
(2014) 05 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

Priyaluckshmi Garments Represented By Mrs. G. Mahalakshmi APPELLANT
Vs
ORIENTAL INSURANCE CO. LTD. RESPONDENT

Date of Decision : 01-05-2014

Acts Referred:

Citation : 2014 0 NCDRC 286 : 2014 3 CPJ 510

Hon'ble Judges : J.M.MALIK , S.M.Kantakar J.

Advocate : V.MOHANA , SAKSHI GUPTA

Judgement

1. THIS is a case against insurance company where the goods were damaged in fire and sums of Rs.2,14,01,500/ -, Rs. 46,35,000/ - and Rs.72,45,000/ - were claimed by the complainants No. 1, 2 and 3, respectively, with interest and costs. The case, of all the three complainants, namely, Sri Priyaluckshmi Garments, Sri Priyaluckshmi Exports and Priyaluckshmi Apparels, respectively, which was filed before this Commission on 19.3.1999, is as follows.

2. ALL the complainants had three separate partnership firms having the common partners in all firms. They transact the business of fabrics, garment and hosiery items and are in export business. The complainants obtained six insurance policies for fire "C " floater policies from the three opposite parties representing the Oriental Insurance Co. Ltd. Unfortunately, on 21.2.1998 at about 10.45 p.m., a fire broke out in the factory premises of the complainants, who have got the same place, mentioned above, for transacting their business. It is averred that it was a devastating fire and the reason for it is suspected to be an electric short circuit. Eight fire tenders viz. eight lorries of water were required to put off the flame in the kiosks and premises. Lot of goods were suspected to be stolen from the premises. The fire damaged stocks, stock -in -process and other material stored in the premises. A police complaint was lodged on 22.2.1998. The complainants informed about the fire to their respective banks on 23.2.1998. The insurance company was also informed about this mishap.

3. THE complainants made the claim before the insurance company. Mr. G. R. Raj, their preliminary surveyor assessed the loss. All the necessary documents

were produced. On 23.2.1998, the opposite parties appointed another surveyor Mr. P. S. Ramanathan, who checked 866 files and met with the employees of banks. The complainants assisted the surveyor as per the letter dated 3.3.1998 sent by the complainants to the opposite parties. The certificate from District Fire Officer was also placed on the file. The complainants requested the surveyor Mr. P. S. Ramanathan for removing the salvage but they were not given clearance from the surveyor till July, 1998. A lot of salvage was lost in this period, which was exposed to wind, rains and theft. There was correspondence between the surveyor and the complainants vide annexure VIII (Colly) and annexure IX (Colly). It is alleged that there was some delay on the part of the opposite parties as they were not settling the claim. The complainants have informed their banks vide letter dated 16.7.1998 and 30.7.1998, Annexure XV (Colly). The surveyor promised that he would finalise the claim within a month vide annexure XV -A (Colly). In the meantime, the Surveyor met with an accident. He had a fracture in the left hand. In the end of August, the complainants met the surveyor in his house and they were assured that the surveyor will send the report within 10 days vide annexure XVI (Colly) but no action was taken even after the lapse of three months.

4. THE complainants have placed on record Annexure XVII sent by the creditors. The matter could not be settled till January, 1999. All the documents were provided to the Surveyor again. The Surveyor again sent a letter dated 29.1.1999 and put the blame on the complainants vide his letter dated 29.1.1999. In between, correspondence continued between the parties. Due to delay, the complainants have to suffer a lot. Their entire business came to stand still due to huge loss. They were unable to restart their business. It was explained that the complainants have thus incurred a direct loss of Rs.2,58,94,000/- . The bank interest comes to Rs.43,87,500/- as on 28.2.1999. They have spent Rs. 5 lakh towards legal expenses, telephone calls, telefaxes, courier etc. incurred by the complainant. They have also claimed Rs.15 lakh towards incidental loss incurred by the complainants No. 1, 2 and 3 at the rate of Rs. 5 lakh each. Defence of the Opposite parties.

5. THE opposite parties have enumerated the following defences in support of their case. Each complainant has different cause of action and they ought to have filed separate complaints. This Court has no jurisdiction to entertain this complaint. The complainants did not produce the documents as required by the opposite parties. Preliminary surveyor, Shri G. R. Raj visited the manufacturing units on 22.2.1998, 23.2.1998, 25.2.1998, 2.3.1998, 13.3.1998, 15.3.1998, 31.3.1998, 20.4.1998, 2.5.1998, 15.5.1998, 23.5.1998 and 1.6.1998 and carried out preliminary survey. The complainants did not submit the accounts and statement in the first week of April, 1998. They promised through their letter dated 6.4.1998 to submit the accounts within 15th April, 1998. Even on 15.4.1998, they did not submit the above said documents. Another letter was sent on 21.4.1998 to the complainants to submit the necessary papers, financial statements and supporting documents at an early date for finalizing the survey.

