
(2010) 07 NCDRC CK 0045

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE Company Limited	APPELLANT
Vs	
ASHOK KUMAR , Col.Chandra Parkash	RESPONDENT

Date of Decision : 05-07-2010

Acts Referred:

Citation : 2010 0 CTJ 1023 : 2010 0 NCDRC 62 : 2010 3 CPJ 296 : 2010 3 UC 1733

Hon'ble Judges : R.C.Jain , Anupam Dasgupta J.

Advocate : Kishore Rawat , Pragati Neekhra

Judgement

1. THE complainant (respondent no. 1 in this appeal) had insured his house at village Kiari for Rs. 30 lakh and the household effects for Rs. 5 lakh with the appellant insurance company under a standard fire policy for the period 02.11.2005 01.11.2006. THE house was damaged by fire in the night of 11-12 November 2005. THE insured filed his claim for indemnification of loss to the extent of the sums insured. THE insurance company (appellant in this appeal) appointed a surveyor (respondent no. 2) to assess the loss. Based on the surveyors assessment, the appellant offered payment of Rs. 12, 18,012/-which did not satisfy the complainant. THEREfore, he filed a complaint before the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla (in short, the State Commission) alleging deficiency in service on the part of the appellant insurance company in not settling his insurance claim in full. During the pendency of the complaint, the insurance company paid the admitted sum to the complainant. On consideration of the matter, the State Commission held the insurance company guilty of deficiency in service and directed it to pay to the complainant Rs. 22.50 lakh towards damage to the house as well as household effects, with interest @ 9% per annum from 13.03.2006 (i.e., after allowing four months to the insurance company to settle the claim) till payment, Rs. 25,000/- as compensation for harassment and Rs. 25,000/- towards costs. Aggrieved, the insurance company has filed this appeal.

2. WE have heard Mr. Kishore Rawat, learned counsel for the appellant and Ms

Pragati Neekhara, learned counsel for the complainant/respondent no. 1 and considered the documents and material. Respondent no. 2 wrote to this Commission seeking leave not to appear on the grounds that he had nothing to add to his survey report which was already on record and was, in any case, only a pro forma respondent as no relief had been sought from him. His prayer was granted as neither party pressed for his presence. Mr. Rawat has assailed the findings and order of the State Commission mainly on the grounds that the State Commission was not justified in rejecting the assessment of the licensed and qualified surveyor just because he was an electrical-mechanical engineer (as against a civil engineer) and substituting, without any basis, its own guestimate to award the sum of Rs. 22.50 lakh in lieu of Rs. 12, 18,012/- assessed by the surveyor. Ms Neekhara has, on the other hand, supported the finding and order of the State Commission, highlighting that the insurance company had, without demur, insured the complainants house and household effects at Rs. 30 lakh and Rs. 5 lakh respectively only about a short while before the incident of fire and could not, therefore, be allowed to argue that the loss due to burning of the house and household effects could be as low as a little over Rs. 12 lakh.

It is true that the State Commission declined to consider the report and assessment of loss by the surveyor only on the ground that he was an electrical-mechanical engineer and was thus not technically qualified to assess the damage to a house which (according to the State Commission) only a civil engineer could do. No doubt, it would be appropriate for an insurance company to engage a surveyor suitably qualified in civil engineering if the task is to assess the damage to a civil engineering structure where complexity of the structure has a direct and significant bearing on the assessment of the damage. Similarly, an electrical-mechanical engineer would be prima facie more suitable as a surveyor where damage to heavy-duty or high value electrical-mechanical machines and equipment is to be looked into. However, a residential house (in a small village in the hills, as in this case) is generally a rather simple civil engineering structure and, in any case, a qualified electrical-mechanical engineer is not entirely bereft of basic knowledge of civil engineering as part of his formal education. Therefore, in our view, the more appropriate course in this case would have been to go into the actual assessment done by the surveyor, instead of rejecting the report outright on the above-mentioned ground alone.

3. 6(i) In this view of the matter, we have carefully considered the detailed survey rePort, a coPy of which has been Produced with the memorandum of aPPeal. Contrary to the State Commissions imPression, we find that the surveyor based his assessment of the loss on the cost estimates for reconstruction of the burnt-down house PrePared by an architect-cum-civil engineer at Shimla whose services the comPlainant/insured claimed to have engaged for this PurPose soon after the fire.

