(2004) 03 NCDRC CK 0067

In the National Consumer Disputes Redressal Commission

New India Assurance Co. Ltd. APPELLANT

Vs

RAM RISHIPAL SINGH RESPONDENT

Date of Decision : 04-03-2004

Acts Referred:

Citation : 2004 3 CPJ 460

Hon'ble Judges : K.D.Shahi , Surendra Kumar , Luxmi Singh J.

Final Decision : Appeals dismissed

Judgement

1. THESE are two connected appeals arising out of judgment and order dated 24.9.2003 passed by the District Forum, Dehradun whereby the complaint of the complainant was allowed for a compensation of Rs. 17,000/- (Rupees seventeen thousand) for the damage in house which was insured and Rs. 5,000/- (Rupees five thousand) as compensation and Rs. 1,000/- (Rupees one thousand) as cost of the proceedings. It was directed that the amount be paid within a month, failing which the complainant shall get interest @10% from the date of the complaint i.e., 21.12.2000.

2. THE complainant Sh. Ram Rishipal Singh has also filed a cross-appeal, registered as Appeal No. 51/2004, Sh. Ram Rishipal Singh v. New India Assurance Co. Ltd., for the enhancement of compensation. According to him, the compensation as directed to be paid by the learned Forum is highly inadequate. Since both the appeals arise out of same judgment and order and in both the appeals common question of law and facts are involved, therefore, both the appeals are taken together for disposal. Copy of the order shall be placed in the records of both the appeals separately. The brief facts of the case are that the complainant and his wife Smt. Shashi Prabha had got a policy of their house a well as household articles in 1998. During the insurance period on 28.3.1999 there was an earthquake in Dehradun in which the complainant suffered a loss of Rs. 17,000/- (Rupees seventeen thousand). Information was given to the Insurance Company but the Insurance Company was arbitrarily ready to pay only Rs. 2,907.99 (Rupees two thousand nine hundred seven and ninety-nine paise),

therefore, the complaint was filed.

It is further alleged that due to the cracks in the roof, there was leakage of water which damaged articles worth Rs 30,000/- (Rupees thirty thousand) and there was also weakness in the house which has been assessed for Rs. 1,00,000/- (Rupees one lac). The complainant has claimed these two amounts as well.

3. THE opposite party admitted the insurance and the earthquake. It was alleged that the loss due to cracks in the roof was not to the tune of Rs 17,000/- (Rupees seventeen thousand), it was only to the tune of Rs. 2,907.99 (Rupees two thousand nine hundred seven and ninety nine paise) which were desired to be paid but the complainant did not accept. THE loss of articles of Rs. 30,000/- (Rupees thirty thousand) is also denied. It is alleged that the complainant is not a consumer. The learned Forum after hearing both the parties held that the complainant is a consumer. This point was not agitated here because the learned Counsel for the Insurance Company admitted that the policy was in the name of the complainant as well as his wife and any of the two or both could have filed the complaint. Regarding the damages, the learned Forum has held that there is no evidence of the opposite party that the loss was only to the tune of Rs. 2,907.99 (Rupees two thousand nine hundred seven and ninety nine paise) only. The learned Forum believed the notice of the complainant, which was not replied. It was further believed that when the complainant was ready that the opposite party if feels that a sum of Rs. 17,000/- (Rupees seventeen thousand) is on the higher side, it can get the repair done itself but the said notice was not replied. Therefore, the learned Forum believed the allegation of the complainant that the repair costs could have been Rs. 17,000/- (Rupees seventeen thousand). However, the learned Forum held that there is no evidence of the loss of articles of Rs. 30,000/- (Rupees thirty thousand) or the loss of strength of the house worth Rs. 1,00,000/- (Rupees one lac), therefore, for these two reliefs claim was rejected.

4. FOR the reliefs which were allowed, the Insurance Company has filed the appeal and for the reliefs which were rejected, the complainant has also filed an appeal. Both the appeals are taken together for disposal. The judgment and order passed by the learned Forum is an elaborate one. It is true that the report of the assessor of the complainant has not been supported with an affidavit as the report of the opposite party but on perusal of the evidence, it is itself clear that at least crack in the roof could not be denied, its length and breadth has also been given in the report of the assessor. Likewise although Sh. D.K. Jain, the Surveyor of the Insurance Company has written that the complainant did not co-operate with him in the estimation of the loss but the other Surveyor Sh. Vivek Arora has definitely given the major cracks measuring to 92 running ft., he has also given 42 running ft. minor cracks. He has also reported that it is well known that a high-density earthquake has hit the region in the midnight of 28-29.3.1999, which has widely destroyed life and property. Sh. Vivek Arora has reported that during inspection some old cracks were also noticed which were

not definitely related to this earthquake. He, however, did not define those earlier cracks. Sh. Vivek Arora has further alleged that it can be repaired only in Rs. 3,138/- (Rupees three thousand one hundred thirty eight). We are unable to appreciate this cost because in these days even if you touch the house for minor repairs, it never costs less than Rs. 10,000/- (Rupees ten thousand), not only the gap in the cracks is to be filled in, it has properly to be repaired so that there is no leakage of water for that even a layer of mortar shall be required to be kept over the roof. In these circumstances, the estimate as given by the complainant cannot be said to be on the higher side. However, if it was on the higher side, when the complainant offered the Insurance Company to get the repairs done, it should have done it but their failure shall lead to the conclusion that the estimate given by the complainant to that extent was correct. As regards the loss of the articles worth Rs. 30,000/- (Rupees thirty thousand) and consequential damages of the house of Rs. 1,00,000/- (Rupees one lac), we fully agree that there is absolutely no evidence that when the cracks are to be repaired in Rs. 17,000/- (Rupees seventeen thousand) where is the question of further strengthening of the house in which a sum of Rs. 1,00,000/- (Rupees one lac) is to be spent. The learned Forum has rightly refused these reliefs and as such the appeal of the complainant for enhancement of the compensation is to be dismissed.

5. AS regards the appeal of Insurance Company, it is also to be dismissed. The complainant prayed the he has not been awarded interest. Interest has already been given in the order. The order has not been complied with within a month, consequently the complainant is entitled to interest as ordered by the learned Forum.

6. THE net result is that there is no force in either of the appeals and both the appeals are liable to be dismissed. ORDER Appeal No. 845/2003, New India Assurance Co. Ltd. v. Sh. Ram Rishipal Singh, and Appeal No. 51/2004, Sh. Ram Rishipal Singh v. New India Assurance Co. Ltd., is hereby dismissed. Cost of both the appeals shall be easy. Appeals dismissed.