and ruled as under: "6. The deficiency in service cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service. The burden of proving the deficiency in service is upon the person who alleges it. The complainant has, on facts, been found to have not established any willful fault, imperfection, shortcoming or inadequacy in the service of the respondent. The deficiency in service has to be distinguished from the tortious acts of the respondent. In the absence of deficiency in service the aggrieved person may have a remedy under the common law to file a suit for damages but cannot insist for grant of relief under the Act for the alleged acts of commission and omission attributable to the respondent which otherwise do not amount to deficiency in service. In case of bona fide disputes no willful fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in the service can be informed (sic). If on facts it is found that the person or authority rendering service had taken all precautions and considered all relevant facts and circumstances in the course of the transaction and that their action or the final decision was in good faith, it cannot be said that there had been any deficiency in service. If the action of the respondent is found to be in good faith, there is no deficiency of service entitling the aggrieved person to claim relief under the Act. The rendering of deficient service has to be considered and decided in each case according to the facts of that case for which no hard and fast rule can be laid down. Inefficiency, lack of due care, absence of bona fides, rashness, haste or omission and the like may be the factors to ascertain the deficiency in rendering the service."

[Emphasis supplied]. Mr. Nanda argues that by the above-mentioned criteria, there was no deficiency in service in this case on the part of the OP Insurance Company inasmuch as the OP appointed a duly qualified Surveyor; the Surveyor assessed the loss with reasons recorded in his report; he also took samples of the burnt cotton in the presence of the complainant/insured and signed the sealed packets of the samples along with the complainant and, in view of a subsequent anonymous letter of 15.5.1998 (alleging a stage-managed fire), sent one of the samples to the IICT. On receipt of the report of the IICT, which clearly opined that petrol had been used to set fire to the insured stock of the complainant, the Surveyor recommended the claim as "not tenable" and the OP accordingly repudiated the claim in good faith. In such a situation, the

complainant subsequently sending the sample to another laboratory and getting a report therefrom that there was no trace of any inflammable hydrocarbon like petrol, diesel or kerosene in the sample sent to the said (second) laboratory could not be held to establish any deficiency in service on the part of the OP in repudiating the claim. Mr. Nanda also argues that the second report was biased because the complainant had, having been apprised by then of the ground of repudiation, made a reference to the second laboratory in a "leading" manner and that the sample that he sent was appeared to be "manipulated" because the signatures of the Surveyor and the complainant on the paper label were not decipherable, as observed in the report of CIRCT itself.

5. ON the other hand, Mrs. Radha emphatically argues that unlike the report obtained by the complainant from the CIRCT (which discusses the identity and condition of the sample in a manner that does not leave any doubt about its being one of the relevant samples of the cotton that got burnt in the case in question), the IICT report does not at all refer to the identity/condition of the sample sent to it by the Surveyor. According to Mrs. Radha, in the absence of such identification of the sample, it was open to question whether the report of the IICT at all pertained to one of the samples of burnt cotton collected from the insured premises by the Surveyor in the presence of the complainant. She also disputes that the complainant made this reference to the CIRCT without informing the OP or in a manner that would prompt the said CIRCT to give an opinion in favour of the complainant, in total disregard of its professional ethics. For this, she relies on letters dated 27.1.1999 to the Deputy Director, CICT, Hyderabad as well as that dated 17.3.1999 to Branch Office of the OP, both written by the complainant (copies of which she produced across the bar during hearing of the appeal). She further argues that the reports of the Fire Brigade, the Electrical Inspector and the local Police regarding the source/cause of the fire (i.e., electrical short-circuit) could not be discarded as inconsequential and that it was doubtful if the OP at all received any anonymous letter because it never brought on record the anonymous letter which, it claimed, had led to the chemical examination of the burnt cotton sample.

6. IT is true that on a plain reading, the report of the CIRCT appears to be more complete than that of the IICT, in terms of its content as well as the description of the sample. However, we are wary of discarding the report of the IICT only because of the lack of description of the sample. Clearly, in taking the matter to the CIRCT for a second report, the complainant had the advantage of briefing the said Institute on the background of the case, as is clear from the complainant's letter dated 10.4.1999 to the Director, CIRCT, Mumbai (copy of which too was produced by Mrs. Radha during the appeal along with the complainant's letters mentioned above). In such a situation the CIRCT taking care to describe the sample in some detail would be quite natural. However, while the CIRCT report does describe the sample, the wording of the report itself makes it clear that the signatures on the paper label were not identifiable and "the sample was still in water-wet state". It is difficult to see how a sample which was taken nearly a

year back would still be in a water-wet state. Further, accepting Mrs. Radha's contention would imply that the Branch level officials of the OP and the Surveyor colluded in sending a doctored sample of burnt cotton to the IICT. Such a view would be far-fetched because there is nothing to suggest that the officials concerned of the OP and the Surveyor had such a serious enmity/grouse against the complainant as to go to this extent, merely to repudiate a claim of just about Rs. 4.90 lakh, which had been earlier accepted by both the Surveyor as well as the complainant. Moreover, this is not a matter of criminal conspiracy and fraud, in which case the complainant's remedy would lie elsewhere. Thus, the important question in this case is whether the OP can be held guilty of deficiency in service under the provisions of the Consumer Protection Act, 1986 if it chose to send a sample of the burnt cotton (or, caused it to be sent) to the IICT for an examination if the said contained any trace of any of the hydrocarbons commonly used to set fire to material like the insured stock of cotton. It is also not necessary, in our view, for the OP to explain why it chose to do so, i.e., whether it was on the basis of an anonymous complaint or otherwise. Cases of engineered fire to make false insurance claims are unfortunately not uncommon and neither the Surveyor nor the OP can be faulted for getting the cause of fire investigated further.

7. MRS. Radha has not been able to point out any ruling that in the facts and circumstances of the case on hand, the general criteria to determine deficiency in service, as laid down in the Apex Court judgment relied upon by Mr. Nanda, would not be applicable. Insofar as (a) the OP appointed a qualified Surveyor and considered the Surveyor's report, as required under Section 64 UM of the Insurance Act, 1938, (b) despite having assessed the loss, the Surveyor took into account the technical opinion of a competent laboratory/institute to the effect that the fire that affected the burnt insured stock was started using petrol and finally recommended the claim as untenable and (c) the OP repudiated the insurance claim on that basis by its letter dated 9.2.1999 (i.e., well before the CIRCT report became available), it cannot be said that in doing so the OP committed any "deficiency in service" in terms of the meaning of that phrase under the provisions of the Consumer Protection Act, 1986. This is because, to quote from the Apex Court judgment (*supra*), "If on facts it is found that the person or authority rendering service had taken all precautions and considered all relevant facts and circumstances in the course of the transaction and that their action or the final decision was in good faith, it cannot be said that there had been any deficiency in service."

8. IN view of the discussion above, we allow the appeal and set aside the impugned order. However, we also notice the observation of the Apex Court in the judgment (*supra*), "The deficiency in service has to be distinguished from the tortious acts of the respondent. In the absence of deficiency in service the aggrieved person may have a remedy under the common law to file a suit for damages but cannot insist for (sic) grant of relief under the Act for the alleged acts of commission and omission attributable to the respondent which otherwise

do not amount to deficiency in service." Therefore, if so advised, the complainant would be at liberty to seek his remedy before a competent Court/Forum in accordance with law and the benefit of the Apex Court's ruling in the case of Laxmi Engineering Works v. P.S.G. Industrial Institute, II (1995) CPJ 1 (SC)=(1995) 3 SCC 583, on limitation. Parties are left to bear their own costs in these proceedings. Appeal allowed.