(2003) 10 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

New India Assurance Co. Ltd. — APPELLANT

Vs

RASIKLAL CHHAGANLAL SHAH — RESPONDENT

Date of Decision : 15-10-2003

Acts Referred:

Citation : 2004 3 CPJ 701

Hon'ble Judges : M.S.Parikh , M.K.Joshi J.

Final Decision : Appeal partly allowed

Judgement

1. THIS appeal arises from order dated 15th May, 2001 rendered by the learned Panchmahal District Consumer Disputes Redressal Forum at Godhra in Complaint Application No. 8/1997 directing the opponent Insurance Company to pay to the complainant Rs. 60,200/- by way of compensation, Rs. 300/- by way of cost of application and Rs. 500/- by way of compensation on the head of mental agony and physical hardship, in all Rs. 61,000/- with interest @ 9% p.a. from the date of application till payment and also awarding penal interest @ 15% p.a.

2. IT was the complainant''s case before the learned Forum that the complainant''s shop in which cloth goods were lying, was hit by fire on 30.6.1995 resulting into total damage to the electrical fittings, furniture, fixtures and cloth goods of the value of Rs. 70,000/-. Since the opponent Insurance Company offered Rs. 17,500/- the complainant was before the learned Forum praying for compensation as alleged in the complaint. The opponent Insurance Company resisted the complaint inter alia on the ground that Surveyor was appointed for assessment of the loss and he has made detailed survey of the loss by making reference to whatever material that was supplied by the complainant to the Surveyor. Surveyor S.R. Chitre accordingly submitted the report for surveyed amount of Rs. 17,500/-.

After considering the material placed on record and after hearing the parties the learned Forum came to the conclusion that complainant was entitled to compensation in the sum of Rs. 60,200/- and not Rs. 70,000/- as prayed for by the complainant. One of the grounds on which the learned Forum held in favour of the complainant to the extent of compensation in the sum of Rs. 60,200/- was non-production of spot survey report by the opponent Insurance Company before the learned Forum. Learned Forum reduced the compensation claim of the complainant on the ground that in the police complaint as well as in the Panchnama the loss stated by the complainant was Rs. 60,200/-. Learned Forum, therefore, held that claim to the extent of Rs. 60,200/- was established. The resultant order as stated above has been subjected to challenge in this appeal.

3. WE have heard the learned Advocates for the parties. WE have gone through the impugned order. WE have gone through the memorandum of appeal. The Surveyor''s report has been submitted before this Commission. In our considered opinion the survey report is a valuable document and when detailed survey was made, to that extent deficiency in service could not have been attributed to the opponent Insurance Company. If there was no survey report before the learned Forum it was for the complainant to establish the claim under Section 13 of the Consumer Protection Act, 1986. As a matter of fact detailed survey report was produced by the opponent Insurance Company for consideration of the learned Forum. It is true that spot survey report was not produced. However, the complainant could have pointed out from the survey report those items which appeared at the time of spot survey and which did not appear in the survey report. The question in such type of complaints is whether the material or the documents required for the assessment of loss and supplied by the consumer are considered or not considered and if considered what is the impropriety or illegality in such consideration. That exactly has to be shown by the complainant in a proceeding under the Consumer Protection Act where deficiency in service has been alleged.

4. WE have, however, gone through the survey report. The complainant has not been in a position to point out any items of stock which have not been considered by the Surveyor. He has also not been able to point out which items have not been properly considered by the Surveyor. This is with regard to the stock of cloth goods which have been item-wise enumerated by the Surveyor. The Surveyor has pointed out the amount of claim in the sum of Rs. 41,200/- and amount of assessment in the sum of Rs. 10,506/-. In our considered opinion the assessed amount will have to be accepted as there is nothing on record to show that there was more loss than the amount so assessed. We would, however, like to refer to the assessment of loss insofar as furniture, fixtures and fittings are concerned. The Surveyor has observed under the head inspection/ verification that a detailed inventory of furniture, fixtures and fittings and insured stock was taken. He has observed that entire wiring and ceiling fans were badly short circuited, blackened and damaged. He has also observed that wooden racks were also badly burnt and damaged. Now if furniture, fixtures and fittings were so badly damaged as could not be repaired the complainant would have been entitled to total amount of loss of such furniture, fixtures and fittings. The claim which has been set up by the complainant is in the sum of Rs. 1,600/- for damage to electric wiring and fitting and Rs. 24,061/- for damage to ceiling and

wooden racks, in all Rs. 25,661/-. We do not find any basis of reduction of these amounts to Rs. 1,220/- and Rs. 10,000/- respectively, in all Rs. 11,220/-. We, therefore, propose to take the total claim of Rs. 25,661/- for the purpose of final working of the claim. If this amount is added to the assessed amount of stock in the sum of Rs. 15,506/- it gives out the figure of Rs. 36,167/- and if salvage value of Rs. 726/- is deducted it gives out the figure of Rs. 35,441/-. From this amount ''under insurance'' will have to be deducted. It is to be worked out @ 16.5% in the sum of Rs. 5,847/-. Thus the net amount which could be awarded to the complainant comes to Rs. 29,594/- and if this amount is rounded off it will give out the amount of loss awardable to the complainant in the sum of Rs. 30,000/-. As the amount of cost and compensation awarded by the learned Forum is quite reasonable we do not propose to disturb the same. We, therefore, pass following order: Impugned order dated 15th May, 2001 rendered by the learned Panchmahal District Consumer Disputes Redressal Forum at Godhra in Complaint Application No. 8/1997 is hereby set aside and modified as under: The opponent Insurance Company (appellant herein) is directed to pay to the complainant (respondent herein) Rs. 30,800/- with running interest @ 9% p.a. from the date of complaint till payment within six weeks from today. This appeal is accordingly partly allowed with no further order as to cost. Appeal partly allowed.

