(2009) 04 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO. LTD. — APPELLANT

Vs

Sehrawat India (P.) Ltd. And Anr. — RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

Citation : 2009 3 CPJ 4

Hon'ble Judges : B.N.P.SINGH , P.D.SHENOY J.

Final Decision : R.P. dismissed

Judgement

1. THIS Revision Petition has been filed by New India Assurance Company Limited against the concurrent Judgments of the Fora below.

2. IT is an admitted case of the parties that the complainant M/s. Sehrawat India (P.) Ltd. had got its stock insured for a sum of Rs. 18,50,000 with New India Assurance Co. Ltd. during the currency of the policy. It is also not in dispute that during the currency of the policy on the intervening night of 13/14.10.2000, a burglary took place in the factory premises of the complainant, resulting in huge loss to the company. Immediately the complainant lodged claim with the Insurance Company, as a result of which, Surveyor visited the spot on 19.10.2000 and he assessed loss at Rs. 4,33,774 to be paid proportionately by the Insurance Company. The New India Assurance Company took the plea that the complainant had not supplied all the requisite documents and most of the purchase bills submitted by the complainant were found to be fake. The claim of the complainant was closed as no claim''.

3. THE District Forum on the basis of the evidence available on record accepted the complaint and directed the New India Assurance Co. Ltd. to reimburse the complainant a sum of Rs. 2,81,573 and National Insurance Company a sum of Rs. 1,52,201 to be paid along with interest @ 7.5% p.a. from the date of repudiation of the claim i.e., 26.11.2002 till its realization within a period of two months from the date of its order failing which the rate of interest will increase to 9% p.a. The Forum also awarded Rs. 1,500 as cost to be paid by the Insurance Company equally. Dissatisfied by the order of the District Forum, the New India

Assurance Co. Ltd. filed an appeal before the State Commission.

4. IT was contended before the State Commission that as per the provisions of Section 64 -UM of the Insurance Act, the Surveyor and the investigator are only to assist the Insurance Company in assessing the loss. However, the final decision has to be taken by the Insurance Company. The Insurance Company has also placed on record affidavit of Shri C.P. Chopra, Administrative Officer of the company supporting the report of the investigator, Shri Kavinder Malhan who has investigated into certain bills which were found by him to be not genuine. The State Commission had observed that the Insurance Company had not filed the original policy and accordingly have withheld the best evidence to prove their version and stated that the observations made by the High Court of Punjab and Haryana in the case of Jaswinder Singh v. Purshotam Lal Sanghi and Others, 2005 (3) CCC 478 (P and H), are fully applicable to the case on hand.

5. AS the State Commission dismissed the appeal, the New India Assurance Co. has filed this Revision Petition before us.

6. MR . Vishnu Mehra, learned Counsel for the petitioner submitted that the complainant did not co -operate with the Surveyor. The State Commission has not even given credence to the affidavit of Shri C.P. Chopra, Administrative Officer of the Company who had supported the report of the investigator by filing an affidavit. Non -production of original policy is not relevant as at any time it could have been produced. Findings:

7. UNDISPUTED facts are that the peril has taken place during the currency of the policy and statutory Surveyor has been appointed who has taken pains to assess the loss in great detail. It is worthwhile to look into the report of the Surveyor. He has observed that the circumstances proves the mishap to be accidental in nature and the peril is covered under the hazards of the policy issued to and held by the insured by both the insurers. The progress of the case was also being reported to both the insurers from time -to -time and the loss has been finalized after due discussions with the parties concerned.

8. THERE was no doubt about the burglary as the Managing Director had found that the iron bars of the back side window of Electroplating section were removed and stocks of 1082 sets of mixers lying in the electroplating section were missing. The matter was immediately reported to the Sampla Police Station through Kharawar Police Post and FIR was lodged. The Police party immediately visited the insured premises. The Surveyor has also looked into the Books of accounts vis -a -vis financial performance. As against the claim of Rs. 7,30,000 of the insured the Surveyor assessed net loss only at Rs. 4,33,774. He has also observed the stocks have been found adequately insured and the police authorities have given final untraced report.

9. FURTHER the Surveyor has observed that apparently no breach of warranty was observed. The insured has manufactured the quantity much more than the order received from the merchant exporter. He has also apportioned the loss

payable by two Insurance companies. Though the Insurance Company in its Revision Petition has stated that one Shri R.G. Verma, a professional Chartered Accountant was also sent to assess the loss, his report is not submitted before us. It could have been possible that either he had concurred with the first Surveyor P. Kumar Garg who is also a Chartered Accountant or he might have assessed loss at higher level but we do not want to base our judgment on this surmise. It is true that the Insurance Company had appointed an investigator by name Shri Kavinder Malhan. He has not given any detailed report. His qualifications are not known. He has only disputed certain bills stating that they were not genuine. Surprisingly this Kavinder Malhan has not filed any affidavit to enable the complainant to cross -examine him or to serve interrogatories on him.

10. IT is a settled law that report of the statutory Surveyor has to be given due importance in arriving at the conclusion about the net loss suffered by the consumer unless there is substantial evidence to the contrary. Accordingly, we do not see any material irregularity or jurisdictional error in the order passed by the Fora below. Therefore, this Revision Petition is dismissed. There shall be no order as to cost.