
(2002) 05 NCDRC CK 0085

In the National Consumer Disputes Redressal Commission

PADMASRI TOBACCO CO.

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD.

RESPONDENT

Date of Decision : 03-05-2002

Acts Referred:

Citation : 2002 2 CPJ 96 : 2003 1 CLT 215 : 2003 1 CPR 172 : 2003 2 CPC 231

Hon'ble Judges : D.P.Wadhwa , J.K.Mehra , B.K.Taimni J.

Final Decision : Complaint disposed of

Judgement

1. THESE five complaints have been filed by the respective complainants against a common respondent, New India Assurance Co. The complainants are Tobacco dealers/traders who purchase Tobacco from different sources to supply it to the cigarette manufacturers. THESE stocks were lying in the godown of one "Ranga Enterprises" for which each of the complainant had obtained an insurance policy cover. There was fire in the godown on 2nd/3rd September, 1990 destroying the tobacco stored in the godown for which respective claims were preferred. Since they relate to the same godown of "Ranga Enterprises" for purpose of storing Tobacco, involve the same incident of fire and the respondent Insurance Company is the same, we go on to deal with the respective claims through one single order. The facts in each are brought out separately. (i) Original Petition No. 52 of 1996 Padamshree Tobacco Company had taken an insurance policy from the respondent for Rs. 13.3 lakhs, through three separate policies, for Tobacco stored in the godown of Ranga Enterprises. On the night of 2nd/3rd September these stocks were gutted by the fire. (ii) Original Petition No. 130 of 1996 M/s. Bharat Enterprises had got an insurance cover of Rs. 18 lakhs under three separate policy covers for Tobacco stocks, stocked in the godown of Ranga Enterprises which was gutted by fire on the night of 2nd/3rd September, 1990. (iii) Original Petition No. 131 of 1996 The complainant, M/s. Bharat Leaf Tobacco Co., had taken insurance policies amounting to Rs. 33 lakhs under two policies covers from the respondent Company for stocks kept in the godown of Ranga Enterprises. THESE stocks were destroyed by fire on the night of 2nd/3rd September, 1990. (iv) Original Petition No. 32 of 1997 In this case, M/s. Bhartiya

Tobacco Company had insured Tobacco stocks stored in the godown of Ranga Enterprises for Rs. 11 lakhs under two policies which caught fire on the night of 2nd/3rd September, 1990. (v) Original Petition No. 127 of 1997

The complainant Saibaba Tobacco Company had two valid insurance policies for Rs. 5.5 lakhs for the stocks of Tobacco kept in the godown of Ranga Enterprises which was destroyed by fire on the night of 2nd/3rd September, 1990. All these incidents were immediately reported to the respondent Company who appointed Surveyor for the purpose and an Investigator. There is no dispute on the basic facts i.e. about the incident of fire, its coverage by the said policies as well as the cause of fire which is short-circuiting and confirmed by the finding of the Investigator. Complaints were filed basically on three grounds : (1) delay in settling or offering to settle the claim by five years; (2) uncalled for deductions made even after the recommendation made by the "Surveyor" after requisite deductions; and (3) settlement or its offer to settle the claims but not including any "interest" on account of delayed "offer" of settlement. Brief Summary of the Case is as under : Insurance Cover Claimed Amount Amount re-commended by Surveyor/Loss Assessors Amount offered by Respondent Remarks O.P. No. 52/96 13.3 12,16,852/- 10,37,238/- 9,31,014/- - O.P. No. 130/96 18.0 18,00,000/- 16,37,800/- 14,71,520/- Paid to the Banker of the complainant on 7.9.1999 O.P. No. 131/96 33.0 31,55,400/- 10,25,714/- 20,81,966/- -Do- O.P. No. 32/97 11.0 11,00,000/- 10,25,714/- 9,20,643/- -Do- O.P. No. 127/97 5.5 5,39,738/- 4,58,549/- 4,08,549/- - Original Petition No. 52 of 1996 :

