(1997) 04 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO LTD — APPELLANT

Vs

Sun Steel Industries P Ltd — RESPONDENT

Date of Decision : 03-04-1997

Acts Referred:

Citation : 1997 1 CPJ 104 : 1997 2 CPC 225 : 1997 2 CPR 32

Hon'ble Judges : V.BALAKRISHNA ERADI , S.S.CHADHA , R.THAMARAJAKSHI , C.L.CHAUDHRY J.

Judgement

1. THIS Revision Petition is directed against the Order dated 5th December, 1995 of the State Commission, West Bengal allowing the claim of the complainant amounting to Rs. 3,12,439.66 with interest. The facts which are necessary for the disposal of this Revision Petition are summarised as under.

2. BY a policy of insurance dated 24th January, 1991 the Insurance Company opposite party insured the petitioners against all losses and damages on the petitioner''s goods as stated in the schedule to the policy for a total insured sum of Rs. 1,26,57,940/ -. On 20/21.4.91, during the subsistence of the petitioner''s insurable interest, some material was lost in burglary from the site stores situated in Village Talso, Police Station -24 North Parganas. The loss was estimated at Rs. 2,11,234.74, particulars of which were delivered to the Insurance Company. The complainant also lodged the complaint with the Police Station regarding the burglary by a letter dated 11th September, 1991. The matter was investigated and the Investigating Officer submitted his report on 4th December, 1991, that the case ended in F.R.T. and the theft material could not be traced out inspite of the investigation. The opposite party by letter dated 31th March, 1993 informed the complainant inter alia stating that it has been gathered from the report of Grampanchyat and nearby neighbours that there was no such incident of theft having occurred on that date and accordingly the opposite party rejected the claim of the claimant. With these allegations the complainant approached the District Forum, Calcutta, claiming a sum of Rs. 3,12,439.66 from the opposite party. Needless to say that the opposite party contested the claim by filing written version stating inter alia that the

respondents after receipt of the claim lodged by the complainant, got the claim investigated through a duly licensed Surveyor/Investigator and after receipt of the report, repudiated the claim of the complainant with reasons and the repudiation was not arbitrary or without cogent reasons. It was further pleaded that on 24th April, 1991, Mr. N. Nag Chowdhury, a Surveyor was appointed to assess the loss. The Surveyor submitted his report on 3rd February, 1992 assessing the quantum of loss to the tune of Rs. 1,43,162.89. Thereafter, on 5th March, 1992 another Surveyor, Mr. M. Chatterjee was appointed to assess the loss and on the basis of the report of the second Surveyor, the claim was repudiated on 31.3.93.

3. THE District Forum after considering the material placed on the record, came to the conclusion that the opposite party had rightly repudiated the claim of the complainant and it was not entitled to get the relief sought for in these proceedings. The complainant was advised to file a civil suit in a competent Civil Court.

4. AGGRIEVED by the order of the District Forum the complainant approached the State Commission by way of an appeal. The State Commission on appreciation of the material on record, observed that the Redressal FORA were bound to see whether or not the repudiation was made in good faith and on justified grounds. If the Surveyor or Surveyors choose to submit wrong report and Insurance Company repudiates the claim without applying their minds, then repudiation could not be said to be justified. The report of the Surveyor should show that the investigations were proper, fair and thorough. In the instant case, the Insurance Company repudiated the claim on the basis of second Surveyor''s report without assigning any reason and even without communicating the report of the Surveyor to the complainant. Even after submission of Police report and certificate of Pradhan in support of the incident, the Insurance Company took more than two years to repudiate the claim motivated, biased and arbitrary and that amounted to deficiency in service on the part of the Insurance Company. The State Commission thus allowed the claim of the complainant amounting to Rs. 3,12,439.66 as calculated upto 31st July, 1993 and future interest at the rate of 20% over the amount till the date of payment.

5. WE have heard the Counsel for the parties. It was canvassed before us by the Counsel for the petitioner that the finding of the State Commission holding that there was a deficiency in service, was not borne out by the record of the case. The repudiation of the claim was justified.

6. WE have considered the material in the light of the submission of the learned Counsel for the parties. We find no merit in the contention raised by the Counsel for the revision petitioner. The State Commission returned the finding after taking into consideration all the relevant facts and circumstances of the case. The finding is based on sound principles laid down by this Commission in various pronouncements. Conclusion arrived at by the State Commission is fully justified. There is no scope of interference. The finding of the State Commission that there

was deficiency in rendering the service by the Insurance Company is affirmed. The next submission on behalf of the Insurance Company was that the State Commission awarded compensation without any material on the record except the bald statement of the complainant. The award of compensation to the Consumer is to be determined on the basis of actual loss and injury, suffered by consumer. No evidence or material was placed by the complainant to substantiate its loss. Even the State Commission had not gone into this question as to on what basis the complainant was entitled to the amount claimed. In the complaint, the complainant had claimed a sum of Rs. 3,12,432.66 particulars of which were given as below: The amount of losses caused by theft/burglary Rs. 2,11,234.75 Compound interest @ 20% p.a. calculated from 21.6.91 to 31.7.93 Rs. 1,01,204.92 Rs. 3,12,439.66

7. THE State Commission allowed the entire claim without giving any indication as to how the complainant was found entitled to that amount.

8. IN our view the contention of the petitioner has merit. It is well settled that a consumer who suffers loss on account of deficiency in rendering service by the opposite party is entitled to compensation. The claim for compensation has to be substantiated by placing relevant material on record. Quantification of compensation has to be done on rational basis and is not to be made arbitrarily. The order of the State Commission does not show as to on what basis the compensation was arrived at Rs. 3,12,439.66. The order contains no discussion on this aspect nor does it disclose which material was taken into consideration by the State Commission while awarding the amount of Rs. 3,12,439.66. In our opinion the State Commission acted in the exercise of its jurisdiction illegally and with material irregularity so far the order relates to the award of compensation of Rs. 3,12,439.66.

9. AS a result, this Revision Petition is partly allowed. The order of the State Commission so far it relates to the award of Rs. 3,12,439.66 to the complainant is set aside. The case is remanded to the State Commission for deciding the matter relating to the award of compensation to the complainant afresh in the light of the observations made above. Of course, the State Commission will pass the order afresh after affording opportunities to the parties. The other finding of the State Commission that there was deficiency in rendering of services by the opposite party is confirmed. The parties are left to bear their own costs.

10. WE hope that the State Commission will dispose of the matter as expeditiously as possible but not later than four months from the date of the receipt of a copy of this order as the matter relates to the year 1991. Revision Petition partly allowed.