(1999) 01 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE COMPANY LIMITED — APPELLANT

Vs

DODDA KOTESWARA RAO — RESPONDENT

Date of Decision : 19-01-1999

Acts Referred:

Citation : 1999 2 CPJ 535 : 1999 3 CPR 405

Hon'ble Judges : S.Parvatha Rao , T.Ranga Rao , Mamata Lakshmanna J.

Final Decision : Appeals allowed

Judgement

1. THESE two appeals are preferred by New India Assurance Company Limited, Lalapet Branch (Labbipet Branch), Guntur questioning the common order dated 11.7.1996 passed by the Guntur District Forum in O.P. No. 426/1995 and O.P. No. 427/1995 after recording evidence in O.P. No. 426/1995 and treating the same as evidence in O.P. No. 427/1995.

2. THE facts that gave rise to filing of these appeals are stated briefly as follows : THE respondent herein, D. Koteswara Rao of Guntur who was the complainant in O.P. Nos. 426 and 427 of 1995 carried on liquor business in the name and style of "M/s. Prakash Wines and Bar as a proprietory concern in a house located in 17th Lane, Arundalpet, in Guntur town. He insured all the furniture, fixtures, electrical fittings, stocks, etc., in the said premises with the New India Assurance Company Limited, Labbipet Branch, Guntur (i.e. opposite party) for a sum of Rs. 2,50,000/- for the period commencing from 24.4.1995 to 23.4.1996 after paying the required premium amount and the opposite party issued a Fire Policy-A and the particulars of the stocks covered under the policy were mentioned in the schedule attached to the policy. As the complainant was also carrying on liquor business in the name and style of M/s. Bhavani Bar and Restaurant situated in Hostel Sarovar, opposite to R.T.C. Bus Stand, Guntur as a proprietory concern, fie insured all the furniture, fixtures, electrical fittings, etc., of that business with the opposite party for a sum of Rs. 6,00,000/- for the period commencing from 17.3.1995 to 16.3.1996 after paying the required premium and obtained a Fire Policy-A with Cover Note No. R-3941 and the stocks covered under the said

policy were mentioned in detail in the schedule attached to the said policy. As the Government of Andhra Pradesh introduced total prohibition, the complainant stopped doing business in both the premises and shifted the furniture, fixtures, stocks in the premises of Bhavani Bar and Restaurant to the shop located in 17th Lane, Arundalpet, Guntur wherein Prakash Wines and Bar was carried on, with the consent of the opposite party and obtained a Fire Extra Endorsement from the opposite party on 29.5.1995. As such the furniture, fixtures, electrical fittings, stocks, etc., in both the premises were kept in the shop Prakash Wines and Bar located in 17th Lane, Arundalpet, Guntur. While so, at about 4.30 a.m. on 7.6.1995 a fire accident occurred due to short circuit of electricity in the shop located in the 17th Lane, Arundalpet, Guntur and the entire stocks were gutted in fire. Immediately, the complainant reported the matter to the Law and Order Police Station, Arundalpet, Guntur and the police registered a case as Crime No. 80/1995 dated 7.6.1995 and issued the F.I.R. (First Information Report). The complainant also reported the same to the opposite party-Insurance Company on the same day and also to the Fire Service Station and Electricity Department. According to the complainant, he sustained a loss of Rs. 2,50,000/- as far as stocks of Prakash Wines and Bar are concerned and a further loss of Rs. 5,45,000/- as far as stocks of Bhavani Bar and Restaurant are concerned. He submitted his claim forms to the opposite party. Thereupon the opposite party appointed a Surveyor to assess the loss sustained by him on account of the fire accident. The Surveyor came and inspected the premises and found that the entire stock was gutted in fire. The Police Department, Electricity Board and Fire Service Department also confirmed that the cause of fire was short-circuit of electricity. As the opposite party did not settle his claim, the complainant filed O.P. No. 426/ 1995 in regard to the damage caused to the stocks in Prakash Wines and Bar claiming an amount of Rs. 2,50,000/- towards compensation together with interest at 24% per annum from the date of fire accident till the date of payment and costs. He filed another complaint O.P. No. 427/1995 in regard to the damage caused to the stocks of Bhavani Bar & Restaurant claiming a total compensation of Rs. 4,99,000/- together with future interest at 24% per annum from the date of petition till the date of realisation and costs.

