(2016) 05 NCDRC CK 0071

In the National Consumer Disputes Redressal Commission

Case No : 2935 of 2015

ORIENTAL INSURANCE CO. LTD. APPELLANT

Vs

MANOJ KUMAR & ANR. RESPONDENT

Date of Decision : 09-05-2016

Acts Referred:

Citation : 2016 2 CPR 749

Hon'ble Judges : J.M. Malik, S.M. Kantikar

Advocate : Sakshi Gupta, Jitendra Bharti

Judgement

1. The entire case swirls around the report of the Surveyor. To confound his report, solid and incontrovertible evidence is required, unfounded suspicions must not lead the fora astray.

2. The complainant, Shri Manoj Kumar, is having electricity shop in the name and style of M/s Mandal Ready Made Store situated at Kesari Market, Munhar. He obtained insurance policy

from Oriental Insurance Company Co. Ltd. A fire broke out due to short circuit of electricity, on 27.03.2008. Shri Ajay Kumar Ojha was deputed as a Surveyor. The Surveyor assessed the value for the net loss on account of stock and trade to the tune of Rs.49,495/- and Rs.50,000/- on account of furniture and fixture, fitting and after deduction of the Excess policy for Rs.10,000/- came to the final liability of Rs.89,405/-.

3. The stock register and sale register were burnt in the fire. The assessment of loss was calculated on the basis of purchase and sale shown in VAT returns of three financial years. It was mentioned that the complainant had made an exaggerated claim and he had produced concocted money bills and vouchers. The claim was found to be fraudulent under condition No. 7 of the Shop Keeper Insurance Policy. The claim of the claimant was repudiated on 30.1.2009. The present case was contested by the petitioner/insurance company. The Branch Manager, Syndicate Bank was also arrayed as one of the opposite parties. In our

opinion, Syndicate Bank is not necessary party in this case. Syndicate Bank is hereby discharged.

4. The District Forum allowed the complaint and directed the insurance company to pay a sum of Rs.7,90,000/- with interest @ 12% per annum from the date of filing of the complaint till its realization. Punitive damages in the sum of Rs. 1 lakh were awarded. Litigation costs in the sum of Rs.10,000/- were also awarded in favour of the complainant.

5. Aggrieved by this order, the insurance company filed first appeal before the State Commission. The State Commission came to the following conclusion:

"11. So in view of the above policy of the complainant/ respondent No. 1, it appears that there is error in the amount, calculated by the District Forum and is need to be corrected. Since the cash in Transit for Rs.50,000/- is not applicable in this case, is not payable to the respondent/complainant.

12. Accordingly, after correction in the amount towards total loss for the stock in the impugned order, the appellant insurance Co. is liable to pay Rs.6,75,000/- + Rs.50,000/- + Rs.10,000/- + Rs.5,000/- = Rs.7,40,000/- to the complainant on account of the actual loss and damage, instead of Rs.8,90,000/-.

13. We are also of the view that the amount awarded as punitive damages for Rs. 1 lac and rate of interest as 12% p.a. in the impugned order, appears excessive and hence it is reduced to Rs.50,000/- and interest rate 9% respectively. With the extent of above mentioned correction/modification in the impugned order dt. 13-09-12, rest of the direction made in the order of the District Forum is justified and stand affirmed.

6. Aggrieved by this order, the insurance company filed this revision petition before this Commission. We have heard the learned counsel for the parties.

7. Learned counsel for the complainant/respondent has supported the judgments given by both the fora below. He contended that the Surveyor is not a reliable person, complaints were lodged against him and the State Commission also mentioned that the integrity and dispassionate of the Surveyor was one of the reasons for allowing the complaint. The State Commission in para 8 of the impugned order mentioned as under:

"........ In view of submission the survey report after long gap of time, especially when the complainant made repeated complaint against the integrity and dispassionateness of the surveyor and also when there was no justified reason on the part of the surveyor was given for ignoring the relevant document i.e. monthly bank stock statements, while assessing the loss, created suspect in the eye of law and hence the surveyor''s report dt 5.-01-09, held not to be relied upon as biased one for oblique motive, the findings of District Forum appears to be correct and proper and therefore we find the repudiation of the claim by the appellant Insurance Company on the aforesaid ground as not valid and hence not sustainable.

8. We are not satisfied with the reasons given by both the fora below. It is difficult to fathom why did they ignore the report of the surveyor. The facts mentioned in the report itself speak for themselves. The question regarding integrity of the surveyor cannot be raised. We are hereby quote the relevant extract from the report of the surveyor. In clause ''D'' the Surveyor observed as under:

i. xxxxxxx

ii. xxxxxx

iii. Insured had provided six retail invoices - two related to M/s Bhai Bhai Dresses, Delhi 110031, three related to M/s Gupta Jeans, Delhi 110031 & One related to M/s Khandelwal Bros. - Delhi 110031. In these retail invoices, one invoice of M/s Khandelwal Bros. was dt. 03.04.08 after the occurrence.

I sent letter to all these three firms for confirmation of their retail invoices

I have received letter dt. 13.06.08 of M/s Khandelwal Bros. related to retail invoice No. 1024 dt 03.04.08 in which it has been informed that " we have not sold the goods to Mandal Readymade Store, Chowk Bazar, Munger, Bihar.... this invoice is completely duplicate bill & I am not responsible for this duplicate bill".

