(2011) 08 NCDRC CK 0065

In the National Consumer Disputes Redressal Commission

New India Assurance Company Ltd. APPELLANT

Vs

Sturdy Polymers Ltd. RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Citation : 2011 0 NCDRC 531 : 2011 3 CPJ 338

Hon'ble Judges : V.R.Kingaonkar , Vinay Kumar J.

Final Decision : Revision petition is allowed

Judgement

1. THE appeal and the revision petition mentioned above are being disposed off together. First Appeal No. 208/2006 has been filed by original opposite party (OP New India Assurance Company Ltd.) against judgement and order rendered by the Delhi State Consumer Disputes redressal Commission (hereinafter referred to as the State Commission) in complaint case no. C-107/1996. By the impugned judgement, the State Commission allowed the complaint of the respondent and directed the appellant (OP Insurer) to pay compensation of Rs.9,76,200/- alongwith Rs.50,000/- being cost of litigation and general compensation on account of wrongful repudiation of the claim. Revision Petition No. 2094 of 2011 has been filed by the original complainant, M/s. Sturdy Polymers Ltd., against the order rendered by the State Commission in execution case no. 54/2006.

2. SHORN of unessentials, the case of the complainant was that on 28.02.1995 it had taken Marine cum Erection policy from the appellant as per cover note no. 0307937/483. An Extruder machinery alongwith certain parts thereof were dispatched from Daman during the relevant period of validity of the insurance cover. The machinery was to reach at Baddi (Himachal Pradesh) through M/s. Surat Goods Transport Service. During the transit, certain goods in the consignment boxes, including parts of machinery, were damaged. The remarks were given by the truck drivers and store officers / Engineers of the complainant, about the damages, while accepting the delivery of the machinery at Baddi office. The complainant, therefore, put forth three claims. Out of those three claims, one was settled by the appellant (Insurer). The appellant, however,

repudiated two claims pertaining to damages caused to parts 90-22V Barrel and Twin Screw-set of Extruder Machine Model BEX-2-20-22V, despatched under GRs Nos. 1290 and 1291, valued at Rs.4,98,500/- and Rs.4,77,700/- respectively. The appellant had appointed M/s. A.K. Gupta & Associates, Government approved surveyor to conduct the survey and assess the loss. The claims were repudiated by the appellant. The appellant inter alia contended that the respondent did not cooperate with the authorised investigator, i.e., M/s. Ilas Consultants Pvt. Ltd. The appellant further alleged that there was undue delay in giving intimation about the loss caused during course of transportation of the goods and that was on account of falsehood in the claim. The appellant further alleged that the respondent (complainant) failed to furnish documents regarding transaction about the second consignment received from M/s. Scalechem Engg. Corporation, Bombay in spite of repeated requests. The appellant further alleged that the investigation report dated 4.01.97 disclosed the fact that the respondent (complainant) could not have obtained personal delivery of the machinery items from M/s. M/s. Scalechem Engg. Corporation, Bombay, which could not be carried in passenger compartment of a passenger train. The appellant repudiated the claim on basis of investigation report submitted by M/s. Ilas Consultants Pvt. Ltd.

The parties adduced certain evidence before the State Commission. The State Commission, after hearing the learned counsel for the parties and on consideration of the material placed on record, held that the delay caused by the complainant (respondent) was not inordinate. The State Commission further held that the subsequent investigation report could not have been used as basis for repudiation of the claim, particularly, when the assessment of the loss was reported by M/s. A.K. Gupta and associates on 6.09.2005. The State Commission, therefore, allowed the complaint and awarded compensation as mentioned earlier.

3. WE have heard learned counsel for the parties. WE have also perused the relevant documents and the material on record. Learned counsel for the appellant would submit that the investigation report could not be rejected by the State Commission when sufficient reasons were recorded by the investigator to expose falsity of claim. Learned counsel for the appellant invited our attention to letter dated 19.06.1997 issued by the appellant in order to show that the complainant (respondent) failed to cooperate during the process of investigation. It is also pointed out from the written version that M/s. Ilas Consultants Pvt. Ltd. had been appointed to carry out detailed investigation in the matter. It is further submitted that the barrel of about 5 ft. length and the heavy screw available only in one piece could not have been carried in the passenger compartment of a train from Bombay to Baddi (H.P.). Learned counsel for the appellant strenuously argued, therefore, that the repudiation of the claims was on valid grounds, hence he urged to allow the appeal. On the other hand, learned counsel for the respondent (complainant) supports the impugned judgement. So far as the question of delay caused in giving information to the appellant is concerned, it

