(2001) 08 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO LTD APPELLANT

Vs

Patel Kanjibhai And Atmaram RESPONDENT

Date of Decision : 09-08-2001

Acts Referred:

Citation : 2001 2 CPC 566 : 2001 3 CPJ 21

Hon'ble Judges : D.P.WADHWA , C.L.CHAUDHRY , J.K.MEHRA , B.K.TAIMNI J.

Judgement

1. THIS first appeal arises out of the order passed by the Gujarat State Commission on 20th October, 1993.

2. BRIEFLY put, the facts are that a number of cotton dealers/traders, after purchasing cotton were getting it pressed into cotton bales at the Ambica Vijay Ginning & Pressing Factory. New India Assurance Company was the insurer for the cotton in fully pressed (F.P.) bales, for each insurance policy obtained by each trader, the amount insured differed which was as specified in the policy for each. On April 25, 1991, there was out -break of fire in the compound of the Pressing and Ginning Factory damaging the cotton bales. Two Surveyors namely, Shri U.R. Shah and subsequently, M/s. Standard Surveyors Pvt. Ltd. carried out the survey. Since the Insurance Company did not settle the claim within a reasonable time, the aggrieved parties filed a complaint before the State Commission seeking relief. The State Commission after recording the evidence and hearing both the parties ordered payment of the claimed amount after deducting the fire brigade and some other miscellaneous charges. In all there were fourteen matters before the State Commission. Since the cause of action was the same, the State Commission, decided to pass a split but a single order i.e. one single order explaining the background and context but examining the evidence and passing the order in each case. Before us are fourteen cases. Six appeals filed by the Insurance Company. (In one case - namely New India Assurance Co. Ltd. v. Iscon Traders - two appeals have been filed for the same cause/order of the State Commission), five counter appeals by the parties to the disputes; three appeals by the parties for enhancement of the compensation.

3. SINCE on the date of final hearing before us, only the Insurance Company was present and others were absent in spite of service of notice and as the matters related to the years 1993 -94, it was decided to move ex -parte and hear the arguments of the Insurance Company - appellant in five and respondent in other cases.

4. IN order to appreciate the case in proper perspective, the following chart may help : Name of the Party Amount claimed(In Rs.) Assessed by Surveyor(In Rs.) Accepted by Ins Company Now ordered by the State Commission (1) New India Assurance Co. Ltd. v. Patel Kanji Bhai Atma Ram, F.A. No. 709/93 Counter Appeal No. 33/94 5,00,000 4,92,465.48 Nil 4,92,465 (2) New India Assurance Co Ltd. v. Ayodya Trading Co F.A. No. 710/93 Counter Appeal No. 32/94 7,20,000 1,99,557.00 1,99,557.00 7,20,000 (3) New India Assurance Co. Ltd. v. Iscon Traders F.A. Nos. 711 and 714/93 Counter Appeal No. 14/94 14,40,000 2,66,458.00 2,66,458.00 14,22,932 (4) New India Assurance Co. Ltd. v. Madhav Traders F.A. No. 712/93 Counter Appeal No. 34/94 3,70,000 2,42,503.60 2,42,503.60 3,63,803 (5) New India Assurance Co. Ltd. v. Shyam Traders F.A. No. 713/93 Counter Appeal No. 36/94 8,00,000 3,22,160.00 3,22,160.00 7,84,862 (6) Shiv Shakhti Traders v. New India Assurance Co. Ltd. F.A. No. 35/94 12,50,000 8,08,423.25 8,08,423.25 8,08,423.25 (7) Chinu Bhai Kanti Lal Patel v. New India Assurance Co. Ltd. F.A. No. 60/94 6,00,000 6,00,000.00 6,00,000.00 6,00,000 (8) Maruti Industries v. New India Assurance Co. Ltd. F.A. No. 61/94 11,50,000 8,94,300. 00 8,94,300.00 8,94,300 Since the cause of action and the Insurance Company is the same, we are inclined to pass one single order in all cases. F.A. No. 709/93 and F.A. No. 33/94 :

The claim of the complainant, Patel Kanji Bhai Atma Ram was rejected on the sole ground that the material i.e. the cotton bales destroyed in fire did not belong to the complainant. According to the petitioner Insurance Company it belonged to M/s. Ravi Irrigation Agency and there is no material on record to substantiate the transfer of the stock in favour of the complainant.