I have received letter dt 11.07.08 for M/s Bhai-Bhai Dresses, Delhi in which they informed that " we have not issued invoice No. 91 & 92 dt 03.0308 to M/s Mandal readymade Store, Chowk bazar, Munger, Bihar. That the two invoices don''t belong to our concern. The dealer M/s Mandal Readymade Store had not made any purchases from our firm".

I have received letter dt 15.07.08 from m/s gupta Jeans, Delhi 110031 in which they had informed that " these invoices...... bearing No. 825, 826 & 827 dt 01.03.08 are false We have not dealt with dealer."

Thus insured had provided false and fabricated retail invoices related to his lodged claim.

I informed insured on 28.07.08 with copies of there letters for his reply.But he had not given any proper reply related to it."

9. We confronted the learned Advocate towards this portion of report of Surveyor.He did not deny the factual position.The complainant was present in the court.He submits that this is a story of kachha bills.It shows that the complainant wanted to cheat the insurance company as well as the non-payment of necessary taxes is a betrayal with the Nation.Fora below should have thrown this case at the very threshold but they went on passing lengthy orders, without any substance. It is difficult to fathom, how did the Fora below come to the conclusion that the Surveyor was biased in view of such a solid and unflappable evidence. It stands established that the claim made by the complainant was fraudulent.

1. Again, the complainant has not approached this Commission with clean hands.The Surveyorfurther reports, as

1. "(iv) In letter dt 19.05.08, insured informed that he had not submitted Vat return of year 2005-06, 2006-07, 2007-08 to commercial taxes department.

2. On 16.06.08, he again informed that he had not submitted Vat return & his firm was not VAT registered firm.

On 11.06.08, I sent an RTI application to commercial taxes department, Munger for some required information.

I got letter No. 296 dt. 17.07.08 from commercial tax department, Munger which informed that insured firm was VAT registered and its TIN VAT No. was 10561302092.

As informed by commercial tax authorities, the firm was registered on 30.03.05. the firm had submitted VAT returns of the year 2005-06, 2006-07 & upto third quarter of 2007-08.

As per these VAT returns:

Period Purchase Sale

2005-06 23760.00 102520.00

2006-07 11490.00 69540.00

2007-08 72400.00 53030.00

Upto Dec. 07)

(v.) VAT registered firms purchase through tax invoices from VAT registered suppliers while retail invoices are issued to unregistered firms by registered suppliers. In case of purchases from outside state, VAT registration is must. In that case road permits issued by tax authorities are essential for supply of goods to the purchaser VAT registered firm.

In this case, commercial tax authorities had informed that they had no information regarding road permits issued to the firm.

Insured provided six retail invoices instead of tax invoices and all these invoices were unsigned.

(vi) I required bank regarding A/c statement, monthly stock statements & purchase invoices.

I received information that on 09.08.07 bank charges penalty for non-submission of stock-statements. On 16.08.2007 a notice sent to insured by the bank.

On 27.08.07, insured had submitted stock statements as on 30.04.07, 31.05.07, 30.06.07 & 31.07.07. After 31.08.07, stock statement submitted regularly. As per stock statements submitted to bank.

In period Purchase Sale

April 07-Dec.07 Rs.1505000=00 Rs.1601000=00

While in VAT returns submitted by insured in three quarters of 2007-08,

Purchase was only-Rs.72400/-

Sale was only-Rs.53030/-

It indicated that monthly stock-statement given to bank were highly exaggerated & fabricated compared to VAT returns which are given based on proper purchases and sales memos and indicted real purchases & sales.

(vii) I enquired commercial tax authorities regarding stock of insured premises after VAT registration & before VAT registration. Authorities had not any record regarding his stock so they enquired insured and he provided it on 13.10.08. Here closing stock on 31.05.03 was Rs.781786/- while opening stock on 01.04.04 was of Rs.753751/- related to tax paid goods.

In that year, items of only Rs.90326/- sold & Rs.95238/- purchased.

Thus minimum stock of Rs. Approx. 6,75,000/- purchased before 01.04.04 could have remained on 31.03.05. As the firm was not sale tax registered before 01.04.04 so its annual sale was certainly below Rs.1,00,000/-. Considering 30% gross profit in this business, maximum stock being carried forward for at least 10 years before 01.04.04. Then market cost of these stock would certainly nit or negligible.

As insured had not given any stock value to tax authorities in any documents so the trading A/c given on 13.10.08 related to year 2004-05 was certainly fabricated. ....".

Thus it has been concluded that due to declining sales, insured was unable to meet his shop expenses from gross profit earned.

10. It clearly goes to show how the complainant has manipulated all these claims.

11. In absence of any solid or concrete evidence, we do not find that the report of the Surveyor is a biased one. Facts are stubborn things. It is rudimentary principle of jurisprudence that the documentary evidence will always get preponderance over oral evidence because it is well known axiom of Law that ''men may tell lies, but the documents cannot''. The repudiation of claim is valid and correct. In the result, we hereby set aside the orders passed by the fora below and dismiss the complaint filed by the complainant.

