**(2008) 05 NCDRC CK 0010**

**In the National Consumer Disputes Redressal Commission**

NEW INDIA ASSURANCE COMPANY LIMITED — APPELLANT

Vs

HIM ISPAT LIMITED — RESPONDENT

**Date of Decision :** 26-05-2008

**Acts Referred:**

**Citation :** 2008 4 CPJ 174

**Hon'ble Judges :** K.S.Gupta , S.K.Naik J.

**Advocate :** Salil Paul

## Judgement

1. -THIS revision by the opposite party Insurance Company is directed against the order dated 5. 5. 1998 of Consumer Disputes Redressal Commission Punjab, Chandigarh allowing appeal against the order dated 26. 2. 1997 of a District Forum with direction to the petitioner to pay the deducted amount of Rs. 1,52,008 with interest @ 12% p. a. from the date three months after the survey report was submitted, to the respondent/complainant. The District Forum had dismissed the complaint.

2. RESPONDENT had purchased a fire policy ''c'' of the sum of Rs. 10,00,000 for the period from 15. 4. 1991 to 14. 4. 1992 from the petitioner. Respondent alleged that a fire broke out in the main mill block on the intervening night of 21st-22nd March, 1992 causing damage of Rs. 20,00,000 to the company. Insurance Company appointed a surveyor who assessed the loss at Rs. 4,09,390 out of which the Insurance Company paid Rs. 2,57,382 through a cheque dated 30. 10. 1994. This cheque was received by the respondent under protest. It was stated that the amount of Rs. 1,52,008 was deducted by the petitioner on ground of short payment of premium by the respondent in respect of the previous insurance policies. Complaint seeking payment of the said amount, etc. filed by the respondent was contested by the Insurance Company. It was alleged that the total amount of short premium paid in respect of the previous policies was Rs. 1,51,958. Amount of Rs. 82,624 was waived while effecting recovery. It was further alleged that in his report dated 4. 5. 1991, Engineer Naveen Kumar reported that the rate in respect of flood and allied peril was to be charged @ 0.

 

75 paise per mille. Insurance Company charged @ 0. 50 paise per mille from the respondent. Respondent at the time of taking policies had represented that the building was ''a'' class construction but it was not so. By the letter dated 21. 1. 1992, the Insurance Company informed the respondent giving complete details that the premium charged for the previous policies was less on account of wrong information given regarding the class of construction of the building. Respondent was called upon to make payment of the difference in premium but it did not respond. We have heard Sh. Paul for the petitioner.

Controversy in this revision centres around the justification to deduct amount of Rs. 1,52,008 out of the amount of Rs. 4,09,390 as assessed by the surveyor towards damage in fire, by the petitioner Insurance Company. In the rejoinder filed to the written version, the respondent has alleged that the Insurance Company has wrongly taken the stand that the respondent represented that the building was Class ''a'' construction and on inspection it was found to be of other class. In fact, the respondent gave complete details of the construction in various proposal forms. Receipt of the petitioner''s letter dated 21. 1. 1992 was emphatically denied. Paper book would show that in support of written version, only a short affidavit of Ms. Kamlesh Vashist, then posted as Deputy Manager at Jeevan Bharti Building, Connaught Place, New Delhi was filed. Order of Fora below would show that neither the copy of the letter dated 21. 1. 1992, receipt whereof is denied in rejoinder with proof of service thereof on the respondent nor the proposal forms and/or copies thereof was filed by way of evidence by the Insurance Company. Proposal forms would have thrown light as to the class of construction of building declared by the respondent at the time of purchase of policies. That apart, the petitioner should have verified the class of construction before the issue of policies. Further, in absence of service of the letter dated 21. 1. 1992, the Insurance Company cannot be said to have afforded opportunity to the respondent of its having allegedly paid short premium in respect of the previous policies. Deduction of the said amount based on the inspection report dated 4. 5. 1991 and the audit report was thus totally unjustified. There is no illegality or jurisdictional error in the order of State Commission calling for interference in revisional jurisdiction under Section 21 (b) of CP Act, 1986.

3. ACCORDINGLY, revision is dismissed with no order as to cost. Payment pursuant to the State Commission''s order be made to the respondent within six weeks. Revision Petition dismissed.

 