5. THE learned Counsel argued at length to explain that the Surveyor took all the pains to go into the details and obtained the material from the parties and arrived at the conclusion that the bales did not belong to the complainant. We have seen the Surveyors report relating to this case. Surveyor writes that ''the purchase from M/s. Ravi Irrigation Agency was on 18.4.1991... all such purchases from M/s. Ravi Irrigation Agency were lying in the compound of the Ambica Vijay Ginning and Pressing Factory and were burnt...'', yet the Surveyor say he does not accept the same and reject the claim on the ludicrous plea that M/s. Ravi Irrigation Agency did not have any cover. There is no material on record, no evidence led - oral or otherwise, to support his claim. Yet the Insurance Company decides to accept the untenable deduction of the Surveyor just because it suited them. In our view, after examining the evidence both oral and on record, the State Commission has rightly and justly not accepted the plea of the Surveyor/Insurance Company in this regard and awarded the amount after

due deductions to the complainants. No ground exists to interfere with the order of the State Commission.

6. FIRST Appeals filed by both parties are dismissed. First Appeal No. 710 of 1993 and First Appeal No. 32 of 1994 : In this case, the complainant had lodged a complaint towards damages to 100 bales for an amount of Rs. 7.20 lakhs. As per Surveyor the party was holding 350 bales valued at Rs. 19.03 lakhs, hence there was under insurance to the extent of 62.20%. Some sale transactions were carried out by the complainant after the incident of fire to offset the effect of under insurance which the Surveyor did not accept. The Surveyor rightly assessed the claim at Rs. 1,99,557/ - after providing for deductions for under insurance, salvage and policy excess. According to the appellant the State Commission did not provide for under insurance to the extent of 62% while passing the order. After examining the oral evidence and material on record at length the State Commission did not agree with the contention of the Surveyor that the party was holding 350 bales. The Surveyor in cross -examination admits only 100 bales were destroyed valued at Rs. 5,39,561/ -. According to the Surveyor, it was the Factory Manager who had informed that 300 bales of the complainant Company were in the compound of the factory but he failed to produce any statement or material on record to substantiate his information. The State Commission, in our view rightly arrived at the conclusion that only 100 bales belonging to the complainant were in the compound of the factory at the time of incident of fire. A mere averment that too based on the uncorroborated information cannot be accepted as a conclusive proof to be held against the complainant.

7. IN our view, State Commission has rightly held that only 100 bales belonging to the complainant were destroyed, hence the acceptance of full claim as preferred by the complaint. We do not see any ground to interfere with the order passed by the State Commission. The first appeals filed by both parties are dismissed. First Appeal Nos. 711 and 714/93 and F.A. No. 14/94 :

8. IN this case the complainant, Iscon Traders had lodged a claim for Rs. 14,40,000/ - from the Insurance Company for loss of 300 cotton bales during the fire in the premises of Ambica Ginning and Pressing Factory whereas according to the Surveyor the value of these bales was Rs. 16.39 lakhs, thus there was under value by 12.15%. The Surveyor did not accept the claim of the complainant of 300 bales being destroyed by fire, as, according to him, 250 bales belonged to their close associates, Shyam Traders. Surveyor accepted the loss of 50 bales valued at Rs. 2.75 lakhs. The learned Counsel for the Insurance Company argued that the State Commission was not justified in granting the complainant/ respondent Rs. 14,22,932/ - net of salvage and policy excess as this is a case of attempted fraud on the Company. The learned Counsel argued that according to their survey report only 50 bales belonged to the complainant which were increased to 300 by them in order to help M/s. Shyam Traders who did not have adequate insurance. The transaction of purchase from Shyam Traders was