2. AS per complaint filed by the complainant, the complainant's prayer is to direct the respondent to pay an amount of Rs. 10,91,829.40 as worked out by the Surveyor before deduction for salvage (Rs. 54,591.47) and excess under Fire Policy "C" (Rs. 2,500/-) with interest and compensation amounting to Rs. 6.50 lakhs and costs of Rs. 10,000/-. This claim is resisted by the respondent Company that not only the Surveyor's report need to be restricted by way of providing for aforesaid deduction but also a further 10% of the amount as recommended by the Surveyor is to be deducted for breach of warranties as well as a further Rs. 2,500/- need to be deducted as "Policy Excess". What has been offered is as per terms of the policy. The respondent has shown its bona fide by offering the amount of Rs. 9,31,014/- as full and final settlement in 1995 - one year before the filing of the complaint. Since the deductions are as per the terms of policy, the complainant cannot be given more than the offered amount. Rejoinder and affidavits were filed by the parties. We have seen the material on record. What we need to examine is the main deductions made, one by the Surveyor and second by the respondent Company. The Surveyor has valued the salvage at Rs. 54,591.47 and deducted this from the estimates of loss. During the arguments on a specific question being asked by the Bench as to what use burnt tobacco (salvage) can be put to, there was no reply. Admitted position would be that there will be no buyers of burnt tobacco. In fact there was no salvage. Fire was smouldering as per report of Surveyor and Investigator on record, for several days after the incident - and still salvage is being talked

about. It was stated during arguments that by salvage value what was meant was, the quantity which could have been saved. It is also the tenor of survey report. In our view this explanation is still worse. This is not the case that any effort was spared to save the stocks by the godown staff. This conclusion or deduction appears to be one-sided, imaginary, arbitrary and without any basis, hence cannot be sustained. We see no merit in these contentions, hence keeping in view the facts and circumstances, we find no merit in deduction on this account. Then the respondent Company has further deducted 10% of the amount recommended by the Surveyor on account contravention of the terms of warranties forming part of the policy. The two violations were : (i) insufficient Fire Fighting Equipment on site, and (ii) non-segregation of 3 years old stocks from more than three years old stock; on each of these counts 5% of the assessed loss is deducted. Without beating about the bush, we are unable to agree with both the above deductions; our rationale is based on the letter dated 21.5.1993 written by respondent's office in Ongole District of Andhra Pradesh to its Regional Office in Hyderabad. For purpose of facility, we reproduce from this letter the relevant portions related to each of alleged contravention of warranty clauses : "Fire Extinguishers : Though the Surveyors have commented in their report that Fire Extinguishers were not provided by the client, if we observe the photos, it is obvious that number of buckets were scattered outside the premises and inside position we may not be in a position to decide unless the debris is removed. Basing on the above observations, we have concluded that Fire Extinguishers were provided as per norms. (Emphasis supplied) Regarding storage of old and new stocks : AS per the clause supplied to us - 3 years old stock (current and preceding two years) shall not be stored along with the tobacco which is more than three years old. Moreover our Engineer, Mr. V.R. Ganesh, who had conducted Risk Inspection on 16.12.1989 that had commented in his report that 3 years old stocks of tobacco (current and preceding two years) shall not be stored along with tobacco of more than 3 years old. It does not mean that more than 3 years old stock must be kept in a separate godown. But in this particular case, the clients have stored their stocks in the same godown, but in separate stockings by maintaining the distance warranty. Hence, we have concluded that there is no breach of the warranty".

(all emphasis supplied) In our view nothing could be more perverse on the part of respondent than to conclude that inspite of these observations of the local office of the respondent, still it is decided at whatever level to deduct 5% on each of these counts. Nothing is on record to show any basis for disagreeing by the respondent's Regional Office with its local office. On account of above discussions these deductions cannot be sustained. There is enough material on record to substantiate the fact that warranty clauses were being adhered to. We have also seen that even though incident of fire took place in September, 1990 claims were preferred immediately thereafter and even though the Surveyor report came in April, 1992 after a delay of one and a half years, yet the offer for settlement was made only in March, 1995 i.e. four and a half years after the date

of incident of fire. This manifest itself as a deficiency in service while making an offer. We also see that no component of interest is added which again is deficiency. In the light of these discussions, the complaint is allowed and the respondent Company is directed to pay to the complainant's Bank, Rs. 10,91,824.40 with interest @ 12% from 1.12.1990 till the date of payment which should be done within eight weeks of this order. Original Petition No. 130/1996 : From the Surveyor's report we see that total loss was calculated at Rs. 17.24 lakhs and after deduction of value of salvage (Rs. 86,200/-) and excess under Fire Policy (Rs. 2,500/-), loss assessed was Rs. 16,35,300/- but the respondent Company further deducted Rs. 1,63,780/- on account of contravention of terms of warranty and another Rs. 2,500/- on account of excess "policy excess", thus arriving at a figure of Rs. 14,71,520/- which was paid to the complainant's Bank on 7.9.1999 i.e. after 9 years of the incident. The case of the complainant is, firstly, that his stocks were not valued properly. Had the valuation been done @ Rs. 32/- per kg. for whole of stock, that would have helped settled the claim at full insured value of Rs. 18 lakhs. Non-settlement of claim for six years i.e. till the date of filing the claim itself is deficiency. Deductions on account of contravention of warranty of clauses are not in order. The complainant now claims the balance of the amount claimed plus interest from the date of incident, Rs. 5 lakhs on account of loss of profits and Rs. 1 lakh as compensation for loss of goodwill, business reputation and mental agony. An amended complaint was filed by the complainant to enhance the total amount claimed, the basis of claiming the interest @ 24% on the claimed amount. It was also stated by the complainant at the time of arguments, that they have settled the amount with the Bank in the year 2000 and now order of "award" should be made in his favour. In the written version filed by the respondent basic facts were agreed to. Yet it was denied that there was no violation of the warranty clause; offer to settle the claim was made to the complainant in March, 1995 but in view of the fact that offer was acceptable to the complainant "without prejudice" and not as full and final settlement, hence payment not made. There has been no deficiency on the part of the respondent. Rejoinder and affidavits were filed by the parties. Arguments were heard.

