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(2009) 05 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE CO. LTD. — APPELLANT

Vs

Vijaya Srinivasa Cotton Co. — RESPONDENT

Date of Decision : 27-05-2009

Acts Referred:

Citation : 2009 4 CPJ 52

Hon'ble Judges : R.C.JAIN , ANUPAM DASGUPTA J.

Final Decision : Appeal allowed

Judgement

1. THROUGH this appeal, Oriental Insurance Company Ltd. seeks to challenge the order dated 29.12.2006 passed by the Andhra Pradesh State Consumer Disputes Rcdressal Commission, Chennai (in short, the State Commission'') in Complaint Case No. 41/03. By the impugned order, the State Commission has partly allowed the complaint filed by the complainant. M/s. Vijay Srinivasa Cotton Company had directed the opposite party No. 1 Insurance Company to pay a sum of Rs. 52,38,765.44 with interest @ 6% p.a. from the date of repudiation, i.e., 4.4.2003 till the date of realization, together with cost of Rs. 5,000 with the stipulation that the amount be paid within six weeks failing which it shall carry interest @ 9% p.a.

2. THE facts of the case have been amply noted in the order of the State Commission and need no repetition. The consumer dispute raised before the State Commission related to the non -settlement of the insurance claim lodged by the complainant with the Insurance Company in respect of stock of cotton lint and cotton bales which were insured for Rs. 60 lakh with the Insurance Company. It was alleged that stock of cotton bales and lint was gutted in a fire which took place on 8.5.2002 at 7.30 p.m at the premises of M/s. Balaji Pressing Co. where the cotton lint and cotton bales of Rs. 50 lakh belonging to the complainant, besides that of several other traders were stored for the purpose of pressing, etc. Initially, preliminary Surveyor, M/s. Sasi and Company was appointed to inspect the factory and verify the registers, books of accounts, invoices and all other documents and thereafter M/s. Srivastava and Co. were

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appointed as the final Surveyor. Based on the documents, material, inquiries and verifications, the said (later) Surveyor assessed the net loss of stocks of the complainant at Rs. 27,66,963 -which was not acceptable to the complainant and hence it filed the complaint seeking compensation of Rs. 57 lakh. The complaint was resisted by the Insurance Company, inter alia, on the grounds that claim lodged by the complainant was on higher side, the assessment made by the Surveyor with consultation of the Chartered Accountants to the extent of Rs. 27,66,693 was the net loss suffered by the complainant and the Insurance Company was liable to reimburse the complainant only to that extent. It is not disputed that the said amount along with interest stands already paid to the complainant.

3. WE have heard Mr. Abhishek Kumar, learned Counsel for the appellant and Mr. V. Gouri Sankara Rao, learned Counsel for the respondent and have given our thoughtful consideration to their respective submissions. The only question which is to be answered and which will decide the fate of this appeal is quantity of the cotton lint and cotton bales belonging to the complainant which were stored at the premises of M/s. Balaji Pressing Co., on the date and time of peril. The onus to establish the extent of loss of stock was on the complainant, more particularly when the complainant was disputing the finding of the Surveyor and the Chartered Accountants in that behalf and in regard to the assessment of the net loss suffered by it. According to the complainant, there were as many as 455 cotton bales and cotton Boras weighing 134.25 quintals belonging to the complainant which were stored at the factory premises of M/s. Balaji Pressing Co. In order to establish the stock of the above extent, the complainant filed his own affidavit and the affidavit of the proprietor of M/s. Natraj Industries from whom the complainant claims to have purchased the said cotton in the later part of April and beginning of May, 2002, i.e., immediately prior to the fire incident. Reliance was also placed on certain record of the Commercial Fax Authorities, etc. On the other hand, the Insurance Company also filed its affidavit and affidavits of RW -2, Mr. Sisir Kumar, partner of M/s. Sisir and Ravi Associates, Surveyors, RW -3, Mr. V. Balaji and RW -4, Mr. Ch. Veera Babu, Surveyors in order to support its contentions. As per joint survey report dated 22.1.2003, it was found that the books of account of the complainant and the books of the purchasers and sellers of the complainant did not tally and there was a huge variation in their account books so much so that most of the transactions which were stated to be with M/s. Natraj Industries and the stocks as reflected in the registers of the complainants were not comparable with the account books of M/s. Natraj Industries. However, the State Commission, going by the said evidence and the material brought on record, admitted the claim of the complainant by discarding the said assessment made by the Surveyors. Mr. Abhishek Kumar, learned Counsel for the Insurance Company has strongly argued before us that the State Commission has erred in discarding the candid assessment of loss made by the Surveyor in consultation with Chartered Accountants. It is also pointed out that the State Commission was not justified in lightly brushing aside

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certain admissions made by M/s. Balaji Pressing Co. in respect of the stocks of the complainant and other traders which were lying at their premises. In this connection, reference has been in particular, invited to the letter dated 10.7.2002 issued by M/s. Balaji Pressing Co. to the appellant Insurance Company and three other insurance companies which reads as under: JUDGEMENT_31_LAWS(NCD)5_2009.htm

