(2011) 03 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

PIARA SINGH APPELLANT

Vs

Branch Manager United India Assurance Co. Ltd RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Citation : 2011 0 CTJ 499 : 2011 0 NCDRC 145 : 2011 2 CPJ 87 : 2011 2 CPR 75

Hon'ble Judges : Ashok Bhan , Suresh Chandra J.

Advocate : D.K.Sharma , A.K.Dey , Udit Kumar

Judgement

1. BRIEFLY stated, the complainant who is petitioner herein, insured his shed of card board factory and the articles lying in it with the OP Insurance Co. for the sum of Rs.2 lakhs. On 09.08.1998, the entire shed got demolished due to storm and rain and due to this, the goods lying in the shed were also damaged and the complainant suffered a loss of more than Rs.2 lakhs. On his preferring a claim in this regard, the OP Insurance Co. appointed a surveyor. Ultimately, the Insurance Co. sent a cheque for Rs.20,312/- but the complainant refused to accept the same. The contention of the OP Insurance Co. is that the shed of the complainant was of the value of Rs.6,04,800/- but the complainant had got it insured for Rs.2.5 lakhs and hence according to Condition No.10 of the policy in question, the ultimate loss could be indemnified to the tune of Rs.20,312/- only. Aggrieved by the response of the OP Insurance Co., the complainant knocked the doors of the consumer fora by filing a complaint before the District Forum which vide its order dated 04.01.2000 allowed the complaint and directed the OP Company to pay Rs.1,38,048/-, i.e., the loss assessed by the surveyor to the complainant along with interest @ 18% p.a. and cost of Rs.2,000/-. Aggrieved by this order, the OP Insurance Co. challenged it before the State Commission which vide its impugned order dated 19.09.2006 allowed the appeal and set aside the order of the District Forum and hence the revision petition.

2. WE have heard counsels for the petitioner and the respondent. It is not under dispute that the assessor appointed by the Insurance Co. assessed the net loss of Rs.1,38,048/-. WE agree with the view taken by the State Commission that

the cover in question is subject to the terms and conditions of the policy. In the circumstances, the District Forum erred in allowing the complaint and directing the OP to pay the entire amount of loss assessed by the surveyor at Rs.1,38,048/- because in accordance with Condition No.10, of the policy the petitioner would be his own insurer to the extent of under-valuation of the property in question. However, even when we apply Condition No.10, the amount of permissible compensation would come to more than Rs.57,000/- and not Rs.20,312/-. Learned counsel for the respondent Co. fairly admitted that in accordance with Condition No.10 of the policy, the amount of compensation will come to more than Rs.20,312/- based on the net loss of Rs.1,38,048/- assessed by the surveyor. It is to be noted that while the terms of Condition No.10 are placed on file, the respondent Insurance Co. has not explained anywhere the justification for arriving at the figure of Rs.20,312/- which it had assessed as the amount of compensation payable. Except reiterating that the claim of the petitioner would be subject to Condition No.10 of the policy because of the under-valuation of the property in question, even the counsel for the respondent Co. could not explain or clarify as to how the figure of Rs.20.312/- has been arrived at by the respondent Co. Taking into consideration the net loss assessed by the surveyor, we are of the view that a lumpsum compensation of Rs.70,000/- including the compensation for mental agony and harassment and the cost of litigation would meet the ends of justice in the given facts and circumstances of the case. The respondent Insurance Co. is, therefore, directed to pay Rs.70,000/- to the petitioner along with interest @ 9% p.a. w.e.f. the date on which it had conveyed its decision to settle the claim for Rs.20,312/- till the date of actual payment. The respondent Co. shall pay the amount of compensation along with interest so calculated within a period of six weeks from the date of this order failing which, it shall be liable to pay interest @ 12%. The revision petition stands partly allowed in terms of these directions and in modification of the orders of the fora below.