created after the incident. The order of the State Commission is eroneous hence needs to be set aside. We have perused the material on record and heard the arguments. We found that the complainant examined his witnesses, Devji Bhai Kanji Bhai Patel, an erstwhile employee, Accountant of the complainant Company, who produced the requisite record like purchase register, bill, stock register and other documents. We also see that the Surveyor was also examined and in his cross -examination he states that the complainant had informed him that 150 bales were purchased from Shyam Traders, but he did not remember as to whether he had tried to verify the bills from Shyam Traders or from the complainant ? The Surveyor was unable to explain as to how and on what basis he opined/deduced that the 250 bales out of 300 bales for which insurance claim was preferred, did not belong to the complainant Company, based on which the State Commission ordered the appellant herein to pay Rs. 14,22,932/ - with interest @ 12% from 1991 and cost of Rs. 3,000/ -. We do not see any grounds to interfere with the order. First Appeals filed by both the parties are dismissed.

9. IN this case, the complainant claimed damages to 100 bales for Rs. 3,70,000/ -. The State Commission after examining the material on record and hearing the parties ordered payment of Rs. 3,63,803/ - with 12% interest and cost of Rs. 3,000/ -.

10. ACCORDING to the learned Counsel for the appellant Insurance Company, the market value of the 100 bales was Rs. 5.53 lakhs. Hence, there was under insurance by 33.12%. The Surveyor goes further and says that the total stock of the complainant lying in Ginning and Pressing Factory was 150 bales valued at Rs. 8.27 lakhs hence the under insurance was to the extent of 55.27%. According to him, the Surveyor arrived at this conclusion after perusal of lot of material hence his report needs to be accepted. He also argued that the Insurance Company is not shirking away. They have agreed to pay Rs. 2,42,503/ - taking into consideration the value of 100 bales and after providing for deductions for under insurance, salvage and policy excess. It was a case of fraud on the Insurance Company. State Commission committed grave error in ordering award of Rs. 3,63,803/ - with interest @ 12% and cost of Rs. 3,000/ -. The complainant produced his witness who corroborated in details that only 100 bales were in the factory compound on that day and produced register/documents in that regard. On the other hand on cross -examination, the Surveyor, in our view, miserably failed to corroborate his report. His survey report seems to have been based on uncorroborated documents/surmises/second hand information. For example, he was shown a gate pass dated 20.4.1991, indicating exit of 50 bales but he did not secure a copy of gate pass which would have made him wise to that extent. Selected amnesia also seen to affect him; he did not recollect that delivery note of 50 bales was shown to him. In our view, the State Commission rightly and justly did not rely upon the survey report which was based on no proof/corroborated evidence. The order of the State Commission is upheld. The first appeals filed by both the parties are dismissed.

11. IN this complaint, Shyam Traders claimed Rs. 8,00,000/ - for the loss of 200 cotton bales during the fire in the premises of the Ambica Vijay Ginning and Pressing Factory on 25.4.1991. Since the appellant Insurance Company was not settling the claim, the complainant Company approached the State Commission seeking relief. The State Commission after perusing the material on record and hearing both the parties ordered payment of Rs. 7,84,862/ - with interest @ 12% and cost of Rs. 3,000/ - against which the appeal has been filed by the Insurance Company.