The opposite party filed separate versions /counters with similar contentions in both the matters i.e. O.P. No. 426/1995 and O.P. No. 427/1995 admitting issuance of two insurance policies in question but contending that Sri K Siva Prasad, the Surveyor appointed by it inspected the premises on the date of accident itself and enquired into the matter and submitted a preliminary report dated 15.6.1995, that thereafter the Surveyor submitted a final report dated 11.12.1995, that the enquiry made by the Surveyor reveals that the complainant informed the Surveyor that he was not at his house at the time of accident having gone to the Railway station to give send off to somebody, whereas the complainant categorically stated in the report (F.I.R.) given to the police about the accident that he was at his house at about 4.00 a.m. on the date of the accident when the son of the owner of the shop premises and one Yedukondalu, a watchman of the neighboring hospital came to his house to inform about the accident, that this prevaricate statement of the complainant about his presence at his house at the time of accident created suspicion in regard to the cause of the accident, that according to the Surveyor "the scene of fire appears that the entire shop was at once engulfed in fire" which is unusual in nature if the cause of the accident was short-circuit of electricity, that the Surveyor also reported that because the shop was not in running condition since January, 1995 and no lights were kept switched on during a long period it was improbable that the short-circuit would have occurred in the premises that the fact that the entire shop was gutted in fire within a period of twenty minutes also led to a suspicion that the accident was not due to short-circuit of electricity, that the door number of the premises in which the accident occurred is different from the door number given in the policies, that the complainant has not furnished claim forms and other documents relating to his lease-hold rights of the premises, that the complainant filed these cases when the matter was pending consideration by the opposite party, that the Investigator appointed by the opposite party also reported that there was no truth in the claim made by the complainant and the cause of accident was not short-circuit of electricity and that in the circumstances there is no deficiency in service on the part of the opposite party. It is further pleaded by the opposite party that the claim made by the complainant is bogus and therefore, they sent a repudiation letter dated 27.2.1996 to the complainant and that the complaints are liable to be dismissed. As both parties filed a joint memo requesting for joint trial of both the matters in view of the fact that both parties are same in both the matters, the District Forum clubbed both the matters and recorded evidence in O.P. No. 426/ 1995 and treated the same as evidence in O.P. No. 427/1995 and after considering the material on record it passed a common order on 11.7.1996 holding that the accident occurred due to short- circuit of electricity and that there is deficiency of service on the part of the opposite party inasmuch as the opposite party failed to settle the claim of the complainant though it is liable to pay compensation. Accordingly it directed the opposite party to pay to the complainant a sum or Rs. 63,209/- with interest at 18% per annum from 15.8.1995 till the date of payment and compensation of Rs. 2,000/- towards mental agony and expenses in O.P. No. 426/1995 and further directed the opposite party to pay to the complainant a sum of Rs. 1,26,166/-with interest at 18% per annum from 15.8.1995 till the date of payment and compensation of Rs. 3,000/- for mental agony and expenses in O.P. No. 427/ 1995.

3. AGGRIEVED by this order the opposite party i.e. The New India Assurance Company Limited, Guntur Branch preferred these two appeals. The point for consideration is whether there is deficiency in service on the part of the opposite party and whether the opposite party is liable to pay any compensation and if so to what amount ?

4. THE learned Counsel for the appellant submits that the District Forum grossly erred in directing the opposite party to pay compensation despite the categorical

reports of the Surveyor and the Investigator stating that the investigation made by them disclosed that the cause of accident was not short-circuit of electricity and the complainant made bogus claims and that in view of the settled legal position the District Forum should have referred the parties to a Civil Court. THE learned Counsel for the appellant relied on a decision in Parees Offset Private Limited v. United India Insurance Company Limited & Ors., II (1995) CPJ 9 (NC), wherein it was held as follows : "We find that the Insurance Company has carefully applied its mind to various relevant aspects and had, thereafter, arrived at the conclusion that the claim put forward by the insured was not tenable and the insurer was not liable for reimbursing the alleged loss sustained by the insured. In our opinion, on the facts and circumstances of the case, the repudiation of the liability by the Insurance Company cannot be said to have been made arbitrarily or unreasonably and there is absolutely no reason to think that the decision was taken by the insurer otherwise than in good faith. Such being the position, it cannot be said that there was "deficiency in service" on the part of the Insurance Company so as to entitle the complainant to seek any relief under the Consumer Protection Act, 1986. THE complainant will have to pursue his remedy by way of a civil suit or by resort to arbitration in case there is a provision in that regard contained in the policy of insurance and in either event, he will be able to have all the facts fully investigated and will have full opportunity to urge all his contentions before the Civil Court or the Arbitrator."

