(1997) 01 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE CO LTD — APPELLANT

Vs

Girdhari Lal Tulshiramji Joshi — RESPONDENT

Date of Decision : 07-01-1997

Acts Referred:

Citation : 1997 1 CPC 480 : 1997 1 CPJ 50 : 1997 1 CPR 91

Hon'ble Judges : V.BALAKRISHNA ERADI , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA J.

Judgement

1. FIRST Appeal No. 515/93 has been filed against the order dated 2.6.92 passed by the Maharashtra State Consumer Disputes Redressal Commission in Complaint No. 69/92. The opposite party Insurance Company before the State Commission is the appellant before us.

2. THE complainant had obtained a shopkeeper''s insurance policy dated 11.2.91 for a period of one year upto 11.2.92 for a total risk of Rs. 2,75,000/ - . The said policy covered the building, furniture and fixture and stock -in -trade. A devastating fire occurred on 13.5.91 and the entire shop was reduced to ashes; the complainant intimated this to the opposite party and lodged a claim for a total value of Rs. 2,75,000/ -. The opposite party got the incident surveyed through two parties i.e., M/s. Maharashtra Surveyors and M/s. Jodh Joshi & Co. M/s. Maharashtra Surveyors in their report dated 17th July, 1991 noted that the complainant''s shop was completely charred and burnt leaving ashes of stock in trade. The second Surveyor assessed the loss at Rs. 2,44,700/ -, after allowing for depreciation at 20 percent on building, furniture and fixtures. Since according to the opposite party the depreciation allowed for was on a low side, they appointed another Surveyor, M/s. B.K. Indurkar & Company who assessed the loss at Rs 2,05,240/ - after allowing depreciation at 50%. On the basis of this assessment the opposite party offered an amount of Rs. 2,05,000/ - to the complainant on 7.2.92. Although the complainant received this amount in full and final settlement of his claim, he wrote to the opposite party on 8.2.92 informing that he accepted the said amount under protest. Aggrieved by the payment of a less amount by the opposite party the complainant preferred a

complaint before the State Commission alleging deficiency in service on the part of the opposite party and claimed full insured amount with interest at 24%. The State Commission was convinced that the amount was accepted under protest; they broadly considered the following three points as relevant for the case; (i) settlement by the opposite party of the insurance claim on the basis of averages when the said policy was for a total loss and grant of partial claim amounts to deficiency in service; (ii) whether in such matters of dispute about the quantum, the arbitration clause should be invoked; and (iii) the question of delay in settlement of the claim. Regarding the first question the State Commission did not find any justification for the opposite party to settle the claim on the basis of averages since there were no rules/ or regulations framed by the Insurance Company to that effect when the policy is for total loss and the claim is for total loss. The Commission concluded that the action on the part of the opposite party to arbitrarily reduce the complainant''s claim amounts to deficiency in service and held that he should be granted full amount of policy and compensation. They, there - fore, directed the opposite party to pay to the complainant the balance amount of Rs. 70,000/ - towards the full claim together with interest at 18% per annum. In regard to the second question though there is a clause permitting either partly to refer the matter to arbitration within two months after the receipt of notice requiring appointment of Arbitrator, the period of two months had already expired in the instant complaint and therefore, there is no question of referring the matter to arbitration. Regarding the delay, the incident occurred on 13.5.91 and the settlement by the opposite party was only after a period of nine monhts. The Commission directed the O.P. to pay interest at 18% per annum on the amount of Rs. 2,05,000/ - for the period from 1.8.91 to 7.1.92 and compensation of Rs. 25,000/ -.

3. IN their appeal against this order, the appellant -Insurance Company''s main grounds are that, (i) the fire policy is a policy of indemnity and the appellants had undertaken to pay only the actual loss; (ii) the State Commission should not have awarded interest on the amount of Rs. 2,05,000/ - from 1.8.91 to 7.1.92 since the said amount was accepted by the complainant on 7.2.92 in full and final settlement of his claim; and (iii) the award of compensation of Rs. 25,000/ - for the loss of income was arbitrary.

4. WE have carefully considered the records and heard the Counsel. We agree with the finding of the State Commission that there was no justification for the Insurance Company to settle the claim on partial basis when the material on record showed total loss to the insured and the policy covers total risk. The opposite party had collected the appropriate premium in February, 1991 for the insured value of Rs. 2,75,000/ - which included Rs. 70,000/ - for building and Rs. 30,000/ - for furniture and fixtures. When the incident occurred in May, 1991 the rightful expectation of the insured is that after the bonafides of the incident are established, he would get the full amount. In this context the action of the opposite party to allow only 50 percent on these two items is not justified. We, therefore, concur with the State Commissions direction regarding payment of full

insurance amount with interest. We are, however, of the view that the award of compensation of Rs. 25,000/ - is on the high side; we feel that compensation of Rs. 15,000/ - would meet the ends of justice. We, therefore, pass the following order: The opposite party will pay to the complainant, (i) the balance amount of Rs. 70,000/ - with interest at 18% per annum from 1.8.91 till realisation; (ii) interest @ 18% per annum from 1.8.91 to 6.2.92 on the amount of Rs. 2,05,000/ - already paid; and (iii) compensation of Rs. 15,000/ -. The order of the State Government is accordingly modified. The Appeal is disposed of as above. No costs. Appeal disposed of. -