12. IT was argued by the appellant Insurance Company that while the complainant claimed Rs. 8 lakhs for loss of 200 bales, his actual stock lying in the factory was 350 bales valued at Rs. 19,15,785/ - which were gutted in fire but showed 150 bales transferred to Atmaram Manchlal and others to avoid the effect of under insurance. According to the learned Counsel for the appellant State Commission erred in not relying upon the survey report which the Surveyor prepared after detailed enquiry and awarding Rs. 7,84,862/ - to the complainant, Shyam Traders. The insurer could not prove the same before the Surveyor. This is a case of fraud on the Insurance Company. What we fail to understand is that how could the appellant/Insurance Company arrogate to itself that the matter must be proved before the Surveyor, when he himself and his report can be and is subjected to scrutiny by an independent Forum as in this case. Infact during the cross -examination the Surveyor admits that as per the statement of Ambica Vijay Ginning Factory, 200 bales of the complainant, Shyam Traders were in the compound and they were damaged. This is as per details given by the Ginning Factory as to which parties were holding particular number of bales on 25.4.1991; what more proof was required on the subject by the Insurance Company to settle the claim ? The State Commission accepted that the complainant succeeded in proving sale transaction of certain bales whereas the ''the opposite party (the appellant Insurance Company) have not established that no such transaction took place''. The report of the Surveyor or for that matter the evidence of the Surveyor was not accepted by the State Commission as it was found to be incomplete and uncorroborated. We agree with the finding of the State Commission and uphold the order passed by it. First appeal filed by both the parties are dismissed.

13. THE complainant, Maruti Industries preferred a claim with the respondent Insurance Company for Rs. 11,50,000/ - for the loss of bales by fire in the premises of Ambica Vijay Ginning Factory on 25.4.1991. After examining the material on record and hearing both the parties, the State Commission ordered payment of Rs. 8,94,000/ - with interest @ 12% from 1.9.1991 alongwith cost of Rs. 3,000/ - against which appeal has been filed by the appellant praying for payment of full claim of Rs. 11.50 lakhs @ 18% rate of interest. According to the appellant the State Commission erred in not admitting the transactions done by the appellant during the period from 1.4.1991 to 25.4.1991. It is true that the appellant was doing business with his relatives (in this case with his son) but there is no law that he cannot do business with his relative and to discard the

transactions with his relative by the State Commission is an error in the eyes of law. Hence he be awarded full amount of Rs. 11.50 lakhs at the market rate of interest of 18%.

14. ACCORDING to the respondent/Insurance Company as per survey report the insured had stocks worth Rs. 38.37 lakhs while the policy was for Rs. 11.50 lakhs which was a case of huge under insurance. Out of 700 bales, 150 bales were saved and 550 bales were burnt, valued at Rs. 30.22 lakhs and net of salvage loss was Rs. 29.52 lakhs - showing an under insurance 70%, based on which loss payable came to Rs. 8,94,300/ -. Insured had also given his consent but subsequently the party backed out and filed this claim for Rs. 11.50 lakhs plus interest. State Commission has accepted the Surveyors report. The payable amount was deposited with the SCDRC in November, 1993. We have gone through the material on record and the arguments of the learned Counsel for the respondent Insurance Company. In the claim of the complainant itself, he states that between 10.4.1991 to 25.4.1991, total number of bales pressed were 800 of which he sold 350 and the value of the remaining 450 bales destroyed were Rs. 16,30,200/ - whereas the insurance cover for Rs. 11.50 lakhs - a clear case of under insurance. It is the evidence of Bipin Kumar Purshottam Das Gujjar, Manager of Maruti Industries which is relevant in this case. He states that as on 1.4.1991, they had 800 bales, opening stock plus purchases on 1.4.1991 out of which they sold 450 bales - most of which were sold to Nimesh Kumar Ramchandlal and Atma Ram Maneklal of these 350 bales were destroyed and 100 bales could be saved. The value of these should be Rs. 25,00,000/ -. He also admits that the proprietor of Maruti Industries had written to the Insurance Company accepting the settlement of claim at Rs. 8,94,300/ -. He also goes on to say that loose bills are kept and no printed numbers are given to these Bills. They also do not maintain any delivery memo. He admits even though memo is not maintained but the signatures of the recipient are obtained on the reverse of the bill but in this case no such signatures were found. The firm of Nimesh Kumar Ramchandlal is none else but that of the son of the appellant. The conduct and the evidence does not lead us to believe or accept the evidence of this witness at all. The State Commission were right in holding that they have no hesitation to say that no such transaction was entered into with Nimesh Kumar Ramchandlal or Atmaram Maneklal. On the other hand enough material is made available in the details supplied through the Surveyors report and his oral evidence. The Surveyor places the total value of bales at Rs. 38,36,531/ - which reflects under insurance to the extent of 70%. According to them there were 700 bales, of which 150 bales were saved and the value of lost 550 bales come to Rs. 30,22,143/ -. After making deductions for under valuation, value of salvage the total amount recommended for settling the claim is arrived at Rs. 8,94,300/ - which the State Commission accepted and awarded. We are in full agreement with the analysis and justification of orders passed by the State Commission. We have also carefully considered the point regarding the rate of interest. In view of several recent rulings of the Honble Supreme Court we are not inclined to change