He also relied upon another decision in Advance Rubber Industries v. United India Insurance Company Limited, II (1996) CPJ 111 (NC), wherein it was held as follows : "We have come to the conclusion that in the present case there is no ground to hold that the Insurance Company has been guilty of negligence or there is deficiency in service. THE Insurance Company appointed the Surveyors and Investigator who filed the reports. After going through the report the Insurance Company applied its mind and repudiated the claim. THE repudiation in the present circumstances does not appear to be arbitrary."

He also relied upon another decision in New India Assurance Company Limited v. B.K. Vashist, III (1997) CPJ 101 (NC), wherein it was held as follows : "THE Insurance Company had fully investigated into the claim put forward by the complainant, got the survey conducted and had finally come to the conclusion that the claim put forward by the complainant was false and accordingly the claim was repudiated."

He also relied upon another decision in Murli Cold Storage Private Limited v. THE New India Assurance Company Limited & Ors., I (1998) CPJ 84 (NC), wherein it was held as-follows : "On the facts disclosed above, we do not find that there is any deficiency on the part of the opposite party which had fully investigated'' into the claim put forward by the complainant, got two joint surveys conducted and had finally come to the conclusion to repudiate the claim, under the said two policies. THE complainant is not satisfied with this letter of repudiation and the complainant may have its own reason. Having regard to the facts and circumstances of the case and the nature of controversy between the parties, we consider that this is a matter that should be adjudicated before Civil Court where the complainant as well as the opposite party would have sufficient opportunity to examine witnesses at length and produce oral and documentary evidence from the official records of the West Bengal Government which are claimed to be in existence for ascertaining of the cause of loss and quantum of loss. Without prejudice to the right of the complainant, the complaint is dismissed leaving the parties to bear their own costs."