6. A number of correspondences went on between the parties. The allegation of the opposite parties is that numerous delay was caused by the complainants. Vide letter dated 29.1.1999, final opportunity was given to the complainants to produce various documents. The opponent did not co-operate but the final report was issued by the surveyor, Shri P. S. Ramanathan finally on 4.4.1999 and 3.5.1999. Ultimately, the claim of the complainant was repudiated vide their letter dated 29.6.1999. The relevant portion of the said letter runs as follows: ""Dear Sirs, RE : FIRE POLICY "C " CLAIM IN RESPECT OF FIRE LOSS SAID TO HAVE TAKEN PLACE ON 21.2.1998. With reference to the subject claim we have thoroughly investigated and after due consideration of the survey report of the preliminary survey and the final surveyor wish to place on record that the claim is not admissible for the following reasons. The policy in question bearing No. 11817/98 dated 30.6.1997 is in respect of 17 specific locations as more particularly set out therein. The premises said to have been affected by fire is not held covered under the policy in question. In as much as the reported loss occurred in a location which is not held covered, we were not at risk and consequently no claim is payable under the policy in question, for an alleged loss which took place in a location which is not covered. Without prejudice to the aforesaid position it is noticed (a) no damage has occurred to the stock in a manner attributable to accidental outbreak of fire (b) you have been unable to submit any documentation to support the quantity or value of the stock in the aforesaid premises despite repeated opportunity and adequate notice given to you by the surveyors. (c) you have been unable to submit the supporting documentation in respect of the summarized records whereby it is established that your presentations are without any basis whatsoever, (d) you have been unable or unwilling to produce any records showing the stock holding at various locations declared in the policy which is an essential and basic document for the purpose of establishing your claim. In view of the above, your claim under the policy is inadmissible and hence repudiated. ""

7. IT was denied that three complainants were insured by three banks. It was stated that fire was not accidental. The final surveyor requested that a clear set of 12 photos be taken and submitted with negatives. Best offer may be obtained for the salvage and sold after intimation to the surveyor.

8. BEFORE discussing the submissions made by learned counsel for both the parties, it is necessary to go through the order dated 12.2.2007 passed by our previous Bench headed by Hon "ble Mr. Justice M. B. Shah: ""Again on 1.3.99 the complainants wrote a letter to the Insurance Company stating that their claims had not been settled. Thereafter, the complaint was filed on 19.3.99 before this Commission and sent information on 24.3.99 to the Insurance Company about filing of the complaint before this Commission. Subsequently, the final survey report was alleged to have been prepared on 2.4.99, and, the Insurance Co. repudiated the claim by letter dated 29.6.99. It has been pointed out that ignoring the aforesaid details the Surveyor assessed the loss on the physical debris available after a lapse of 4 months, i.e. after heavy rains. Further,

considering the nature of the goods it is difficult to assess its value on the basis of the debris. Assessment of loss on the basis of debris cannot be relied upon for reimbursing the loss suffered by the Complainant. He has assessed the loss for Priyalucksme Garments at Rs.37,56,976/- and deducted a large amount and assessed the net loss at Rs.24,34,578/-. He has ignored all the financial details given by the Complainants. Similarly, he has assessed the net loss to the machinery at Rs.2,07,477/- and the stock for loss of other two factories at Rs.1,69,751/- and Rs.5,25,799/-. Considering the aforesaid record it appears that the Insurance Company was not justified in repudiating the claim on the ground that the insured failed to submit the relevant records demanded by the Surveyors. The Surveyor for the reasons best known to him assessed the loss on the basis of physical debris and on accounts/documents produced by the complainant. However, at present, it would be difficult for us to reassess the same on the basis of various documents which are sought to be relied upon by the complainant. Hence, it is directed that firstly, the Insurance Co. shall pay to the Complainant the sum assessed as loss by the Surveyor i.e. in all Rs.33,37,605/- with interest at the rate of 12% per annum. Secondly, in such circumstances and in view of the foregoing discussion, we have two options, namely: (i) to direct the Insurance company to appoint a Chartered Accountant or a Surveyor having knowledge of accountancy to reassess the loss on the basis of the records which were produced and were handed over to the Surveyors by the Complainants. (ii) To direct the complainant to approach the Civil Court for claiming the remaining amount. ""