On perusal of material on record we see that against claim of Rs. 18 lakhs, full amount of policy cover, the Surveyor assessed the total loss at Rs. 17.24 lakhs. We are unable to sustain the deductions made on account of salvage and contravention of warranty clauses as per discussion on these issues in O.P. 52/1996 above. We are also unable to sustain the contention of the complainant to value the whole stock i.e. Tobacco of all grades at Rs. 32/- per kg. Valuation made by the Surveyor is as per material on goods supplied by the complainant. We also see that a large quantity of a particular variety has been valued at Rs. 32/- per kg. Lower varieties cannot be valued at the same rate, which have been valued differently, which according to us is in order.

3. IN the light of above discussions the respondents are directed to pay Rs. 17.24 lakhs along with interest @ 12% from 1.12.1990 till the date of payment

which must be made within eight weeks of that order. It is clarified that interest for Rs. 14,71,55,201/-, paid to the Bank, will run upto 7.9.1999 i.e. the date of payment to the Bank and for the remainder amount upto the date of payment. Original Petition No. 131 of 1996 : The complainant through the complaint has prayed for direction to the respondent to pay Rs. 81,09,852/- comprising Rs.31,55,400/- as per claim amount and interest @ 24% p.a. Rs. 5 lakhs on account of loss of goodwill and business reputation. The complainant's case is that against their claim of Rs. 31,55,400/- the total loss was worked out by the Surveyor at Rs. 26,35,645/- out of which 7.5% was deducted on account long storage thus arriving at the figure of loss of Rs. 24,37,952/- but after deduction of Rs. 1,21,899/- on account of value of salvage and 10% on account of contravention of clauses of the warranty, the final figure arrived at by the respondent amounting to Rs. 20,81,960/- (?) and paid to the Bank on 7.9.1999 is not acceptable to the complainant. His main grounds of complaint are delay in settlement of claim i.e. of nine long years, no payment of interest on the amount paid, as well as no ground for deductions made on account of salvage and contravention of warranty. It was also argued for the complainant's side that valuation of stocks have also not been done properly. It is true that some stocks were of the year 1985 crop but it is admitted by the Surveyor in his report (para 16) that they have fetched the current price on sale in 1989 and yet valuation of stock, is done on 1985 prices without any ground/justification. To compound the injury/loss thus caused, a further sum amounting to 7.5% on the total loss is added to the deductions on account of "allowances for long storage of old crop". These deductions are neither as per terms of policy nor does it follow any guidelines on the subject. They are completely arbitrary. All these deductions need to be restored. On the other hand the case of the respondent is that there is no deficiency on their part. Immediately after the incident they appointed the Surveyor, whose report was accepted and amount offered in March, 1995 after making deductions on account of contravention of the warranty clause and policy excess. It is the complainant who did not accept it.

4. REJOINDER was filed by the complainant and affidavits were filed by the parties. We also heard the arguments advanced by the learned Counsels for the parties. With regard to deductions made on account of value of salvage, contravention of warranty clauses and access policy, we are unable to accept the deductions on account of reasons outlined in O.P. 52/1996 above. We have seen para 16 of the Surveyor's report. It is admitted by the Surveyor that as late as 1989, the complainant had sold 1985 stocks at current prices and then no reasons are advanced to not to value 1985 stocks at current prices. We can accept that there would be some deterioration, and once deductions have been made by virtue of fixing 1985 prices for purposes of stock valuation, in that case we do not see any justification for further deduction of 7.5% on account of "long storage". There does not appear to be any ground/justification to work out figures doubly to the detriment of the insured on the same ground. Howsoever arbitrary figure it may seem, having valued the stocks at 1985 prices, we cannot