The learned Counsel points out that when the Surveyor, K. Siva Prasad appointed by the opposite party inspected the accident premises on the same day and made enquiry, that during that enquiry the complainant told the Surveyor that he was not at his house when the son of the owner of the shop premises and one Yedukondalu, a watchman of the neighbouring hospital came to his house to inform about the accident, whereas in the F.I.R. (marked as Ex. A6) the complainant categorically stated that he was at his house when the son of the owner of the shop premises and Yedukondalu came to his house and then he immediately rushed to the accident place that this inconsistency in statements of the complainant regarding his presence or absence at his house at or around the time of occurrence would lead to a conclusion that the complainant was making prevaricate statement as to his presence at his house and that therefore, there is every justification for the opposite party to suspect the genuineness of the claim made by the complainant. The learned ''Counsel for the appellant also points out that the shop in which the fire accident occurred is different from the shop mentioned in the insurance policies inasmuch as the insurance policy issued for the shop bears the Door Number as 6-17-1/17 whereas the fire accident occurred in the shop bearing Door Number 6-19-8/H and that therefore, the opposite party is justified in repudiating the claim of the complainant. It is also pointed out by the learned Counsel for the appellant that the failure of the complainant to. submit claim forms and lease agreement in regard to his lease-hold rights of the shop in which the incident occurred would lead to the conclusion that the claim of the complainant was not bona-fide. It is further pointed out by the learned Counsel for the appellant that this claim was made very soon after the opposite party issued Ex. A5 Fire Extra Endorsement giving consent for the shifting of the furniture and other articles from Bhavani Bar and Restaurant to the shop where this accident occurred and that therefore, the cause of the accident as reported by the complainant is not true and there is every reason for the opposite party to suspect the claim made by the complainant. It may be noted that in Ex. A6 F.I.R. the complainant categorically mentioned that he was at his house at about 4.30 a.m. on the date of the accident when the son of the owner of the shop premises and one Battina Yedukondalu came to his house to inform the accident, whereas the Surveyor reported in Exs. B-4 and B-5 reports that the complainant told him that he was not at his house when the son of the owner of the shop premises alongwith one Yedukondalu came to his house to inform about the accident since he had gone to the railway station to give send off to somebody. It may also be noted that in his proof affidavit filed at the time of enquiry before the District Forum the complainant has not denied having stated to the Surveyor that he was not at his house at the relevant time though the Surveyor categorically reported that the complainant told him that he was not at his house when the son of the owner of the shop premises and one Yedukondalu came to his house to inform about the accident. The complainant has not made any attempt either to examine the son of the owner of the shop premises and the said Yedukondalu nor did he file the proof affidavits of those two persons to testify that he was present at his house when these two persons went to him at about 4.30 a.m. or. the date of accident to inform about the accident. Therefore, the conclusion reached by the opposite party that the complainant was giving prevaricate statement in regard to his presence or absence at his house at or around the time of the fire accident and that therefore, the cause of accident as reported by the complainant was not short-circuit of electricity and the complainant was making a bogus claim is justified. It may also be noted that the shop premises mentioned in the policy issued for the shop in which this fire accident occurred is mentioned as 6-17-1/17 whereas the Surveyor reported that the shop in which the accident occurred bears Door No. 6/19/8/H in the same locality. Thus there is a change with regard to the identity of the shop in which the fire accident occurred. Admittedly the Door No. 6-19-8/H was not mentioned in the policies. This circumstance also justifies the opposite party to repudiate the claim of the complainant. It may also be further noted that even without submitting claim forms and the forms relating to his lease-hold rights of the shop in which the fire accident occurred, the complainant filed these complaints before the Guntur District Forum on 21.11.1995 within five months from the date of accident and even before the opposite party gave a final reply. This circumstance also justifies the repudiation made by the opposite party. The Surveyor also reported that because the shop was closed for long time without putting on lights prior to the date of accident it is quite improbable that the accident occurred due to short-circuit of electricity and the fact that the fire broke out very rapidly and the furniture, etc., were gutted in fire within a short time also leads to a conclusion that the fire was not due to short-circuit of electricity. It may be that what the Surveyor reported may not be wholly true but the fact remains that there are circumstances to suspect that the fire accident was not due to short-circuit of electricity. The Investigator K. Giri Kumar reported that the complainant personally and persistently followed up for the issuance of an endorsement after the shifting of the furniture and other articles from Bhavani Bar and Restaurant to the shop where this accident occurred and that this accident occurred very soon after the furniture and other articles were shifted to the shop where this accident occurred and therefore, the complainant''s claim is bogus. On the other hand the learned Counsel for the complainant submits that the Electricity Department Officers, the Fire Station Officers and the concerned Police Officers inspected the premises and gave reports that the fire accident occurred due to short-circuit of electricity and in the circumstances the repudiation made by the opposite party is arbitrary, capricious and without any justification and the District Forum is right in accepting the case of the complainant. We are not inclined to agree with this contention. In the decisions referred to above the, National Commission held that in cases where the Surveyors/Investigators appointed by the Insurance Company made thorough investigation and came to the conclusion that the claim of the complainant was false and where the Insurance Company carefully applied its mind to various aspects and arrived at the conclusion that the claim put forward by the insured was not tenable and the insurer was not liable for reimbursing the alleged loss sustained by the insured, there is no deficiency of service on the part of the opposite party and the complainant will have to pursue his remedy by way of civil suit, when he is not satisfied with the letter of repudiation. Keeping in view the above decisions of the National Commission and having regard to the facts and circumstances of the case and the nature of controversy between the parties, we are of the opinion that the opposite party applied its mind to various relevant aspects of the case and made a repudiation and that there is no deficiency in service on its part, and the complainant will have to pursue his remedies by way of civil suit. Accordingly we hold that the order of the District Forum is liable to be set aside. In the result both the appeals i.e. F.A. No. 859 /1996 and F.A. No. 860/1996 are allowed and the order of the Guntur District Forum is set aside and the complaints O.P. Nos. 426/1995 and O.P. No. 427/1995 are dismissed without prejudice to the right of the complainant to approach the Civil Court for appropriate reliefs. There shall be no order as to costs in these appeals. Appeals allowed.

