(1996) 04 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

RAJ LEATHER CLOTH INDUSTRIES PVT.LTD — APPELLANT

Vs

ORIENTIAL INSURANCE COMPANY LTD — RESPONDENT

Date of Decision : 12-04-1996

Acts Referred:

Citation : 1996 2 CPC 353 : 1996 2 CPJ 34 : 1996 2 CPR 258 : 1997 1 CLT 641

Hon'ble Judges : M.R.Agnihotri , S.Kulwant Singh , Sushil Paul J.

Final Decision : Complaints allowed with costs

Judgement

1. THIS order shall dispose of two complaints No. 80 of 1993 and No. 81 of 1993, as issues of facts and law are identical in both the complaints and in view of the agreement of the parties by order dated 3rd of March, 1994 passed by this Commission, both the complaints have already been clubbed together for trial.

2. COMPLAINANT-M/s. Raj Leather Cloth Industries Pvt. Ltd. is a Company incorporated under the Companies Act, 1956 having its registered office at New Delhi and its factory at 20th Mile Stone, G.T. Road, Village Badhkhalsa, Distt. Sonepat. The Company is engaged in the business of manufacturing and sale of Foam for which it has taken out a fire insurance policy from the Oriental Insurance Company, Panchkula branch vide Policy No. 11/92/00192, for the period 1st of August, 1991 to 31st of July, 1992. This policy was for insurance of machinery and the building of the Company for Rs. 15,02,000/- and Rs. 7,75,000/- respectively. Another fire insurance policy No. 11 /93/00019 covering the building of the factory for a sum of Rs. 12,08,000/- and for machinery for Rs. 16,18,300/- for the period 2nd of June, 1992 to 1st of June, 1993 was also taken out from the Panckula branch of the Insurance Company. The premium for both the insurance policies was paid by the complainant- Company through the Haryana Financial Corporation According to the complainant, on 3rd of June, 1992 fire broke out at the factory and works premises of the Company, causing extensive damage. On that very day the complainant reported the incident of fire to the Insurance Company at 8.00 p.m. and also lodged First Information Report with the Police Station. Information was also given to the Fire Brigade, Municipal

Committee, Sonepat as well as to the Haryana Financial Corporation. Thereupon the Insurance Company appointed M/s. A.K. Govil and Associates as Surveyors to investigate the matter and settle the claim of the complainant. In pursuance thereto, the Surveyors visited the factory premises on 6th of June, 1992 and after inspecting the premises asked the complainant-Company to furnish copies of certain documents. Some additional information was also sought by the Surveyors, which was supplied by the complainant. The complainant had claimed from the Insurance Company compensation for the loss as under: "(i) Loss and damage to the building: Rs. 3,57,000/- (ii) Loss and damage to the plant & machinery Rs. 17,20,660/- (iii) Loss and damage to raw material and semi-finished goods Rs. 23,43,748/- The total loss claimed was Rs. 44,21,408/- and the Surveyor M/s. A.K. Govil got a claim form filled in from the complainant on or about 9.1.93"