sustain deduction of 7.5% on account of long storage, hence set aside. It is stated by the complainant that he has settled the account with the Bank and "No Due Certificate" is on record. In the light of above discussions, the respondents are directed to pay to the complainant an amount of Rs. 26,35,645/- as worked out by the Surveyor before any deductions, along with interest @ 12% p.a. from 1.12.1990 to the date of payment. It is clarified that interest on amount of Rs. 20,81,960/- shall be payable upto 7.9.1999 i.e. date of payment of this amount to the Bank by the respondent; for the rest of the amount, the interest shall be payable till the date of payment. Original Petition No. 32 of 1997 : Complainant's case is that against the claim for loss of tobacco, on account of fire in September, 1990, he preferred a claim for Rs. 11 lakhs against which an amount of Rs. 9,20,643/- was paid to the Bankers only on 7.9.1999 i.e. after a delay of 9 years and that too during the pendency of the complaint. Against claim for Rs. 11 lakhs the Surveyors assessed the loss at Rs. 10,79,699/- and after deduction of Rs. 53,985/- on account of value of salvage as assessed by the Surveyors and for the deductions on account of contravention in the warranty clauses and "policy excess", was not acceptable to the Complainant. Deductions on account of contravention in warranty clauses and on account of salvage value are not as per the "Terms" of policy. There has been no breach of warranty on their part. On account of such an extended period of fire which kept smouldering for days, the question of salvage does not arise. No interest has been paid while making payment after a delay of 9 years. The amount offered in 1995 was on the condition of its being full and final settlement which was not acceptable to the Complainant. According to the Complainant Surveyor erred in not valuing the stocks at Rs. 36/- per kg. but valued the stocks at Rs. 34/- per kg. All deductions made should be set aside. The Complainant prayed for payment of claimed amount of Rs. 11 lakhs in full and final settlement along with interest @ 22% and Rs. 6 lakhs on account of loss of business, goodwill and reputation. The case of the respondent is that there has been no deficiency. They offered to settle the claim in March, 1995 but it was not acceptable to the Complainant. It is his fault and not of respondents; the deductions made are as per the terms of policy and terms of warranty.

5. AFFIDAVITS were filed by the parties and arguments were also heard.

6. AS regards deductions made on account of value of salvage/contravention of warranty clauses and policy excess, these deductions cannot be sustained in the light of discussion on these points in O.P. 52/1996 above. We see no merit in the contention of the complainant to value the stocks at Rs. 36/- per kg. and not @ Rs. 34/- per kg. as the complainant could not satisfy the Surveyor on the quality aspect, as there were no records relating to grading and stripping. In the absence of these records, to ask for higher price would be begging the question. We are not in a position to accept this claim of the complainant. Based on our discussions above, we direct the respondent to pay to the complainant Rs. 10,79,699/- along with interest @ 12% from 1.12.1990 upto the date of payment. It is however clarified that interest for Rs. 9,20,643/- shall be payable

to the Bank for the period upto 7.9.1990 i.e. date of payment to the Bank, and for the remainder amount interest shall be payable upto the date of payment which shall be within eight weeks from the date of the order. Since the complainant has settled the account with the Bank in the year 2001 and "No Due Certificate" obtained, all balance amounts emanating out of the order shall be payable to the complainant. Original Petition No. 127 of 1997 : The complainant case is that he had preferred a claim for Rs. 5,39,738/- against which total loss worked out by the Surveyor was Rs. 4,85,314.50 but after deduction of Rs. 24,266/- as value of salvage i.e. amount equivalent to stock which could have been saved, loss was assessed at Rs. 4,61,049/- by the Surveyor A further amount of Rs. 50,000/- and Rs. 2,500/- was deducted by the respondent on account of breach of two warranty clauses and policy excess. Based on these calculations, an offer of payment of Rs. 4,08,549/- as full and final settlement was received in March, 1995 by the complainant but since it was acceptable to him "without prejudice", hence no payment was made and none has been made till date. The complainant prayed for, directions to be given to the respondent, for payment of Rs. 26.74 lakhs; Rs. 5,39,758/- on account of claim preferred plus interest and Rs. 6 lakhs on account of loss of business and goodwill. Respondents have given the same reply that deduction on account of value of salvage was in order and deduction on account of violation of warranty clauses was as per terms of warranty forming part of insurance policy. There has been no deficiency. They made the offer in 1995 which was not accepted by the complainant hence they cannot be held deficient in rendering the service.

