(2006) 06 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

Oriental Insurance Co. Ltd. APPELLANT

Vs

KALA EMPORIUM PVT. LTD. RESPONDENT

Date of Decision : 26-06-2006

Acts Referred:

Citation : 2007 2 CPJ 308

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

Final Decision : Appeal disposed of

Judgement

1. IN this first appeal filed against the order dated 12.12.2001 of Consumer Disputes Redressal Commission UT, Chandigarh the facts, in brief, are these. Respondent/complainant is having cloth business at SCO. 22-23, Sector 11-D, Chandigarh and the company purchased ''A'' fire policy and shopkeepers'' policy on 25.9.1998 from the appellant/opposite party. Sum assured of the fire policy was Rs. 25,00,000 while that of shopkeepers'' policy Rs. 10,00,000 . It was alleged that the stocks of cloth lying in the premises was damaged during the currency of policy on 4.3.1999 on account of seepage/inundation resulting from the dripping of water from the water tank kept on the roof. There was massive water logging on the first floor which percolated to the ground floor of the premises. Loss to the stocks was in the vicinity of Rs. 15 to 20 lakh. Appellant was intimated of the incident through a letter dated 4.3.1999 by the respondent. Complaint seeking certain reliefs filed by the respondent was contested by the appellant. Though the issuance of two policies was not denied but it was alleged that the assessment of loss as made by M/s. Duggal, Gupta and Associates, Surveyor was of Rs. 1,60,477 . Claim was repudiated by the letter dated 2.6.2000 as the peril was not covered by the two policies.

2. COPY of fire policy is at pages 17 to 19 while that of shopkeepers'' at pages 20 to 25. In former policy in Clause 7 under the heading ''Risk covered'' it is stated: "Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, Flood and Inundation" Clauses (b) and (f) of Section 1-Building/contents of shopkeepers'' policy read as under: "The company will indemnify the insured in respect of loss or damage to

the building/contents whilst contained in the insured premises by: (b) Bursting and overflowing of water tanks, apparatus or pipes. .... (f) Flood, Inundation, Storm, Tempest, Typhoon, Hurricane, Tornado or Cyclone."

At this juncture, reference has to be made to the two letters dated 25.11.99 (copy at page 40) and 11.6.99 (copy at page 39). Contents of the letter dated 25.11.2006 which seems to have been sent in continuation of the letter dated 11.6.99 which are material, are reproduced below: "To The Branch Manager, The Oriental Insurance Co. Ltd. Sector 17, Chandigarh Sub.: Insurance Claim Sir, Your kind attention is invited to the above subject and the claim lodged by our company in respect of the loss suffered in the shop known as Kala Emporium Pvt. Ltd. (the insured) in the morning on 4th March, 1999. A survey in respect of the loss was undertaken by M/s. Duggal & Gupta Associates, who were authorised by your company for this purpose. Necessary information as required by them was duly furnished. Subsequently, further details as called for by them and after the detailed discussions the estimated loss was agreed at Rs. 6,41,908. This amount was arrived after mutual settlement. The report of survey was duly submitted with your office for taking suitable action in the matter. You will appreciate that a period of nearly eight months has elapsed since the loss occurred but the claim has not been received so far. You would also appreciate that on account of the loss suffered by the insured, the business activity which has still not normalised. It may be further added that the insured is availing CC limit from Punjab & Sind Bank and is paying huge interest on the amount borrowed by it and it is stated that any further delay in payment of insurance claim will lead to loss on account of interest on the borrowed amount being borne by the insured. We would, therefore, request you to kindly take an early action in the matter."

Copy of this letter was forwarded to the Sr. Divisional Manager of the Insurance Company to expedite the settlement of the claim. In the letter dated 11.6.99, the respondent had agreed not to approach any Court of law in the event of consented amount of Rs. 6,41,908 being paid by the insurance company. To be only noted that the said letter dated 25.11.99 is silent in regard to adjustment of any money from the said amount of Rs. 6,41,908.

3. MR. Ashok Gurnani for respondent has submitted that respondent company confines its claim to the amount of Rs. 6,41,908 together with reasonable interest which this Commission may award to the respondent. Copy of the written version filed by the insurance company is placed at pages 61 to 74. It is pertinent to mention that written version is conspicuously silent in regard to parties having mutually settled the claim for Rs. 6,41,908. Repudiation was made much after the issuance of said two letters on 2.6.2000. In absence of denial of the claim having been mutually settled for the said amount, without going into the issue of admissibility/non-admissibility of claim under both or any of the said policies, we are of the view that it would be equitable that the settled amount of Rs. 6,41,908 as assessed by the surveyor without under insurance is paid for the

loss caused to the stocks of cloth by the appellant insurance company to the respondent. Since the respondent has been deprived of the use of said money it is entitled to interest/compensation on the said amount atleast from the date of filing of complaint which we quantify @ 9% p.a.

4. ACCORDINGLY, while disposing of appeal, aforesaid order dated 12.12.2001 is set aside and appellant is directed to pay Rs. 6,41,908 with interest @ 9% p.a. from the date of filing of complaint to the respondent within six weeks. Amount, if any, deposited pursuant to the order dated 7.2.2002 is released together with interest in favour of the appellant insurance company. No order as to costs. Appeal disposed of.

