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(2012) 05 NCDRC CK 0103

In the National Consumer Disputes Redressal Commission

New India Assurance Company Ltd APPELLANT

Vs

Harinder Paul Singh (Since deceased) Through his legal heirs RESPONDENT

Date of Decision : 15-05-2012

Acts Referred:

Citation : 2012 0 NCDRC 138 : 2012 3 CPJ 103 : 2012 3 CPR 46

Hon'ble Judges : V.B.Gupta , Vinay Kumar J.

Advocate : Aftab Singh Bakshi , Kishore Rawat

Judgement

1. THE New India Assurance Co. Ltd. has filed this appeal against the order of Consumer Disputes Redressal Commission, UT Chandigarh in CC No.7 of 2004.

2. DURING the pendency of this appeal, Complainant Harinder Paul Singh died on 26.11.2007. Substitution of the following as his legal heirs was requested in MA No. 914 of 2010 1) Tejinder Kaur (Wife) 2) Arshleen Kaur (daughter) 3) Ishreen Kaur (daughter) The same was permitted by this Commission on 24.9.2010. The matter arises out of an incident of fire, which took place on 13.4.2004 in the premises of the Complainant New Paul Textiles. Substantial part of the textiles stocks were allegedly burnt and the remaining were damaged in the effort to extinguish the fire with water hose. Five and half months after this fire the claim was repudiated by the appellant/Insurance Company. The letter of 27.9.2004 addressed to the Complainant showed that the repudiation was done as per condition Nos.6 and 8 of the concerned Standard Fire and Specified Perils Policy. These two conditions, as contained in the letter of repudiation read as follows:- "6. On the happening of any loss or damage the insured shall also at all times at his own expense produce, procure and give to the company all such further particulars, plans, specification books, vouchers, invoices, duplicates or copies thereof, documents, investigation reports (internal/external), proofs and information with respect to the claim and the origin and cause of the loss and the circumstances under which the loss or damage occurred, and any matter touching the liability or the amount of the liability of the company as may be reasonably required by or on behalf of the company together with a declaration

on oath or in other legal form of the truth of the claim and of any matters connected therewith. 8.If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof or if any fraudulent means or devices are used by the insured or any one acting on his behalf to obtain any benefit under the policy or if the loss or damage by occasioned by the willful set, or with the connivance of the insured all benefits under this policy shall be forfeited.

Before the State Commission, the Complainant made allegations of demand of illegal gratification by the Surveyor Shri Vinay Mittal and impleaded him as OP-4, the other three being the New India Assurance Co. Ltd. In response to the grounds for repudiation, the Complainant claimed that all required documents had been submitted to the insurance company and they were never told precisely what were those other documents which were required but not supplied and thereby attracted the condition of non-compliance.

3. ON the other hand, the stand of the OPs before the State Commission was that the Complainant No.1 had continued to seek time to prepare detailed list of damaged goods. He had also tried to delay the verification and assessment of the loss on the pretext of ill health. The allegation of demand of illegal gratification was denied and called malicious and defamatory. The case of the OPs was that the investigation report of Mr. S.P. Singh and the assessment of Surveyor Mr. Vinay Mittal made it amply clear that condition Nos.6 and 8 of the policy had been violated. The State Commission has noted that on the question of genuineness or otherwise of the claim, income tax returns for years 2001 to 2003 were submitted on behalf of the Complainant showing turnover of Rs.43.50 lakhs, 54.03 lakhs and 60.35 lakhs respectively. It was argued that since the business was running well, the Complainants themselves could not be expected to set the shop on fire and damage their business, as alleged. On the allegation of non-submission of documents and non-cooperative attitude of the Complainants, it was pointed out before the State Commission that all documents asked by the OPs vide Annexure C-4 had been handed over vide Annexure-32.

