(2003) 02 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

Oriental Insurance Co. Ltd. APPELLANT

Vs

MAHESWARA AGENCIES RESPONDENT

Date of Decision : 14-02-2003

Acts Referred:

Citation : 2003 4 CPJ 490 : 2004 1 CLT 6 : 2004 1 CPR 214

Hon'ble Judges : P.Ramakrishnam Raju , Mamata Lakshmanna , C.P.Suresh J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an application to condone the delay of 100 days in filing the appeal.

2. WHAT is stated in the petitioner''s affidavit is that the copy of the impugned order was received by his Counsel on 8.2.2001 and sent the same to their Divisional Office which was received on 15.2.2001. Again it was sent to the Regional Office. As the file was mis-placed, the appeal could not be filed in time, and as such, there is delay of 100 days. This explanation is not convincing as which file was mis-placed, whether it is copy of the order of other papers, in which office it took place, who made the search, where it was found and in which bundle or in which office etc., details are all deliberately left vague. In view of such a vague explanation, the inordinate delay of 100 days cannot be condoned. Hence, the application is devoid of merits and is accordingly dismissed.

Even otherwise there are no merits in the appeal. The case of the complainant is that he is a whole-sale dealer in various items of cosmetics, food items etc. He took out an insurance policy covering the stock in trade from the risk of damage due to fire. While so, when the policy was in force on 2.6.1996 between 5.30 p.m. and 6.30 p.m. fire broke out in his business premises. Material worth Rs. 4,50,000/- was damaged. A Surveyor was appointed.

3. THOUGH the damages were assessed at Rs. 3,60,000/- the first appellant paid only a sum of Rs. 1,15,000/- through cheque. Hence the complainant sent several letters including legal notice to pay Rs. 2,45,000/- together with interest. As there was no response he filed the complaint. The first appellant while

admitting appointment of a Surveyor and his report assessing the loss at Rs. 1,15,000/-, it is further asserted that on the basis of the Surveyor''s report the claim was settled at Rs. 1,15,000/-. The amount was also paid towards full and final settlement.

4. THE second opposite party merely stated that it has granted loan to the complainant and he has nothing to do with the policy or the claim. The District Forum however felt that there is deficiency in service and accordingly directed the first appellant to pay a sum of Rs. 1,87,284/- with interest at 12 per cent per annum. Challenging the said order, the first opposite party filed this appeal. The District Forum observed that the complainant due to financial stringency has signed voucher, for full satisfaction, for Rs. 1,15,000/- on 14.6.1996 under Ex. B-6.

5. THE District Forum found that the report of the Surveyor fixing compensation at Rs. 1,15,711.28 ps. is without any basis. In fact, the stock in the shop as on 31.5.1996 was at Rs. 4,49,965.62 as per Ex. B-7 and fire broke-out on 2.6.1996. THE Surveyor noted the value of the stock as on 2.6.1996 as Rs. 3,02,284.35 ps. THEn, the Surveyor himself admitted that the damaged stock is of no use. THE complainant, in fact, agreed that the same can be taken way by the insurer. Under these circumstances, there can be no impediment for payment of compensation of Rs. 3,02,284.35 ps. being the value of the stock damaged as found by the Surveyor. THE District Forum, therefore, rightly found that the complainant is entitled to compensation at Rs. 3,02,284.35 ps. As already seen a sum of Rs. 1,15,000/- was paid, the balance was directed to be paid.

6. WE do not find any ground to interfere with the said order. However, the District Forum directed that the said sum shall carry interest at 12 per cent per annum. But the Apex Court ruled that the grant of interest against the Insurance Company beyond 9 per cent is impermissible. Accordingly, we reduce the rate of interest from 12 per cent per annum to 9 per cent per annum. With this modification, the appeal fails and is accordingly dismissed. Time for payment six weeks. Appeal dismissed.