(2004) 08 NCDRC CK 0057

In the National Consumer Disputes Redressal Commission

National Insurance Company Ltd. APPELLANT

Vs

BAIDYANATH PD. GUPTA RESPONDENT

Date of Decision : 02-08-2004

Acts Referred:

Citation : 2005 1 CPJ 382

Hon'ble Judges : D.P.S.Choudhary , Asma Ahmad J.

Final Decision : Appeal dismissed

Judgement

1. O.P. National Insurance Company is the appellant who has preferred the appeal against the order dated 12.9.1995 passed by District Forum, Samastipur in Complaint Case No. 32/1994 whereby and whereunder claim in favour of the complainant for Rs. 17,160.50 has been allowed after deducting the amount of Rs. 16,165/- already credited to the account of the complainant with interest. Rs. 200/- has been awarded as compensation and Rs. 100/- as cost of litigation in favour of the complainant.

2. THE appeal was heard ex parte against respondent No. 2 (State Bank of India, Samastipur) who did not appear in spite of service of the registered notice. The brief fact of the case is that complainant has filed the complaint against the Insurance Company and against the Branch Manager, State Bank of India, Kalayanpur-O.P. No. 2 stating therein that he had a fertilizer shop at Kalyanpur, Samastipur. The shop was insured by the O.P. 1 to the extent of Rs. 50,000/- only. In the year 1987 there was flood and stock of fertilizer kept in the shop was damaged with water. The complainant preferred claim to the Insurance Company - O.P. No. 1. A Surveyor was appointed. The matter was also entrusted to the Vigilance Authority. The Surveyor reported the value of the loss to the extent of Rs. 33,325.50 as against the claim of Rs. 42,067.69. The O.P. No. 1 out of its own settled the claim for Rs. 16,165/- only and sent the cheque of this amount to the complainant. The complainant has prayed for the remaining amount as assessed by the Surveyor.

O.P. Nos. 1 and 2 appeared and filed separate written statement. O.P. No. 1

admitted that the shop was insured and the Bank had sanctioned cash credit limit upto Rs. 50,000/- to the complainant for carrying out his business of fertilizer. O.P. No. 1 further stated that Rs. 16,165/- was sent by cheque as claim amount to the complainant and it was credited by the Bank in the loan account of the complainant. The O.P. No. 2-Bank admitted that this amount has been credited to the loan account of the complainant with his Bank.

3. THE District Forum after hearing the parties held that Insurance Company has failed to give any reason as to what was the basis of assessing loss and to settle the claim of the complainant to the extent of Rs. 16,165/- only. Admittedly, the complainant has claimed for more than Rs. 42,000/- and Surveyor has assessed the value of loss to Rs. 33,325.50. THE Surveyor''s report was on record and Insurance Company has not assigned any reason for not accepting the Surveyor''s report who was appointed at the instance of the Insurance Company. THE District Forum further held that Insurance Company has not pointed out any drawback in the report of the Surveyor. THE District Forum also considered the report of the B.D.O., Kalyanpur in which it is mentioned that the fertilizer kept in the shop of the complainant were badly damaged and it was not fit for sale and use. THE Surveyor in his report has given details of different fertilizers, their cost and salvage value. On these basis the District Forum held that amount sent by the Insurance Company to the complainant is arbitrary and without any reason and held that complainant is entitled to the amount as assessed by the Surveyor and accordingly directed the Insurance Company to pay the remaining amount as mentioned above. The appellant-Insurance Company submitted before us that the Insurance Company settled claim and amount was sent to the complainant, which was credited to his account as full and final settlement, and the complainant received no objection whatsoever. Therefore, he is now not entitled for any further amount. The property were hypothecated as the Bank was financier, hence the Bank was owner of the property and Bank has accepted the amount of claim and credited in the account of the complainant of loan account. Therefore, it will amount to full and final settlement and his further claim is unjustified and not maintainable in the eye of law. In support of this contention, the appellant''s lawyer placed reliance on the decision of case New India Insurance Company v. Sri Venkata Padmavathi R & B Rice Mill, reported in (2000) 10 Supreme Cases 334 where it has been held that where assured agrees to accept a certain amount in full and final settlement of his claim, held, such an assured is bound by his commitment in particular where there are no allegations before any Forum that the agreement was vitiated by fraud or undue influence and Supreme Court struck down the order of the National Commission which has allowed higher claim than what has been accepted by the insured without any objection.

4. IN reply to the above contention of the learned lawyer of the respondent-complainant submitted that the above case law has got no application with the fact of this case. The amount sent by the INsurance Company was credited by the Bank in the loan account of the complainant. The complainant had no

opportunity to make any objection with regard to the said amount. The amount was not directly sent to the complainant. The complainant has claimed for more than Rs. 42,000/- and the Surveyor has assessed the claim for more than Rs. 32,000/-. The INsurance Company suo motu without accepting the Surveyor''s report or without assigning any reason sent the said amount by cheque to the State Bank of INdia, Samastipur which was credited in the account of the complainant. This will not amount to acceptance of the amount by the complainant as full and final settlement. The complainant has been raising objection from the very beginning with regard to this amount, which has been credited in his loan account by the Bank. We have considered the submissions of both the parties and the above case law relied on behalf of the appellant and also perused the impugned order. We are in agreement with the submission of the complainant-respondent that the above case law has got no application with the facts of the present case. It is admitted fact that amount of Rs. 16,165/- was not sent to the complainant nor the complainant has opportunity to accept the same as full and final settlement of his claim rather it was sent to the State Bank of India, Kalyanpur, Samastipur Branch directly which credited the said amount in the loan account of the complainant. This does not mean that this amount has been accepted by the claimant as full and final settlement and now he is not entitled to make further claim. The complainant has been agitating from the very beginning with regard to this amount as sent by the Insurance Company to the Bank. Neither before the District Forum nor before us the appellant-Insurance Company has been able to give any much the less valid reason why the Surveyor''s report has not been accepted by the Insurance Company and arbitrarily without any basis of the claim was settled for the amount of Rs. 16,165/- only and it was credited in the loan account of the complainant by the Bank. This is settled law that unless the Surveyor''s report is found to be fraud or biased or having any defect in its assessment or earlier in the calculation there is no valid reason for the Insurance Company not to accept the Surveyor''s report which is almost a binding on the Insurance Company and also on the claimant. Therefore, the District Forum has rightly held that Surveyor''s report is to be accepted by the Insurance Company and the amount assessed as loss in the flood is to be paid by the Insurance Company to the complainant. Therefore, the Insurance Company has been rightly directed by the District Forum to pay the remaining amount of Rs. 17,160.50 to the complainant besides the amount of Rs. 16,165/- which has already been paid through cheque. The Insurance Company has made unreasonable delay in settlement of the claim, as such, the District Forum has rightly held that complainant is entitled to the interest on this amount from the date of occurrence till the date of payment but we are in agreement with this contention of the appellant that rate of interest @ 18% is higher which is reduced to 10% per annum. Since the interest has been allowed to the complainant on the claim amount, therefore, the award of compensation to the tune of Rs. 200/- will amount to double punishment. Therefore this part of the impugned order is set aside, However, the litigation cost of Rs. 100/- is confirmed. In the result, we do not find any merit in this appeal, which is dismissed with the modification in the impugned order as indicated above. The appellant-Insurance Company is directed to pay the remaining amount with interest within two months from the date of this order. However, there shall be no order as to cost. Appeal dismissed.