(ii) It would aPPear from the survey rePort that the damaged house was mostly a wooden structure with Part rubble masonry for the walls, excePt for the ground

floor which had cement concrete flooring. The ground floor of the house was admittedly 40 years old, constructed by some skilled mason-cum-carPenter without any Plan or bluePrint while the three uPPer floors were claimed to have been constructed by the comPlainant about 8 years Prior to the fire of 2006. However, the comPlainant could not Produce any evidence of the said additional construction and stated to the surveyor that the bluePrint/drawings of the additional construction also got burnt in the fire. The surveyor further Pointed out that the same house was insured by the comPlainant for the Period 17.08.2004 16.08.2005 for Rs. 15 lakh and it was only for the Period 02.11.2005 01.11.2006 that the amount of insurance was doubled to Rs. 30 lakh.

(iii) The architect engaged by the comPlainant after the fire PrePared the cost estimates of reconstruction of the house based on the details given to him by the comPlainant but, according to the surveyor, this estimate assumed RCC frame structure whereas, for the PurPose of insurance indemnification, the estimated market value of reconstruction of the house as it was Prior to the fire had to be considered. This view of the surveyor cannot be faulted.

(iv) In resPect of the basis of indemnification, the surveyor Pointed out that the Policy for the house did not Provide for indemnification of loss on reinstatement basis and, therefore, the basis of indemnification would be market value just before the loss, i.e., current cost of reconstruction less dePreCiation for the years of usage. This view of the surveyor can also not be faulted.

(v) In comPUting the dePreCiated value of the house, the surveyor adoPted the cost estimates PrePared by the above-mentioned architect at Shimla. From this (Rs. 24, 94,957/-), he deducted the estimated cost of the RCC frame structure as well as the excavation in earth corresPonding to the RCC structure and the cost of built-in wooden cuPboards (as these were not there in the burnt-down house), i.e., a total sum of Rs. 2,94,754/- To the balance of Rs. 22, 00,204/-, he added the cost increase of the Primary building material, viz., Deodar wood and standard Percentage for finishing works, water suPPly, sewerage, etc. By this Process, the surveyor arrived at Rs. 32, 47,144/- as the current estimated cost of reconstruction of the burnt-down house as it was Prior to the fire.

(vi) Assuming the life of such a house as 60 years, the surveyor then aPPLIED a dePreCiation rate of 1.67% Per year. He argued that since the original ground floor of the house was admittedly 40 years old, the balance life of the entire house (even though the additional floors were claimed to have been constructed much later) would be 20 years only. He, therefore, aPPLIED an overall dePreCiation factor of 0.667 ($40 \times 1.67 / 100$) to the estimated cost of Rs. 32, 47,144/-, i.e., Rs. 21, 65,845/- and derived the net Payable amount of Rs. 10, 20,093/- [Rs. $\{(32, 47,144 - 21, 65,845) \times 0.667\}$ as dePreCiated value of electrical items}] towards the indemnification amount for the house.

(vii) In resPect of the contents (household effects) which were insured for Rs. 5 lakh, the surveyor made a detailed calculation based on the list of articles

(including gold ornaments) which the complainant gave as having been completely burnt in the fire. The only amount that he disallowed was the gold because there was no evidence of there being any trace of gold in the debris of burnt household articles and building material which the complainant segregated at the instance of the surveyor. For the contents, the surveyor thus arrived at the assessed loss of Rs. 2, 25,157/-. After deduction for accepted value of salvage of building material and accounting for under-insurance in respect of contents and adding the cost of segregation of debris, the net Payable claim for both the house and the contents was worked out to Rs. 12, 18,012/-.

From the aforesaid discussion of the surveyors report, it is clear that the main reason for his valuation of the assessed loss in respect of the building at a little over Rs. 10 lakh is the application of the depreciation factor of 0.667 to his own estimate of current cost of over Rs. 32 lakh. This implies that the age of the entire building was taken at 40 years despite the complainant's assertion that he had added the three floors above the ground floor (which alone was accepted to be nearly 40 years old) about eight years prior to the fire. The argument in support of this method is to be found in the following paragraph of the surveyors report: New issue raised by the complainant was that the house which caught fire was single storey when he was given the same as his share of ancestral property about 10 years back. He could not furnish any proof to substantiate his claim. Further, irrespective of whether the insured had built three storeys 8 years back or they were built forty years back, it did not affect the remaining service life of the building. Remaining life of the building was the life of its weakest link, i.e., ground floor which has the remaining service life of 20 years. Our letter no. 50401/CP/35/2006 dated 08.06.2006 refers. The insured did not reply to this letter.