Thereafter the Surveyors approached the complainant on or about 9th of January, 1993 and offered to settle the claim regarding the building, plant, machinery etc. by paying an amount of Rs. 16 lacs. This was accepted by the complainant and the Surveyors forwarded their report to the Insurance Company accordingly. For about 4 months thereafter, the complainant did not receive any communication from the Insurance Company. In early May, 1993, one Mr. H.S. Chadha, Investigator of the Insurance Company again visited the factory premises and thereafter asked for certain documents which the complainant had already handed over to the 1st Surveyor. A couple of months latter, yet another Surveyor Mr. R.C. Chug came to inspect the factory premises and wanted some additional documents for further clarification, which was made available by the complainant. Despite all this, the claim of the complainant was not settled by the Insurance Company. Considering this delay in settling the claim on the part of the Insurance Company as negligent and deficient in rendering service to the complainant, the Company has invoked the provisions of the Consumer Protection Act by filing these complaints in the original jurisdiction of this Commission on 16th of November, 1993. In these complaints, the amount claimed are detailed as under: ''''Complaint Case No. 80 of 1993. (i) Loss and damage to the plant machinery on the basis of actual loss expenses incurred in repairs Rs. 10,16,000/- (ii) Loss and damage to the building on the basis of actual expenses incurred in repairs Rs. 5,35,000/- (iii) Loss/damage/compensation to the complainant on account of negligence and deficient of service and interest at 22% p.a. from the date of the loss till date of payment, as the claimant has to pay interest to his Bankers on the amount which was to be paid by the Insurance Co. and has been unjustly made to pay the same interest on account of harassment Rs. 3,49,000/- Total Rs. 19,00,000/- Complaint Case No. 81 of 1993. (i) Loss and damage to the stocks of raw material, finished and semi finished stocks, machinery on the basis of actual loss expenses incurred in repairs and damage to Building. Rs. 15,00,000/- (ii) Loss/damage/compensation to the complainant on account of negligence and deficient of service and interest at 22% p.a. from the date of the loss till date of payment, as the claimant has to pay interest to his Bankers on the amount which was to be paid by the Insurance Company and has been unjustly made to pay the same interest on account of harassment Rs. 4,00,000/- Total Rs. 19,00,000/-

Notice of the complaints was issued to the Oriental Insurance Company-opposite party, who submitted their detailed reply on 28th of February, 1994. Though certain preliminary objections had been raised in the written statement, yet the learned Counsel for the opposite party did not press the same and prayed for the matter to be decided on merits. It was further stated by Mr. R.K. Chhibbar, learned Counsel appearing for the opposite party, that the written statement filed in Complaint Case No. 80 of 1993 should also be read as the written statement in the Complaint Case No. 81 of 1993. Since the learned Counsel for the complainant had no objection to that, this was so ordered on 3rd of March, 1994. In the written statement it was inter alia pleaded, that the complainant did not have a valid insurance policy and "had done a lot of bungling and had put up a false claim which was highly exaggerated and manipulated." It was further added that the matter was still under active consideration of the Insurance Company and the complainant without waiting for the outcome of the same had hastened to file the complaint.

3. ON the receipt of the aforesaid written statement detailed replication was placed on record by the learned Counsel for the complainant as also affidavit of Mr. Vinay Manchanda, Director of the complainant-Company enclosing thereto certain additional documents in order to substantiate the claim put in by the complainant. Similarly, separate replication was also filed by the complainant through Mr. Vinay Machanda, Director in Complaint Case No. 81 of 1996 annexing therewith some additional documents. In support of the complaint, the complainant produced four witnesses namely Mr. Vinay Manchanda, Director, Mr. Rakesh Singh, Manager, and Mr. Mahavir, Driver of the complainant-Company and Mr. S.L. Soni, Senior Manager of the H.F.C. The aforesaid witnesses filed their affidavits and were also cross-examined by the learned Counsel for the opposite parties. Thereafter the Insurance Company produced their evidence in defence and affidavits were also filed by Mr. A.P. Chopra, Deputy Manager, Oriental Insurance Company Ltd., Chandigarh, Mr. H.S. Chadha, Claim Investigator, Mr. R.C. Chugh, Surveyor, Mr. A.K. Govil and Mr. J.D. Rawal, Surveyors, in support of the written statement filed by the Insurance Company. These deponents have also appeared in the witness box for the Insurance Company and have been cross-examined by the learned Counsel for the complainant.

4. MR. L.M. Suri, Senior Advocate appearing on behalf of the complainant and MR. R.K. Chhibbar, Senior Advocate appearing for the Insurance Company, have confined their sub- missions to the issues which are very relevant and most vital to the decision of the case. In fact at the very out-set MR. R.K. Chhibbar, learned Counsel for the Insurance Company offered to MR. Suri, learned Counsel for the complainant, to settle both the complaints by accepting a sum of Rs. 5,58,190/- by way of full and final settlement of their claims. The offer was however