Evidence was adduced by way of affidavits, arguments were heard. On perusal of record we see that the Surveyor had assessed total loss at Rs. 4,85,314.50 and then deducted Rs. 24,266/- on account of value of salvage. We are unable to sustain the deductions made on account of value of salvage, violation of warranty clauses and policy excess for the same reasons as enumerated/discussed in O.P. No. 52/1996. In view of this the respondents are directed to pay to the Andhra Bank, Orgole (A.P.) an amount of Rs. 4,85,314.50 i.e. the total loss assessed by the Surveyor before the above deductions along with interest @ 12% from 1.12.1990 upto the date of payment, which should be done within eight weeks of the order.

7. IN all these cases, in the written version filed by the respondent, a common strain is that the only remedy for the complainant after non-acceptance of the offer made in March, 1995 was to go to Civil Court for recovery. We see no merit in this as these cases are squarely covered within the definition of consumer under Sections 2(1)(d)(ii) and 2(1)(o) to seek remedy before us as it involved deficiency in service. Basic chronology of events need to be recaptured once again. Fire incident in all the cases takes place in the night of 2nd/3rd September, 1990, matter is reported to the respondents, preliminary survey is done, claims are preferred by the complainant/insured in quick succession in 1990 itself. An Investigator is appointed - he gives report on 14.8.1991. A Surveyor is appointed who gives a report in April, 1992. Nothing is done to

alleviate the sufferings of the insured/complainants. First time the offers are made, after making arbitrary deductions, in March, 1995. In the reply filed by the respondents, delay is sought to be explained by allegation of master minding of claims and collusiveness on the part of complaints for which Investigator had to be appointed. All right but even their report was available in August, 1991. Delay is further explained by internal processing which is totally unacceptable. What are the poor insured supposed to do to keep on paying interest to the Bank on the borrowed capital ? Why should it take year and a half for the Surveyor to furnish the report - and worse - why should it take the respondent a further period of three years to make an offer and then another four years to send the cheques to the Bank ? Even if we condone the delay in the submission of report of the Surveyor, which we do not - even then what prevented the respondents to settle the claim at the amounts, as per calculations of the respondents within three to six months of the Surveyor's report, with interest. Amount of harassment and financial loss being caused by such inordinate, uncalled for and unwarranted delay seemed to have escaped the respondents. In the present case the respondent Company a monopoly - Government owned Company at that - conveniently forgets to award any interest while making an offer after a lapse of 54 months. Nothing could be more tyrannical. To add insult to the injury, the respondent Company has the audacity to state, that there has been no deficiency on their part. In three out of five cases before us, some delayed wisdom dawns on them and money is sent to the Banks in September, 1999, after a lapse of 9 long years, still without any interest and yet stating that there is no deficiency in service. The other two were not so lucky for best reason known to the respondents but no explanation on this point is available on record. We can presume that reasons could not be very healthy. This in our view, appears to be a clear case of failure of internal control, checks and monitoring system if there is any such system in place. The chronology of events brought out above puts the case in perspective and stares at us ominously and bares the functioning of a State Monopoly.

8. IN Lucknow Development Authority v. M.K. Gupta, III (1993) CPJ 7 (SC)=(1994) 1 SCC 262, Hon"ble Supreme Court observed : "The jurisdiction and power of the Courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded as observed by Lord Hailsham in Cassell & Co. Ltd. v. Broome, on the principle that "an award of exemplary damages can serve a useful purpose in vindicating the strength of law. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. (Emphasis supplied). IN Rookes v. Barnard, it was observed by Lord Devlin, the servants of the Government are also the servants of the people and the use of their power must always be subordinate to their duty of service. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He

who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when the officer discharges his duty honestly and bona fide. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness."

"Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socio-economic outlook. The authority empowered to function under a statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. IN discharging this duty honestly and bona fide, loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously, or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose. IN a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no results (Emphasis supplied). The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public-oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary then when even social obligations are regulated by grant of statutory powers. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries."

IN our view the present case meets all the parameters laid down in the above judgment warranting a situation where award on compensation for physical and

mental harassment will be justified with the fervent hope that this will act as a deterrent for others to not to sit over the misery of helpless people. Therefore, we award a compensation of Rs. 1 lakh each, in each of the five cases, covered by this order with clear direction to the "Higher Management" that this amount after payment by the respondents be recovered from the irresponsible delinquent officials, after due enquiry, who forgot their sense of duty and accountability, in not rendering services to the complainants, completely oblivious of the harm and damage being caused to the complainants by their callous and indifferent attitude. All the above complaints are disposed off as above with a further directions to the respondent to pay cost of Rs. 10,000/- to each of the complainant. Complaint disposed of.