the rate of interest. We uphold the order of the State Commission with the modification that interest on this amount shall be payable @ 12% from 1.9.1991 to November, 1993 i.e. the date of deposit of the amount by the Insurance Company with SCDRC.

15. THIS appeal was filed by the appellant, before the Insurance Company could finalise its stand on the claim.

16. IN F.A. 60/94 the claim was for Rs. 6 lakhs. After providing for common costs like those of the Fire Brigade etc. the Insurance Company agreed to pay Rs. 5,91,400/ -. The State Commission has ordered the same to be paid @ 12% with Rs. 3,000/ - as cost. The first appeal is dismissed. In this case the appellant Shiv Shakti Traders held these policies for Rs. 12.50 lakhs. According to the appellant/ complainant he had 400 bales on the date of the fire incident. According to the Surveyor the value of the claim was Rs. 21,74,107.50 whereas the insurance is for Rs. 12.50 lakhs only under insurance to the extent of 42.51%. The Surveyor after investigation accepted the claim for loss of 150 bales and after making deduction for under insurance etc. suggested settlement of claim for Rs. 8,08,423.25 which the complainant did not accept.

17. DURING the examination of witness Jagdish Trikam Lal Prajapati he could not satisfy the State Commission about the defence and actual occurrence of several transactions which could be corroborated by the records. Insurance was taken for Bale Nos. 31601, 31650, 31651, 31700, 701 and 750. The Insurance Company was not informed of these numbers. He admits that buyer and seller of bales in the case were brothers and he writes books for both. He admits that bill numbers were not written in the stock registers. He also states that they do not issue any delivery note to the purchaser.

18. IN our view the State Commission has rightly not relied upon the evidence of such a witness on the premises that any transaction in the above circumstances can be very easily created with a view to avoid the under insurance. This is further corroborated by the evidence of the Surveyor who stated that even though he specifically requested, the accounts were not immediately submitted to him for verification. On the basis of the above we are in full agreement with the view of the State Commission that the claimant is not entitled to anything more than Rs. 8,08,423/ - as recommended by the Surveyor and ordered by the State Commission with interest @ 12% from 1.9.1991 till the date of payment along -with cost of Rs. 3,000/ -. We do not find any merit in the appeal, which is dismissed. We uphold the orders of the State Commission. The first appeal is dismissed. In all the above cases, in the appeals filed by the aggrieved parties who lost their cotton bales in fire incident on 25.4.1991 in the compound of Ambika Vijay Ginning Factory, they have pleaded for increasing the interest rate to 18%. We have considered this but find ourselves unable to agree in the light of several recent judgments where rate of interest to be paid has largely been limited to 12% only, which State Commission has awarded from 1.9.1991. We consider this adequate and are not inclined to interfere in this. A copy of this

order be placed in the file of each case referred to in this order. Appeals dismissed.