4. THE State Commission, on considering the material before it, came to a conclusion that repudiation of the claim was not justified. THE Commission noted that the Surveryor Mr. Vinay Mittal had stated in his cross-examination that he had visited the insured premises five to six times to assess the loss. He also agreed to have done physical verification of complete stock during his three hours long visit to the premises on 22.3.2004. But the insurance company did not rely on his report and appointed an investigator. The State Commission has rejected the report of the investigator Mr. S.P. Singh observing that "a mere reading of which proves beyond doubt that the investigator tried his level best to bring the version of such persons with whom the complainants had some enmity and the entire report presented by him is an attempt to prove that the complainant No.1 was a person of doubtful integrity and was under heavy debts

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etc. We want to mention it pertinently that even before starting with the report while making a sketch of the scene of occurrence Mr. S.P.Singh has mentioned "fire created intentionally which amply proves that the investigator was grossly biased against the insured and even before starting with the investigation, he had arrived at conclusion against the complainant. We have examined the records and heard the two counsels; Mr. Kishore Rawat for the appellant/ OP and Mr. Aftab Singh Bakshi for the respondent/complainant. Learned counsel for the appellant New India Assurance Co. referred to the letter of repudiation and reiterated the claim of the Company that violation of condition Nos.6 and 8 of the policy was the basis for repudiation of the claim.

5. WITH reference to the first (condition 6), he referred to the correspondence in letter of 15.3.2004, 13.3.2004 and 6.4.2004 written by the Surveyor to the Complainant. These letters primarily concern the question of preparation of stock details. The letter themselves show the effort put in by and on behalf of the Complainant, while recording the lack of complete satisfaction of the Surveyor with the same. We do not find anything in this correspondence which can amount to lack of reasonable effort required in condition No.6 relied upon by the appellant/OP. Significantly, neither the memorandum of appeal nor the counsel for the appellant have challenged the stand of the Complainant before the State Commission that all documents asked for by the OPs vide Annexure C-4 were handed over vide Annexure C-32.

6. THE second ground for repudiation of the claim by the insurance company was the allegation of fraud, as per condition No.8 cited therein. Shri Kishore Rawat, learned counsel for the New India Assurance Co. argued that there was no justification for high level of stocks, as sale during the year of fire had dipped. For this learned counsel referred to the observations on stocks in the report of the Surveyor. It needs to be noted here that the list of stocks prepared by the Surveyor was not produced before the State Commission. THE impugned order therefore observes-- "In the absence of or omission on the part of insurance company to produce the actual list prepared by the surveyor immediately after the fire which he has stated on oath to have been prepared and also mentioned in his report on record raises adverse presumption against the OPs. To quantify the stock we are left with no option but to be guided by the stock statement given by the Allahabad Bank for the relevant period. We therefore find no reason to accept the argument of the learned counsel in this behalf.

Further, on the allegation of fraud, it needs to be noted that the written response before the State Commission merely states that the investigation conducted by Shri S. P. Singh (wrongly noted as Jagtar Singh in the written response of OP) as well as assessment made by Shri Vinay Mittal clearly show that condition No.6 and 8 had been violated by the complainant. However, proceedings before the State Commission show that the allegation of fraud was not proved by the appellant/OP.

We have referred to the comment of the State Commission on the biased

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approach of the investigator. Counsel for the respondent/Complainant drew our attention to the fact that the investigator Shri S.P. Singh came into the picture on 27.8.2004 and completed his investigation on 16.9.2004, which was nearly five months after the fire had occurred on 13.3.2004. How could he have come to a conclusion that the fire was caused by spraying inflammable material like kerosene On the contrary, the surveyor, who had visited the site on 14.3.2004 i.e. immediately after the fire, had found only foul smell due to burnt cloth and water . We therefore agree with the opinion of the State Commission on the approach of the investigator.

7. WE are of the view that having repudiated the claim of the Complainant categorically on the grounds of non-submission of relevant documents as well as fraud, as per condition nos.6 and 8 cited therein, it was incumbent upon the insurance company to prove them before the State Commission. Proceedings before the State Commission show that the appellant had failed on both counts. The State Commission has therefore rightly allowed the complaint. In the result, we do not find any substance in this appeal. The same is therefore, dismissed and the order of the State Consumer Disputes Redressal Commission, U.T. Chandigarh in CC No.7 of 2004 confirmed. The parties shall bear their own costs.

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