""In our view, after a lapse of 10 years, if we direct the complainant to approach the civil court, it would be totally unjustified and it would cause further harassment to the consumer. So, we adopt the first alternative and direct the Insurance Company to appoint another Surveyor who is also a Chartered Accountant to assess the loss on the basis of the records already submitted to the previous Surveyor. In the result, we for the time being direct the Insurance Company to pay to the Complainant: (i) Rs. 26,42,05/- (ii) Rs.1,69,751/- (iii) Rs.5,25,799/- Rs.33,37,605/- as assessed by the previous Surveyors. In all Rs.33,37,605/- with interest at the rate of 12% p.a. from 6 months after the date of fire, i.e. from 21.8.1998 till its payment. The insurance company is directed to make the said payment within six weeks from the date of this order. The Insurance Company is also directed to appoint a Surveyor who is a Chartered Accountant to assess the loss on the basis of the records which are produced by the Complainant with the previous Surveyor and direct him to assess the loss not on the basis of the debris but on the basis of the stock which was in existence as reflected in the account books and other documents. ""

Aggrieved by that order, the opposite parties approached the Supreme Court of India. The Supreme Court of India admitted the appeal but permitted the complainants to withdraw the amount. Civil appeal filed by the opposite parties was dismissed on 12.2.2007. Ultimately, the surveyor was appointed for assessing the loss, who filed their report on 15.12.2010. The Surveyor assessed

the amount in the sum of Rs.52,65,423/ -, Rs.14,94,827/ -, Rs.60,40,069/ - for the respective three firms. There was again inordinate delay in submitting this report which has to be attributable to the opposite parties. Submissions of the Advocate

9. WE have heard the learned counsel for the parties. Learned counsel for the complainants vehemently argued that the Surveyor and Loss Assessor assessed the loss at a lower quantum by adopting erroneous method of assessment based on assumptions and conjectures. He did not take the records and books of accounts and other documents in entirety. The complainant also submitted a brief tabulated statement before this Commission summarizing the objection to the loss assessment report. Though this Commission had directed that the loss has to be assessed on the basis of stock and account books and other documents submitted by the complainants, the Surveyor has adopted varying standards and has applied several deductions without any scientific basis to reduce the claim. The complainants took main objection to the method adopted by the assessor in computation. It was argued that in the case of Priyalakshmi, the surveyor stated in their report at page 69 that the purchase of yarn and cloth for 1997 -98 were verified with copies of purchase invoices furnished by the insured and found to be in order, yet, he has still assessed the claim on the basis of stock statement. It was contended that it is common factor that sometimes all the invoices may not be entirely reflected in the stock statement and there may be variance in the stock details given to the bank. It was further pointed out that assuming that the assessors are taking the stock statement as basis for their calculation, they should have adopted the same method for all the three firms. The surveyors have not assessed it uniformly. In one firm, they took the stock statement as the basis and ignore the invoices showing the entire purchase, while in other two, he took the invoices alone ignoring the stock statements. The reason for this is wherever the value is less, the surveyor has adopted the same, which is arbitrary and unfair.

10. IT was also objected that assessors have not calculated the manufacture of cloth which involves several procedures when yarn is purchased and made into cloth. As a matter of fact, complete flow chart was filed by the complainant before this Commission to show the movement for the cloth from the yarn till the stage of finished products. Again semi -finished and finished goods were given values separately. Again the assessor did not take the documents for the period from 1.2.1998 to 21.2.1998 since the accident had occurred on 21.2.1998. During those 21 days, there was hectic activity for purchase and processing. Again the surveyor committed a mistake in stating that there is a variable cost in respect of the material and processing between 1996 and 1998. There is no major variation. There is no basis shown by the surveyor. The cost has been arbitrarily reduced. The Surveyor has arrived at the cost of yarn and cost of fabrics on his own assessment.

11. IT was also argued that the surveyor has valued the semi -finished and

finished goods at actual average realization per piece during 1997 -1998 less un - incurred expenses which is improper. He has reduced 26.14% per piece as un - incurred expenses which includes transport and freight and also bank interest. The Surveyor has failed to see that the bank interest is payable on working capital loan and the same is included to the cost of production whether it is transported or not. Again, without any scientific basis, it has deducted 10% towards export surplus and export rejects. The export rejects and export surplus are not more than 2% in hosiery field. It was also submitted that surveyor erred in assuming that the insured does not carry out any activity in its own premises. It is a mere assumption of the surveyor because some goods were laying outside the affected premises for carrying out some job work. The complainant submitted that the entire movements of the goods have been shown by them to the surveyor and less than 5% of the total goods would have been lying outside the factory for job work. However, the surveyor has estimated the goods lying outside the job work as 20% without any basis and deducted a huge amount.