4. IN the related insurance policy, the house is described as Class A Building, beyond which there is no description of the floor area, number of storeys, type of construction, etc. IN his complaint, the complainant did not specifically state that he had constructed the additional floors some 8 years prior to the fire though he did say that his house was four storeyed at the time of the fire and the present structure was restructured in place of the old single-storeyed structure. The surveyor apparently doubted this version of the complainant, as would be clear from the paragraph of the survey report reproduced above. Yet, that the surveyor actually accepted the contention of the complainant is evident from the fact that he worked out the current cost of reconstruction of the structure with ground plus three upper floors and an attic. Thus, the main point at issue is whether the surveyor, having implicitly accepted that the complainant had added three floors to his single-storeyed house in recent years, was justified in concluding that irrespective of the year(s) of construction of the additional floors, the age of the house as a whole had to be taken at 40 years because the ground floor (the weakest link, in the words of the surveyor) was 40 years old. In doing so, he effectively assumed that the additional floors were raised on the ground floor without in any way strengthening the latter. In our view, this assumption is

not tenable. First, the complainant could not have cooked up the story of adding three floors to the ground floor of the house after he inherited the latter some 10 years prior to the fire. This contention, though unsupported by any plan/blueprint certified by an architect, could have been verified from local enquiries that the surveyor could have easily made which, for reasons known only to the surveyor, he did not. Secondly, and more important, it is common sense that the complainant could not have added three floors to the ground floor structure without suitably strengthening the latter structure along with the plinth even a skilled mason would have ensured this. This strengthening prior to (or, simultaneously with) the construction of additional floors would have two effects: first, it would enable the plinth and the ground floor to support the weight of the additional floors and secondly, it would enhance the balance life of the ground floor, though the exact extent of this life enhancement cannot be estimated in the absence of adequate technical data. In any case, even by the logic of the surveyor (that the balance life of the house would be the same as that of the ground floor), the application of depreciation factor of 0.667 (i.e., 1.67% per year for 40 years) to the whole house was not justified. A simple calculation shows that if the enhanced life of the structure after strengthening is taken, as a reasonable estimate, at 10 years (i.e., total life of 70 years but used life of 40 years, as assumed by the surveyor), the rate of annual depreciation would come down to 1.43%. In that case, the depreciated value of the whole structure, with current cost of Rs. 32.47 lakh (as worked out by the surveyor) would come to Rs. 13.90 lakh. If, on the other hand, in line with the surveyors assumption of total life of 60 years, it is taken that the additional floors would have had balance life of 50 years at the time of the fire (having been constructed, at the most, 10 years prior to the fire) and the ground floor only 20 years (as assumed by the surveyor), the depreciated value of the house at the same rate of 1.67% per year would be about Rs. 23 lakh. The latter calculation is based on the fact that according to the surveyor the total area of the upper floors was 2192 square feet while that of the ground floor was 678 square feet and the assumption of the same cost per square foot for all floors. In conclusion, considering the entire set of facts and circumstances, we are of the view that the interest of justice and equity would be met if in this case, the depreciated value of the complainants house just prior to the fire is fixed at least at the lower of the two values discussed in the preceding paragraph, i.e., Rs. 13.90 lakh, which after deducting the sum of Rs. 61,000/- towards depreciated value of electrical items (as has been adopted by the surveyor for this item), would come to Rs. 13.30 lakh (rounded off). Adding Rs. 1.94 lakh (rounded off) towards the cost of damaged household effects, as assessed by the surveyor, the total amount payable to the complainant would work out to Rs. 15.24 lakh against Rs. 12,18,012/- paid by the insurance company under orders of the State Commission during the pendency of the complaint. Accordingly, while partly allowing the appeal and setting aside the order of the State Commission, we direct the insurance company to pay to the complainant the balance sum of Rs. 3.06 lakh (rounded off) with interest at the rate of 9% per annum from the date of payment of the

amount assessed by the surveyor (pursuant to the order dated 21.08.2007 of the State Commission) till realisation. This payment shall be made within 4 weeks of the date of this order, failing which the rate of interest will be increased to 12% per annum. There shall be no order as to costs. On compliance of this order, the Registry shall refund to the appellant the deposit of Rs. 5 lakh (along with accrued interest, if any, thereon) made by the appellant pursuant to our direction dated 11/11/2009.