(1993) 10 NCDRC CK 0056

In the National Consumer Disputes Redressal Commission

NEW JAIPUR DYING And TENT WORKS — APPELLANT

Vs

National Insurance Co. Ltd — RESPONDENT

Date of Decision : 22-10-1993

Acts Referred:

Citation : 1994 1 CLT 478 : 1994 1 CPC 258 : 1994 1 CPJ 19 : 1994 1 CPR 715

Hon'ble Judges : V.Balakrishna Eradi , A.S.Vijayakar , B.S.Yadav J.

Final Decision : Appeal allowed

Judgement

1. WE do not think it necessary to give here the facts of the case in detail. Suffice it to say that the Appellant Firm is a registered Partnership Firm doing business of manufacturing tents and other ancillary products. For the purpose of developing its business the Appellant Firm had taken loan from M/s. Canara Bank, M.I. Road Branch, Jaipur. While granting credit limits to the Firm the Canara Bank had sought hypothecation of properties of the Firm in the form of manufacturing goods and other related properties available at the factory site. In order to safeguard the entire amount the Canara Bank got insured the hypothecated property through an insurance coverage against burglary. Three different cover notes were obtained from the respondent Insurance Company as well as Oriental Insurance Company. The insurance premium was initially paid by the Bank but it was debited in the Appellant''s account with the Bank.

2. ON the night intervening 17th and 18th September, 1989, according to the Complainant-Appellant firm the locks of the factory were broken open and the entire stock stored lying in the factory was stolen. ON 18th September, 1989 in the morning when one of the partners visited the factory premises he noticed the burglary. He filed a First Information Report at the Police Station, Shastri Nagar, Jaipur. A case was registered on the same day. According to the Complainant-Appellant total loss was to the tune of Rs. 9,14,747.45/-. The Complainant lodged claims with the Oriental Insurance Company as well as the Respondent-Company. When the claims were not settled by these two Insurance Companies even after expiry of reasonable period, the Complainant Firm filed separate

complaints under the Consumer Protection Act, 1986 against the above two Insurance Companies before the State Commission, Rajasthan at Jaipur. It may be mentioned here that the cover note issued by the present Respondent Company Limited the liability of insurance to Rs. 3.00 lakhs. The State Commission happened to decide the complaint against the Oriental Insurance Company on 10th October, 1990 and directed the said Insurance Company to pay Rs. 5.00 lakhs to the Complainant Firm. The claimant Firm as well as the Oriental Insurance Company came in appeals which were registered on the file of this Commission as First Appeals No. l07of 1990 and No.1 of 1991 respectively. Those appeals were decided by this Commission on 25th September, 1991. The two paras preceding the ultimate para of the order of this commission read as follows : "All these facts strongly suggest that there is a need for the investigation whether a theft did take place and if so what is the quantum of loss due to the theft. The gaping holes in evidence regarding the occurrence of the theft, the value thereof and the possible motivation on the part of the Respondent Claimant to solve his financial difficulties by obtaining the insurance amount led the Appellant in this case to reasonably doubt the factum of theft. He had good grounds to apprehend that the claim was not genuine. Only he did not take the matter to its logical conclusion to file a complaint with the Police. Perhaps keeping these facts in view the State Commission had itself observed that it had decided this case on the basis of preponderance of the probabilities. As the upshot of the facts recorded above is that the Appellant has reasonable grounds to doubt the genuineness of the claim, as such the non-payment of the insurance amount under the policies cannot be deemed to be a deficiency in service arising from negligence. Under Section 14 of the Consumer Protection Act, 1986 compensation can be granted to a consumer for loss or injury arising from deficiency in good''s supplied or services rendered provided the same is due to negligence. Such a presumption of negligence cannot normally arise where the factum of deficiency is established on the basis of balance of evidence or preponderance of probabilities. Hence the order of the State Commission is set aside and the parties are left to pursue their claim through State Investigating Agencies and the Courts of Law." With the above observations, the appeal filed by the Insurance Company as well as the cross appeal filed by the Complainant were disposed of accordingly with no order as to costs.

While the aforesaid appeal Nos. 107 of 1990 and 1 of 1991 were disposed of by this Commission the complaint filed by the Complainant Firm against the present Respondent Insurance Company was pending before the State Commission which was numbered on its file as Complaint Case No. 59 of 1990. The State Commission relying upon the observations made by this Commission and reproduced above, made in the First Appeal Nos. 107of 1990 and 1 of 1991, remarked : "the observations made by the National Commissions are adopted in this complaint and the complaint is dismissed on the limited ground. There will be no order as to costs." We are of the opinion that the remarks made by this Commission in another case should not have been made a ground by the State

Commission for disposing of the complaint case No. 59 of 1990. Every case depends upon its own facts and the manner in which it is presented. To assess the loss said to have been caused to the Complainant by the alleged burglary first one Surveyor Shri M.P. Bakshi was appointed. From the Surveyor''s report it appears that he was jointly appointed by the Oriental Insurance Company and National Insurance Company. He had found the story about the burglary as correct. He assessed the loss payable by the Oriental Insurance Company at Rs. 4,62,599.38/- while by the National Insurance Company at Rs. 2,77,559.62/-. The National Insurance Company further appointed S.S. Agencies, Investigators, Recovery Agents and Legal Advisors whose Managing Director is Shri J.P. Singha, a retired Indian Police Service Officer. The said officer made detailed investigations in the matter during the pendency of the Complaint Case No. 59 of 1990 and gave his report on 22nd April, 1990 wherein the story of burglary has not doubted. The report of Shri J.P. Singha was not on the record of the State Commission of the complaint Case filed by the Appellant Firm against the Oriental Insurance Company. Therefore, it is difficult to say that evidence in the two complaint cases was more or less the same. It may also be mentioned here that in the complaint case filed against the present Insurance Company that State Commission had directed the lawyer of the Insurance Company to file the investigator? reports. Instead of filing those investigation reports the lawyer for the Insurance Company produced copy of the above referred order of this Commission before the Commission and prayed that complaint be also dismissed. The State Commission ought to have disposed of the complaint case against the present Respondent Insurance Company on the basis of the evidence produced in that case.

3. IT is further to be noted that in this complaint case, the Insurance Company has not disclosed in clear terms that what reasonable grounds it had to doubt the genuineness of the claim and on what grounds it discarded the reports of the Surveyor and investigators appointed by it. Another fact to be noted is that in the present case the Insurance Company is denying the fact that it had insured the factory premises of the Appellant Firm. According to the Insurance Company it had issued only a Traders Policy. The Complainant''s case is that as soon as the cover note was received by the Bank, the mistake was noticed about the insured property. The Canara Bank immediately wrote a letter for rectification of the terms of the policy. This fact has not been dealt with by the State Commission.

4. FOR the foregoing reasons we accept the present appeal, set aside the impugned order and remand the case to the State Commission for fresh decision in accordance with law. It would be desirable if before proceeding further the Insurance Company is directed to decide the claim of the Complainant either way by a speaking order. The State Commission will also consider the desirability of impleading the Canara Bank who had got the hypothecated goods of the Complainant Firm insured with the Respondent Insurance Company. The Respondents are ordered to pay Rs. 5,000/-as costs to the Appellant. Appeal allowed.

