(2003) 05 NCDRC CK 0124

In the National Consumer Disputes Redressal Commission

NEW JAIPUR DYEING AND TENT WORKS — APPELLANT

Vs

National Insurance Co. Ltd. — RESPONDENT

Date of Decision : 21-05-2003

Acts Referred:

Citation : 2003 3 CPJ 140

Hon'ble Judges : K.S.Gupta , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Appeal allowed

Judgement

1. APPELLANT, M/s. New Jaipur Dyeing and Tent Works, Jaipur was the complainant before the State Commission.

2. BRIEFLY the facts leading to filing of complaint before the State Commission was that the appellant for purposes of manufacturing tent and allied products had obtained credit facility from Canara Bank, who while sanctioning the limit obtained an insurance cover to ensure security of the credit limit for the respondent Insurance Company for Rs. 3 lakhs. In the Cover Note, description of cover reads as follows : "On risk of all types of tent and denying material, poles, tripals, darries, velvets, cloths, coolers, decorated cloths, utencils, which is used as tent house purpose while stored and lying in the shop built at first class construction at the aforesaid address for Rs. 3.00 lacs."

There was a burglary in the night of 17.9.1988 and entire stocks stored and lying in the factory were stolen. FIR was lodged. Matter was reported to the Bank and the respondent. Respondent appointed Surveyor and when even after getting the reports of Surveyor and Investigator, respondent did not settle the claim, the complainant filed a complaint before the State Commission claiming compensation of Rs. 7,35,000/- and interest as Rs. 3 lakhs taken as loan from the Bank. The State Commission after hearing the parties disallowed the complaint, basing its decision on the order of National Commission passed in an appeal, filed by the same complainant aggrieved by the order of the State Commission in regard to the claim preferred with the Oriental Insurance Company, from whom another insurance policy covering risk of burglary etc. for

Rs. 5 lakhs had been obtained separately by the complainant. This Commission remanded the instant case for reconsideration on its own merits rather than basing its order on the facts another case may be of similar nature, and directing the State Commission to pass order on merits of the case as also implead the Bank as party. State Commission impleaded the Bank as a party and after hearing the parties passed the order dismissing the complaint on two grounds namely "that stock and stock in process of cloth, canvas, chemicals and goods whilst stored and/or lying in alleged factory premises at D-31, Shastri Nagar, Jaipur were not insured under the cover note and secondly the insured (Bank) was not the complainant, but it was M/s. New Jaipur Dyeing and Tent House".

We heard the arguments and perused the material on record. We even at the cost of repetition reproduce the risk covered as per Cover Note : "On risk of all types of tent and dyeing material, poles, tripals, darries, velvets cloths, coolers, decorated cloths, untensils, which is used as tent house purpose while stored and lying in the shop built at first class construction at the aforesaid address for Rs. 3.00 lacs."

3. NOWHERE it says that it covers the risk of shop only as is the contention of the respondent, National Insurance Company. Burglary is reported to be from the stocks stored and lying at the factory site. This is corroborated by the report of Surveyor/Investigator. We see no ground whatever with the State Commission to not to believe them. It is severally held by the Hon''ble Apex Court that Surveyor''s report is an important document. Nothing has been shown by the State Commission in its order as to not only relying upon the report of the Surveyor - but also go on to attribute collusion between the complainant and the Surveyor and the Investigator. To say the least, this aspersion is unwarranted and is not borne out by any analysis on record. We see no reason not to believe the report of the Surveyor/Investigator that burglary did indeed take place and goods were stolen from the factory and feel under a covered risk. It is the second ground which is at the bottom of it that is who was the real insured - M/s. New Jaipur Dyeing and Tent House or M/s. New Jaipur Dyeing and Tent House. It is true that as per cover note, the name of the insured is written as M/s. New Jaipur Dyeing and Tent House. After a protracted discussion on this point, State Commission concluded it was M/s. New Jaipur Dyeing and Tent House which was insured, hence the complainant. M/s. New Jaipur Dyeing and Tent House has no locus-perhaps based on the plea of the respondent that this is no privity of contract with the insurers Perhaps on account of name. This controversy has been set to rest to our complete satisfaction. Bank has filed an affidavit before us that it is the complainant M/s. New Jaipur Dyeing and Tent Works, Jaipur who was their client. This affidavit is also supported by the loan agreement which is the name of the appellant/complainant. They also state that the Bank had taken the standard policy cover to cover loss against burglary and house breaking. It is also stated that the Bank had filed a debt recovery suit before D.R.T., there also the name of the complainant is given as M/s. New Jaipur Dyeing & Tent Works. This, is our view, is sufficient evidence, to set the name controversy at rest, and

we have no hesitation in saying that if was the complainant who was insured. A small mistake of ''House'' v. ''Works'' at the end of the complainant''s name is admitted by the Bank, but this in no way changes the reality as to who was insured. Bank was a party before the State Commission. Had they made bit of an effort to get at the truth with the help of the Bank, whole controversy could have been avoided.

4. IN view of the above, both the grounds made out to dismiss the claim cannot be sustained. Order of the State Commission is set aside. In view of the above, the appeal is allowed and the respondent National Insurance Company is directed to pay the amount of Rs. 2,77,559.62 assessed by the Surveyor along with interest @ 10% from 1.8.1989 i.e. two months after the receipt of Surveyor along with interest @ 10% from 1.8.1989 i.e. two months after the receipt of the Surveyor''s report along with cost of Rs. 5,000/- payable by the respondent to the complainant. Appeal allowed.

