

(2011) 01 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE CO LTD

APPELLANT

Vs

Dhanshree Agency

RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Citation : 2011 1 CPJ 312

Hon'ble Judges : R.K.Batta , Vinay Kumar J.

Final Decision : Revision Petition partly allowed.

Judgement

1. IN these revisions filed against the order of the State Commission, limited notice was issued to the respondent/complainant vide order dated 18.8.2010. The limited notice is relating to award of compensation of Rs. 1 lakh by the State Commission.

2. THE matter was fixed for today for final disposal at the admission stage vide order dated 20.11.2010. However, no one appeared on behalf of the respondent and we have heard Counsel appearing on behalf of the petitioner. Counsel for the petitioner has drawn our attention to para VI (9) of the report of the Surveyor, which reads as under: "Regarding Tea stock in ledger informed for six different packed size but came to know from other sources that insured had already stopped selling of Tea and returned back the entire stock to their principal in the month April 2008 itself. That's why not seen any stock physically at the shop during our survey of any burned or fresh?"

3. COUNSEL for the petitioner also submits that no debris of the articles in respect of which claim has been made was found by the Surveyor at the time of inspection and the compensation of Rs. 1 lakh is required to be set aside.

4. THE District Forum had, in fact, disallowed the claim on account of burnt stock of Tea, Toast and Namkeen, etc. but had allowed the claim for Rs. 1,68,967 towards cement plaster, white washing, door fixing, electric fitting, coconut oil and fire brigade expenses as against the report of the Surveyor who had assessed the loss at Rs. 52,362. In addition, the District Forum had awarded Rs.

5,000 towards mental agony and Rs. 1,000 towards cost.

5. THIS order was challenged by both the sides before the State Commission. The complainant sought enhancement and the Insurance Company sought dismissal of the complaint. The State Commission had allowed the complaint partly and passed the following order: "(i) The insurer shall pay a sum of Rs. 80,000 (Rupees Eighty Thousand only) towards loss to building to the complainant. (ii) The insurer shall also pay to the complainant Rs. 22,848 (Rupees Twenty Two Thousand Eight Hundred Forty Eight only) towards loss of coconut oil and a sum of Rs. 1,00,000 (Rupees One Lakh only) towards loss of Tea, Toast and Namkeen. (iii) The insurer shall also reimburse the complainant a sum of Rs. 15,000 which was paid by the complainant for the fire brigade. (iv) The aforesaid amount shall be payable with interest @ 9% from the date of complaint. In case the amount as aforesaid is not paid within a period of 45 days from the date of this order interest @ 10% p.a. shall be payable from the date of default. (v) Cost of proceedings shall also be born by the insurer and the same is quantified at Rs. 2,000 (Rupees Two Thousand only)."

6. THIS order is subject matter of challenge by the petitioner in these revisions. The Surveyor in his report in para VI (9) had stated that he came to know from other sources that insured had already stopped selling Tea and returned back the entire stock to their principal in the month of April 2008 itself. However, except for bare averments, no material has been placed in support of the said statement/conclusion. The Surveyor further states that at the time of inspection, he did not see stock physically either burnt or fresh. According to the Counsel for the petitioner, no debris of the burnt item was found at the site. In this respect, the State Commission has observed that credit invoices of item purchased from S.D. Enterprises only in the month of Aug., 2008 amounted to Rs. 88,320 and the State Commission was of the opinion that there was stock of eatable items in the shop. The State Commission has further observed that huge heap of debris of burnt material on the floor could be seen in the photographs and as such the remark of the Surveyor that he did not see the same, cannot be said to mean that said items were not stored in the shop. The claim of the complainant for Rs. 5,64,372 towards Tea, Toast and Namkeen was not accepted but the State Commission on the basis of the credit invoices came to the conclusion that the petitioner has purchased Tea, Toast and Namkeen in the first fortnight of Aug., 2008 which goes to show that the complainant must have had stock of such items worth Rs. 1 lakh at the time of fire on account of compensation of Rs. 1 lakh was granted. The fire has taken place on 19.8.2000. It is not known as to when exactly the said items were purchased in the first fortnight of Aug., 2008 and no record of the sales by complainant had been produced. Taking the same into consideration, we are of the opinion that a compensation of Rs. 50,000 on this count would be reasonable in the facts and circumstances of the case.

7. IN view of the above, revision is partly allowed and the compensation towards Tea, Toast and Namkeen is reduced from Rs. 1 lakh to Rs. 50,000. The rest of

the order of the State Commission is confirmed. The revision is, partly allowed in aforesaid terms, with no order as to cost. Revision Petition partly allowed.