4. ISSUANCE of this letter by Mr. N.V. Hari Prasada Rao, Proprietor of M/s. Balaji Pressing Company is not denied but during the pendeny of the appeal, a plea has been taken by the complainant that the said letter was procured by the surveyors of the said four insurance companies under undue influence or by coercion. In the supplementary affidavit filed by the said N.V. Hari Prasada Rao, Prop. of M/s. Balaji Pressing Co. the circumstances in which the letter dated 10.7.2002 was given, are sought to be explained as under: "In fact I have not voluntarily given such letter. The respective traders never agreed for such deletion of bales from their respective stocks. While the fire engines were on the job of extinguishing the major fire accident and in the mid -night, without providing breathing time by exerting police pressure and by threatening that the claims of all the customers will be delayed/denied, the Surveyors have taken my signatures by applying pressure, coercion and misrepresentation. In fact the stock of our customers were tallying with our registers/records. As such the letter dated 10.7.2002 is neither binding on us or on our customers including M/ s. Vijaya Srinivasa Cotton Company". As such the letter dated 10.7.2002 is not binding on the complainant. "

5. WE are not prepared to believe the above stand of said N.V. Hari Prasada Rao. To say the least, the above explanation is untrustworthy and clearly an afterthought and has been given to suit the interest of the complainant and other traders who had stored their cotton bales at the premises of M/s. Balaji Pressing Co. As would be evident, the above referred communication is on the letter head of M/s. Balaji Pressing Co. and dated July, 2002 and not of the date of the incident. Going by its content, it is apparent that this communication was issued because the huge differences/variations were detected by the Surveyors in the stocks claimed to have been stored by various traders at the premises of M/s. Balaji Pressing Co. Not only that, this letter of 10.7.2002 mentions this fact of difference in the stocks but it also mentions the fact that the complainant and three other traders had agreed to the deduction of certain number of cotton bales from the claims made by them. So far as the complainant, M/s. Vijaya Srinivasa Cotton Co. is concerned, it was stated that 250 bales could be deducted from the claimed bales. We are of the view that unless there was an exaggerated claim from the complainant, there was no reason for making such a categorical concession by M/s. Balaji Pressing Co. for itself and on behalf of the complainants and other traders. This communication was not disputed at any earlier stage. The Surveyors assessed the net loss by deducting 250 cotton bales out of the 455 bales but recommended full claim for 86 number of Boras weighing 134.25 quintals of cotton lint. It appears to us that the State

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Commission has lightly and erroneously brushed aside this communication and has not appreciated the evidence in its correct perspective; otherwise there was no reason to come to the finding that the loss claimed by the complainant was established.

6. MR . V. Gouri Sankara Rao, learned Counsel for the respondent then vehemently urged that there was ample evidence produced by way of commercial tax assessment orders (Exs. A -14 and A -15 for the periods for 2001 -02 and 2002 -03) along with counter affidavit of the respondent showing that in the proceedings before the Assistant Commissioner (Commercial Tax), Guntur it was clearly stated that the quantity of cotton gutted in the fire accident was 92,220 kgs. and the average purchase value for the year at Rs. 43.97 per kg was taken at Rs. 40,54,914 for the purpose of assessment of commercial tax. In this regard, we may simply observe that the average value of the goods purchased by the complainant is not relevant because for the purpose of quantification of loss sustained by an insured it is the exact quantity of stock as on the date of the peril which would form the basis rather than the average value of the purchases. Even if some value is attached to the said commercial tax assessment proceedings, it would be seen that the stand of the complainant was not uniform. We say so because on receipt of notice dated 5.11.2004 from the Commercial Tax Department proposing the commercial tax based on the claim of the complainant amounting to Rs. 56,75,420, the complainant had raised objection and come out with a plea that the purchase value of the burnt cotton was not Rs. 56,75,420 but it was Rs. 39,72,275 only. This would belie the stand of the complainant. The State Commission has, therefore, also erred in placing reliance upon those proceedings. This Commission is pained to observe that so far as the insurance claims for the loss occasioned to cotton lint and cotton bales is concerned, there is a tendency on the part of some claimants to exaggerate the claim by procuring some dubious material like purchase vouchers, etc., from different traders with a view to show inflated figures of the stock which was destroyed in fire. The stock position can be verified only from the regular stock registers maintained by the claimant or the factory where the stocks were lying. In the case in hand, no cogent evidence has been adduced from the side of M/s. Balaji Pressing Co. to show the exact quantity of the cotton belonging to the complainant which was gutted in fire incident on 8.5.2002.

7. HAVING considered the matter in its entirety and the material brought on record, we have no manner of doubt that the claim lodged by the complainant was exaggerated and was not in consonance with the stock of cotton lint and bales which were actually stored at the premises of M/s. Balaji Trading Co. at the time of the fire took place. On the other hand, we find that the assessment made by the Surveyors in consultation with Chartered Accountants is a fair assessment of the loss suffered by the complainant on that account. In view of this, the finding of the State Commission so far as it directs to the Insurance Company to pay a sum of Rs. 52,38,765.44 cannot be upheld. Accordingly, we quantify the loss of the cotton bales and cotton lint suffered by the complainant to Rs.

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27,66,963 which amount the complainant has already received from the Insurance Company.

8. IN the result, the appeal is allowed and the impugned order so far as it assessed the loss at Rs. 52,38,765.44 is hereby set aside. Since the complainant has already received the due amount of compensation as per the assessment of the Surveyor, it is not entitled to any further amount. Appeal stands disposed of accordingly.

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