declined by MR. Suri as according to him, the amount was too meagre and was hardly an apology for the offer and the claim made by the complainant. Proceeding with the case on merits, learned Counsel for the complainant referred to the relevant paras of the pleadings and documents produced in support thereof. It has been vehemently contended that the damage caused to the complainant by fire had been aggravated by the in action and the remissness on the part of the Insurance Company in the matter of settling the claim; otherwise, it was very simple for the Insurance Company to settle the claim at a lesser amount, if action had been taken promptly after the receipt of the Surveyor''s report. Once the fact that the fire did break-out at the factory premises on 3rd of June, 1992 is proved, regarding which F.I.R. with the local Police Station and the report to the Municipal Fire Brigade and intimation to the Haryana Financial Corporation as well as to the Insurance Company had been made promptly; there was hardly any reason for the Insurance Company not to settle the claim immediately. The only thing which could have delayed the finalisation of the claim was the impression given to the Insurance Company about fraud and criminal conspiracy on the part of the complainant for claiming the insured amount from the Insurance Company. But, even this allegation was non- existent in the present case, as would be evident from the statement of Mr. A.P. Chopra, Divisional Manager, Oriental Insurance Company, who has appeared as the witness for the Insurance Company and has also filed affidavit on behalf of the opposite party. It has been admitted by Mr. Chopra, that "It is correct that the complainant had no hand in the alleged fraud or criminal conspiracy. The allegation in my affidavit regarding the involvement of the complainant in the fraud and criminal conspiracy is hence incorrect." Therefore, the only point which remained to be settled by the Insurance Company was the amount to which the claimant was entitled under the Insurance policies for the damage and the loss caused in the fire. So far as the loss suffered by the complainant is concerned, the learned Counsel of the complainant has placed firm reliance on the Surveyor''s report dated 22nd of January, 1993, (Annexure-R4), according to which, even though the complainant had actually made the claim for Rs. 44,21,408/-, Surveyor recommended to adjust the claim by paying Rs. 16 lacs. This report is a detailed one and covers almost all the aspects of the controversy between the parties e.g. cause of fire, immediate reporting to the Police and Fire Brigade etc., extent of damage to the building, plant and machinery, stocks and stock-in process, stock of raw material and semi-finished goods etc. Thoroughness of this survey and assessment report and the correctness of the conclusions arrived at, could not be seriously found fault with even by Mr. A.P. Chopra, Divisional Manager of the Oriental Insurance Company, who has filed his affidavit and appeared on behalf of the opposite party. Therefore, the learned Counsel for the complainant has stated that the non-settlement of the claim by the Insurance Company even on the basis of the survey and assessment report made by Mr. A.K. Govil, who was their own Surveyor clearly amounted to deficiency in service on the part of the Insurance Company. In support of his submission reference has been made to the decision of the Hon''ble National

Commission in case" The New India Assurance Co. Ltd. v. Purushotam Gokuldas Match Co., reported as II (1995) C.P.J. 156 (NC). Further according to the learned Counsel there was hardly any necessity of appointing any successive Surveyors for the assessment of the loss which too only aggravated the matter and thus also amounted to deficiency in service. Reference in this behalf has been placed by the learned Counsel in the decision of a case titled Gupta Textile Mills v. Chairman, United India Insurance Co. Ltd. & Ors.'' reported as I (1995) C.P.J. 28.

5. REFUTING the claim of the complainant Mr. R.K. Chhibbar, learned Counsel for the Insurance Company pleaded, that the Insurance Company was not liable for any payment as the complainant had not paid the premium to the Insurance Company in time as risk was to be covered only on the payment of premium. Moreover the payment of the premium by furnishing Bank guarantee was not permissible in the present case as the amount of the premium was very much ascertainable.

