(2014) 11 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE COMPANY LTD — APPELLANT

Vs

T Gopal S/O T Nagaiah — RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Citation : 2015 1 CPR 102

Hon'ble Judges : V.K.JAIN , B.C.Gupta J.

Advocate : R.B.SHAMI , M.V.RAGHUNATHAN

Judgement

1. THE respondent/complainant got the stock and furniture, etc., in his shop insured with the petitioner -company for a sum of Rs.22,00,000/ -, for the period from 27 -12 -2010 to 26 -12 -2011. On 06 -03 -2011, a fire took place in his house and according to the complainant/respondent the entire stock kept in the shop was gutted in the fire. The insurance company was informed and a surveyor was appointed to assess the loss. According to the complainant, the surveyor assessed the loss of the complainant/respondent at Rs.22,86,289/ -. Since the claim was not paid the complainant sent a legal notice to the petitioner -company. Thereafter, the petitioner -company made payment of Rs.11,94,798/ - to the complainant. After the aforesaid payment the complainant filed a complaint before the concerned District Forum seeking payment of the balance amount of Rs.11,86,289/ - along with interest @ 24% per annum, besides compensation of Rs.50,000/ -.

2. THE complaint was resisted by the insurance company on the ground that the surveyor had found the tradable stock to be worth Rs.15,84,127/ - and the entire stock in the shop was not burnt. The remaining stock could be treated as salvage and could be sold, though for a lesser price. It was further stated that on the basis of the record, photographs and the report of the surveyor the company assessed the loss at Rs.11,94,798/ -. The complainant after understanding the assessment made by the insurance company accepted the same and signed the payment voucher, accepting the aforesaid amount, whereafter the payment was credited in his account.

3. THE District Forum vide its order dated 13 -03 -2013 dismissed the complaint. Being aggrieved from the dismissal of his complaint, the respondent/complainant preferred an appeal before the concerned State Commission. The State Commission vide impugned order dated 23 -06 -2014 allowed the complaint and directed the insurance company to pay a sum of Rs.6,89,791/ - to the complainant along with cost amounting to Rs.5,000/ -. This order was passed, taking the loss of the complainant covered by insurance policy in question at Rs.18,84,589/ -. Being aggrieved from the order of the State Commission the insurance company is before us by way of this revision petition. A perusal of the report of the surveyor dated 03 -03 -2012 would show that taking the value of the stock found at the time of the survey at Rs.3,12,434/ - the surveyor assessed the loss to the complainant in respect of the stock of trade at Rs.12,71,693/ - and in respect of FFF at Rs.19,805/ -. After making deductions for salvage and policy excess the net loss was assessed by him at Rs.12,72,000/ -. Out of the aforesaid amount, Rs.12,14,182/ - was apportioned by him to the Oriental Insurance Company and Rs.57,818/ - to the other insurance company from which the complainant had taken an insurance cover of Rs.1,00,000/ -.

4. THE discharge voucher admittedly signed by the complainant, to the extent it is relevant, reads as under: "Received this 12th day of March 2012 from the Oriental Insurance Company Limited, the sum of Rs.11,94,798/ -, Eleven Lakh Ninety Four Thousand and Ninety Eight Only in full settlement of all claims upon the said company for loss or damage and expenses sustained by ..and of all demands arising from the Fire which occurred on the ..day of ..19 .to property insured under Policy/ies No.433100148/2011/1964 of the said company, which claim is hereby discharged."

It would, thus, be seen that the complainant accepted a sum of Rs.11,94,798/ - from the petitioner -company in full settlement of all his claims against the petitioner -company for the loss or damage and expenses sustained by him and all his demands arising under the policy in question. On making the aforesaid payment the petitioner -company stood discharged of all his obligations under the said policy. Admittedly, the aforesaid amount of Rs.11,94,798/ - was credited to the account of the trading firm of the complainant. In our view, having accepted the aforesaid amount of Rs.11,94,798/ - in full and final settlement of all his claims arising under the policy in question the complainant is estopped from making any further payment against the petitioner -company. In case he was not satisfied with the amount offered by the petitioner -company he ought not to have accepted the aforesaid payment or he could have at best accepted the said payment under protest and as part payment. The learned counsel for the complainant states that the aforesaid payment was accepted as a part payment. However, there is no such endorsement on the discharge voucher and, therefore, the said statement cannot be accepted. Moreover, no notice/letter was sent by the complainant to the insurance company soon after the receiving of the aforesaid payment of Rs.11,94,798/ - on 22 -03 -2012, claiming that he had accepted the aforesaid amount only as a part payment and not in full and final settlement of his claim under the policy. Therefore, we cannot accept the contention that the aforesaid payment was accepted by the complainant as a part payment.

5. FOR the reasons stated hereinabove, we are of the view that the State Commission clearly erred in law by directing further payment to the complainant despite the fact that he had accepted the amount of Rs.11,94,798/ - in full and final settlement of his claim. The order passed by the State Commission, therefore, is set aside. In the facts and circumstances of the case, there shall be no order as to costs.

