(1999) 03 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE Company Limited APPELLANT

Vs

SHAM LAL BHAT RESPONDENT

Date of Decision : 12-03-1999

Acts Referred:

Citation : 1999 3 CPJ 239

Hon'ble Judges : T.S.Doabia , G.D.Sharma J.

Final Decision : Appeal disposed of

Judgement

1. THE respondent complainant was directed to be compensated for the loss sustained on account of fire in which the house of the complainant was burnt.

2. THE appellant Insurance Company had issued fire policy. This was effective from 5th April, 1995 to 4th May, 96. During the currency of said policy, the house of the complainant was damaged by fire on 10th May, 95. THE loss was intimated to the appellant-Company. M/s. H. Kanan and Company was appointed as Surveyor. It submitted its report on 12th May, 96. THE loss so assessed was to the extent of Rs. 3,06,372/-. THE Surveyor came to the conclusion that the house was a two storey building. It had a covered area of 1,215 sq. ft. THE appellant Company was not satisfied with the Surveyor report. A second Surveyor was appointed. THE second Surveyor, M/s. Alak Consultants Private Limited came to the conclusion that the loss actually suffered was to the extent of Rs. 1,90.852/-. The State Commission has come to the conclusion that the complainant is entitled to be compensated on the basis of the report furnished by the first Surveyor. Interest @ 18% has also been allowed. It is this order passed by the State Commission which is the subject matter of challenge in this appeal. The basic argument raised is that the plinth area as given in the report submitted by the second Surveyor was based on realities and the loss so assessed could be made the basis for assessing the loss.

It be seen that the second Surveyor in his report had observed that the inspection of the building revealed that the building did suffer extensive damage. It had collapsed completely. It has further observed that it was not possible to ascertain the exact specification of the building. The copy of final joint survey report of M/s. H. Kanan and Company was provided to the second Surveyor for reference. After thorough scrutiny of the report, the specifications and various items allowed by the first Surveyor were found reasonable. The amount was reduced by taking note of the plinth area. The second Surveyor also observed that it is not possible to work out a detailed assessment of the loss.

3. THE second report appears to be note based on realities. In the first report it was indicated that the house is a two storey building. It had an attic floor built up over an area of 1,215 sq. ft. It is the complete area which was indicated by the first Surveyor. THE complete area would definitely be different from the plinth area. In this view of the matter, it cannot be said that the report submitted by the first Surveyor was not based on realities. It had taken note of the complete area. In this view of the matter, the order of the State Commission assessing the amount of compensation on the basis of report of first Surveyor cannot be faulted. So far as other submissions regarding jurisdiction of Commission and grant of rate of interest is concerned, these have been dealt with in detail in C.I.M.A. 61/95 titled M/s. Oriental Insurance Company Limited & Anr. v. Sh. Pyare Lal Koul, decided by this Court on 13.11.1998. The conclusions which have been arrived at are as under : (i) that the rate of interest should be 12%; (ii) that this should be payable two months after the Surveyor has submitted its report; (iii) that if the Divisional Forum or the State Commission comes to a conclusion that there is inordinate delay caused by the Insurance Company and the proceedings have lingered on, account of dilatory tactics adopted by the Insurance Company, then it can award even higher rate of interest, but in doing so, reasons would have to be recorded; (iv) that so far as the proceedings are concerned, these can be conducted by two Members. The presence of President is not necessary; (v) that the lacuna in the matter of the order having been not signed by all the Members, stood validated by the Validation Act. Section 16-A which was brought on the Statute Book validates the proceedings which were not in conformity with the Act as it originally existed; (vi) that the order signed by two Members is to be taken as a valid order; (vii) that the argument that the President heard the argument and the other Members signed the order later on, cannot be looked into in this appeal.

4. IN view of the above, this appeal is disposed of with the direction that the rate of interest shall stand altered from 18% to 12%. This would be payable two months after the first Surveyor submitted its report. The appellant would be compensated as per the order of State Commission with the modification in the interest part as indicated above. Appeal disposed of.