6. REGARDING the amount of the loss Mr. Chhibbar pleaded, that since the recommendation of Mr. A.K. Govil, Surveyor, was considered by the Insurance Company on high side and the fire broke out on the very next day of the taking of the premium, the Company decided to have the matter re-investigated. It was for that reason, that successive Investigators had been deputed by the Insurance Company. It was further pleaded by the learned Counsel, that in any case "average clause" should have been applied while assessing the loss and by doing that, the amount actually due certainly be much less than the amount claimed. Learned Counsel further pleaded, that in fact the stocks lying in the factory premises as raw material and semi finished goods were in fact did not belong to the complainant and were the property of the Haryana Financial Corporation : therefore, the complainant was not entitled to claim any compensation for their loss. Learned Counsel for the opposite parties finally submitted, that keeping in view the aforesaid circumstances, the Insurance Company could not be held responsible for any deficiency in service and in case the complainant was feeling aggrieved, he should resort to the remedy by approaching the Civil Court. For that, reliance was placed by the learned Counsel on the decision of the cases reported as II (1994) C.P.J. 89 (NC), Sri Gayatri Modern Raw & Boiled Rice Mill Pvt. Ltd. v. The Divisional Manager, New India Assurance Co. Ltd. & Ors., III (1994) C.P.J. 77, S.L. Lamba v. Klassic Holdings P. Ltd. & Ors. and I (1993) C.P.J. 585, R.S. Oil & General Mills (P) Ltd. v. The National Insurance Co. Ltd. & Ors. After hearing the learned Counsel for the parties and having gone through the aforesaid authorities, we are of the considered view that both the complaints deserve to be allowed as the Insurance Company-opposite party has unnecessarily delayed the settlement of the claim. Once it was reported by M/s. A.K. Govil & Associates, Surveyors and Assessors appointed by the Insurance Company itself that fire broke out in the factory premises and even though the claim for the loss had been made by the complainant for a sum of more than Rs. 44 lacs, the complainant was willing to settle the claim by accepting Rs. 16 lacs,

the Company should have accepted the recommendation of their Surveyors and settled the claim there and then. If not any thing else, atleast the interest accruing on the aforesaid amount since the date the recommendation was made i.e. 22nd of January, 1993, would have been saved by the Insurance Company. Regarding the plea raised by Mr. R.K. Chhibbar, learned Counsel for the Insurance Company, that the payment of the premium by Bank guarantee was not permissible, the objection has to be ignored by writing only that if there was any factual or legal objection with regard to the acceptance of the premium through the agency of the Bank guarantee, the Insurance Company could have rejected the same at the very first instance. In fact the Insurance Company had actually accepted the premium in the present case through Bank guarantee. Therefore, the question of non-payment of the premium or non- commencement of the risk on the basis of the insurance policies did not arise. So far as the justification sought to be furnished by the learned Counsel for the opposite party in appointing the successive Surveyors is concerned, a bare look at the survey reports would show that the difference in the successive two reports is only nominal and no factual or technical fault has been detected by the subsequent Surveyors with the first report of M/s. A.K. Govil. Further, so far as the plea regarding the ownership of the stocks and raw material etc. is concerned, it is evident from the record that the goods in fact belonged to the comp lainant and were their property, over which the Haryana Financial Corporation had only a charge. They were lying in the complainant''s premises because they in fact belonged to the complainant. Coming to the last submission made by the learned Counsel for the Insurance Company that the matter being complicated the complainant should have gone to the Civil Court instead of invoking the jurisdiction under the Consumer Protection Act, we do not find any merit in the same. Firstly, the claim was very simple-based on fire insurance policy claiming Joss suffered by the complainant strictly in accordance with the insurance policy. Secondly, the claim stood reduced to an amount recommended by the Surveyor of the Insurance Company itself i.e. Rs. 44 lacs on 16 lacs and thirdly the controversy being not a complicated question of fact and law need not have been taken to the Civil Court.

In view of the aforesaid discussion, we allow both the complaints to the extent of the recommendation made by the Surveyors M/s. A.K. Govil & Associates in their report dated 22nd of January, 1993 and direct the Insurance Company-opposite party to pay to the complainant Rs. 16 lacs alongwith 15% interest thereon from 3rd of June, 1992, the date the fire broke out, till the date of payment. Since the settlement of the claim has unnecessarily been delayed by the Insurance Company, the complainant will also be entitled to the costs of both the complainants, which are quantified as Rs. 1000/- in each case. Complaints allowed with costs.