12. MOREOVER , the surveyor has erroneously fixed the cost by replacing the machineries at a lower site which is even contrary to the earlier surveyor 's report. It was prayed that the complainants had submitted that they are very short simplified summary of difference in assessment with headings ""For each of the three firms separately "" alongwith his written submissions. The claim of the petitioner (less sum of Rs.33,37,605/ -) should be allowed. A time of 16 years have elapsed from the said occurrence. FINDINGS: It is apparent that the complainants have raised all the objections merely for the sake of cavil. The report dated 7.12.2010 given by M/s Professional Surveyors & Loss Adjusters Pvt. Ltd. through Shri R. Srivatsan, Director appears to be without guiles. This must be borne in mind that he was engaged/appointed vide order passed by this Commission dated 12.2.2007, which observation was approved by Hon "ble Supreme Court. The said Surveyor has taken all the necessary facts into consideration. The opposite party appointed M/s Professional Surveyors and Loss Adjusters Pvt. Ltd., who is also a Chartered Accountant to assess the loss on the basis of record produced by the complainant in conjunction with the reports of previous Surveyors. The opposite parties have already deposited the excess amount as assessed by the 3rd Surveyor dated 7.12.2010 and this Commission has permitted the complainant to withdraw the same.

13. THE Surveyor placed reliance on stock figures, which were the audited accounts and the stock statements submitted to the bank. To our mind, this is the solid and unflappable evidence. Although, there were certain discrepancies in the stock statement, yet, the Surveyor placed reliance upon them. The last stock statement before the fire was as at 31.1.1998. No evidence was adduced to show that there was purchases till 21.2.1998. Instead of rejecting the complainants " books of accounts, which are of dubious nature, the surveyor placed reliance on the stock statement. It is not explained why there was difference between the books of accounts and stock statement.

14. THE complainants could not produce any evidence to show that cutting waste of 1% from any of their records. The complainants mixed semi -finished and finished goods, which is not possible. The complainant could not show that export surplus would be only 2% and could be disposed of at 70 % of cost. Export surplus and rejects arise out of extra production to avoid shortage in exportable goods in the last minute, quality and line rejections etc. and as per industry specialists it would be more than 10%. The complainants failed to show the quality of goods lying with job workers. The complainants gave out material on job work virtually for all processes like fabrication, cutting, dyeing, bleaching, screen printing, steam calendaring, embroidering etc. These stocks were outside with job workers. Consequently, 20% deduction for goods with job workers is fair and reasonable.

15. WE find considerable force in the arguments urged by the learned counsel for the opposite party that accepted cost accounting practice take 50% of the conversion cost as production cost. It is not fair to take 100% production costs. The Surveyor had applied production costs only on ""Cloth "" . The Surveyor cannot include ""Screen Printing Expenses "" and ""Printing Wages "" which are incurred after the cloth is converted into garments. The complainants production cost of Rs.169.26 per kg is wrong. If the activities are carried out on job work it is but natural that more stocks would be lying outside with job workers. Learned counsel for the opposite parties contended that in fact goods with job workers would have been more than 20% but the Surveyor has more than reasonably considered only 20%. The books of accounts of the complainants do not show that they had only 5% of stocks, which were lying outside.

16. IN the case of Sri Priyalakshmi Exports , the Surveyor has verified the record upto 21.2.1998. According to the opposite party, the complainant could not explain why there was difference between the books of accounts and the stock statement submitted to the Bank in respect of yarn and cloth. Again, the complainant could not show that they did not export 14275 garments when they had a stock of 17,388 pieces from July 1997. We find considerable force in the argument urged by the learned counsel for the opposite party that this clearly means that the alleged stock of 17,388 peces were either non existent or non - exportable. The records of Priyalakshmi Apparels were also verified upto 21.2.1998. The complainant did not produce the original purchase bills.

17. IT must be mentioned here that the 3rd Surveyor assessed the loss after the expiry of 12 years. Due to lapse of time, some discrepancies could be there but there is no solid or concrete proof which may lead to the rejection of the report in its entirety. All in all, we agree with the finding given by the 3rd Surveyor. However, we will consider this fact while awarding the compensation. The Fabian policy adopted by the opposite party which is double edged sword is another factor which requires consideration at the time of awarding compensation.

18. WE direct the opposite parties to pay the complainants a sum of Rs. 74,69,331, Rs. 14,25,073, Rs. 9,08,459/ -, respectively, within a period of 90

days from the receipt of this order with interest @12% per annum from the date of incident i.e. 21.2.1998. The amount including interest which has already been deposited or paid shall be adjusted. We also impose compensation in the sum of Rs. 5,00,000/- [Five Lakh Only] which be paid within 90 days from the receipt of this order else it will carry interest at the rate of 12% p.a. till its realization. The complaint stands disposed of.