may be stated that the damaged machinery parts and screw had been received at Baddi (Himachal Pradesh) on 11.03.1995. The intimation of losses was sent to the appellant on 4.04.1995. The machinery was heavy and valuable. The respondent (complainant) was required to verify the actual damage caused, after close scrutiny of the relevant documents and the vouchers pertaining to the purchase items. The respondent is having its business office at New Delhi. The industrial unit of the respondent is situated in industrial area of Baddi (Himachal Pradesh). Baddi is situated in the hilly areas of Himachal Pradesh. The remoteness of the place, the requirement to assess the loss and to first communicate the same to the Head Office at New Delhi are the circumstances which cannot be overlooked while considering the delay caused in giving the intimation. The delay of few days could not be due to malafide intention of the respondent (complainant). The cover note issued by the appellant do not show any specific condition that the respondent was under any obligation to give intimation within any particular time limit. No doubt, the respondent was expected to give the intimation within a reasonable period after the loss was noticed. Considering the attending circumstances and the discussion made hereinabove, we are of the opinion that the claim could not be repudiated on account of mere delay in giving intimation of the loss to the appellant.

4. COMING to the merits of the matter, it may be gathered that M/s. A.K. Gupta and Associates, gave the reports dated 6.09.1995 after assessment of the loss. Both the reports were available to the parties prior to filing of the complaint. The surveyor is admittedly the government authorised valuer and surveyor. The complaint was filed before the State Commission on 29.03.1996. The surveyors reports were much prior in time. Since 6.09.1995 till filing of the complaint dated 29.03.1996, the appellant had not expressed any adverse opinion against the reports of the surveyor. Both the surveyors reports are placed on record. We have perused the surveyors reports in order to find out whether the appellant had expressed any suspicion about transaction between the respondent and M/s. Scalechem Engg. Corporation, Bombay. The surveyors reports show that the bills of replacements were duly verified as per the insureds books of accounts. Thus, it is explicit that the surveyor Mr. A.K. Gupta had verified the books of accounts of the respondent and the assessment was made on basis of the actual payment shown in the books of account. The surveyor reported that the original documents were made available for verification in support of the loss. What appears from the record is that during pendancy of the complaint proceedings, the appellant made appointment of the investigator, i.e., M/s. Ilas Consultants Pvt. Ltd. It appears that M/s. Ilas Consultants Pvt. Ltd. gave the investigation report on 4.01.1997, whereas the claim was filed with the appellant on 4.4.1995. Faced with this difficulty, learned counsel for the appellant seeks to rely on observations in National Insurance Co. Ltd. Vs. Harjeet Rice Mills [(2005) 6 SCC 45], and National Insurance Co. Ltd. Vs. M/s. Sajjan Kumar Aggarwalla [2009 (004) SCC 0751]. In National Insurance Co. Ltd. Vs. Harjeet Rice Mills (supra) the Apex Court held that section 64 UM of the Insurance Act, cannot stand in the

way of insurer in establishing that the claim was fraud on the company. If fraud is established, then there is no difficulty in holding that the repudiation made by the appellant was proper. In National Insurance Co. Ltd. Vs. M/s. Sajjan Kumar Aggarwalla (supra), the matter was remanded to the District Forum to verify the necessary data. No ratio as such is laid down in the given case. Learned counsel further seeks to rely on observations in New India Assurance Co. Ltd. Vs. Pradeep Kumar [Civil Appeal No. 3253 of 2002], wherein the Apex court held that the surveyors report is not the last and final word. It has been observed that the approved surveyors report may be basis or foundation for settlement of a claim by the insurer in respect of the loss suffered by the insured, but such report is neither binding upon the insurer nor upon the insured. The two reports of the surveyor may not be binding on the appellant; yet unless it is show that the surveyors reports are tainted with some malafides, the same cannot be overlooked, particularly, when M/s. A.K. Gupta and Associates was appointee of the appellant. Moreover, the investigators report also does not show that the surveyors reports were malafide or influenced by any other consideration. The only reason ascribed by M/s. Ilas Consultants Pvt. Ltd. is that the replacement of the damaged items was of barrel and 100 kg. of screw which could not have been probably delivered personally to the buyer. The reason so stated only gives rise to some suspicion. As stated before, M/s. A.K. Gupta and Associates had verified the payments made to M/s. Scalechem Engg. Corporation, Bombay. The investigator noticed that Mr. R.K. Gupta was unavailable because he had gone out of country. The investigators report shows that Mr. R.K. Gupta was to return in August 1996. Obviously, thereafter, the inquiry could be made and additional report could be submitted. We are unable to hold that any fraud was played on the appellant by the respondent. There is no tangible material to infer that GR receipts produced by the respondent were forged and fabricated. We are, therefore, in general agreement with the reasons recorded by the State Commission. Needless to say, the impugned judgement does not call for any interference. Under the circumstances, the appeal deserves to be dismissed. Hence the appeal is dismissed. The statutory amount deposited, if any, be refunded to the appellant alongwith accruals. The appellant New India Assurance Company Ltd. is directed to pay cost of Rs.5,000/- to the respondent (complainant). The dismissal of the execution shall be restored and therefore, the revision petition no. 2094 of 2011 is allowed.

