(1997) 05 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

RAJENDRA KUMAR SAWHNEY APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 30-05-1997

Acts Referred:

Citation : 1997 0 NCDRC 7 : 1997 2 CPC 386 : 1997 2 CPR 292 : 1997 3 CPJ 26 : 1998 1 CLT 233

Hon'ble Judges : V.BALAKRISHNA ERADI , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA J.

Advocate : R.K.AGARWAL , S.M.SURI

Judgement

1. SHRI Rajendra Kumar Sawhney who is the partner-owner of the firm M/s. Krishna Flour & Oil Mills which owns a roller flour mill for manufacturing wheat products from wheat at Shrinagar in Jammu and Kashmir is the complainant and the New India Assurance Co. Ltd., New Delhi is the respondent in this Original Complaint No. 195 of 1994. The Complainant insured the buildings, plant and machinery, spares and stores of his mill in Shrinagar for a sum of Rs. 1,18,90,000/- for the period from 17.5.1991 to 16.5.1992 against fire and terrorist act. The said flour mill had stopped its operations in March, 1990 when the terrorists shot dead the only son of the complainant while in his office at the mill. Thereafter, the complainant, shifted from Shrinagar to Delhi and therefore, the production and functioning of the said flour mill stopped from 27th March, 1990. On the 12th November, 1991 the terrorists attacked the flour mill in question and after over-powering the employees, set afire the building resulting in losses to buildings, plant, machinery, spares, stores and stockes of wheat. Alongwith the office building, the complainant avers that, the records were also totally destroyed by fire. They reported this matter to the respondent-Insurance Company who appointed M/s. Adarsh Associates, New Delhi, for survey and they assessed the loss as follows : (i) Building Rs. 16,59,243.00 (ii) Plant and Machinery Rs. 10,13,592.00 (iii) Spares and Stores Rs. 3,39,714.00 ============= Rs. 30,12,549.00 =============

They also assessed the loss of stocks of wheat, which is the subject matter of another policy and a separate complaint before us, at Rs. 5,18,619.00/-, thus assessing the total loss at Rs. 35,31,168/- which they offered to the complainant for the loss sustained by him. The Surveyor desired that the complainant should give his consent for the amount of Rs. 35,28.668/- as assessed by him for the settlement of the claim. However, the complainant was agreeable to give his consent for a sum of Rs. 30,12,549/- for the loss on account of building, plant & machinery, spares & stores and not for a sum of Rs. 5,18,619 /- for the stocks as in his assessment, the value of the stocks at the time of loss was Rs. 37,38,619/-. Quite a considerable time elapsed in resolving the tangle as to whether the entire sum of Rs. 35,28,668/- should be accepted by the complainant or the question of value of stocks should be taken up separately and a sum of Rs. 30,12,459 /- should be paid to the complainant on account of loss of items other than the stocks. Finally the Insurance Company agreed to segregate these items, but stated that as against the assessed loss of Rs. 30,12,549/- they would pay only Rs. 25,82,778/-, thus making a reduction of Rs. 4,29,771/-. After having approached the respondent-Insurance Company through various quarters including the Members of Parliament and after having complained to various agencies including the Finance Ministry and the Public Grievances Cell of the Cabinet Secretariat, the complainant filed his complaint before this commission claiming the payment of Rs.30,12,549/-as assessed by the Surveyor alongwith interest from 12.11.1991 till the date of payment and a sum of Rs. 1 lakh as compensation for harassment and mental agony and another sum of Rs. 50,000/- for costs of filing and pursuing this complaint. The learned Counsel for the New India Assurance Co. Ltd., stated before us that they are willing to pay Rs. 25,82,778/- which the complainant continued to refuse and, therefore, no deficiency in service can be alleged on their part. On our enquiries as to why the sum of Rs. 4,29,771/- is being deducted from the assessed loss, no satisfactory answer was given on behalf of the respondent-Insurance Company. On the 21st June, 1996, during the hearing of the case, the learned Counsel for the respondent-Insurance Company asked for a final opportunity to state the reasons for reducing the amount of compensation after obtaining instructions from the higher authorities. We were not inclined to grant any time as enough opportunity had been given to the respondent-Insurance Company to explain reasons for reduction in the assessed amount of loss. However, we agreed to give him a final opportunity provided the admitted amount of Rs. 25,82,778/- is paid to the complainant within in a period of two weeks from 21st June, 1996. This amount was paid by the Insurance Company vide their Cheque No. 331929 dated 17.7.1996.

2. WE have heard the learned Counsel for the respondent-Insurance Company and have given to him enough opportunity to tell us the reasons justifying the reason for reduction in the assessed amount of loss. However, to our dismay, no satisfactory explanation has so far been given in this regard by the respondent-Insurance Company. Even after the last opportunity given on the 21st June, 1996

the Insurance Company has not been able to give any satisfactory explanation in this regard. We are, therefore, convinced that the unilateral decision taken by the respondent-Insurance Company to reduce the amount of assessed loss by Rs. 4,29,771/- is not based on any objective and rational ground and has not been satisfactorily explained. Therefore, we direct that this amount may be paid by the respondent-Insurance Company to the Complainant within a period of one month from the date of receipt of a copy of this order. The incident of terrorists attack and fire was on 12.11.1991 and a sum of Rs. 25,82,778/-was paid on 17.7.1996 after our direction in this regard. We generally consider a period of three months as reasonable for the settlement of an insurance claim of this nature. However, keeping in view the difficult circumstances obtaining in the Kashmir valley at that time, we think that it would be reasonable to give a period of six months from November, 1991 for the settlement of a claim of this nature. It may be noted that the complainant had shifted from Sri Nagar in March, 1990 itself after his son had been shot dead. After a perusal of the record to see as to whether the delay on the part of Surveyor in giving his report is justified and after hearing arguments from the learned Counsel for the respondent Insurance Company we are of the view that it is only fair and just that interest at the rate of 18% p.a. is paid to the complainant from 1st June, 1992 till 17.7.1996 when a sum of Rs. 25,82,778/-had been paid to him. This amount should also be paid within one month from the date of receipt of a copy of this order. We think that this is an adequate compensation for the hardship, mental agony and harassment suffered by the complainant. In the final analysis the respondent-Insurance Company is directed to pay a sum of Rs. 4,29,771 /- by way of full settlement of the insurance claim and interest at the rate of 18% p.a. on the sum of Rs. 30,12,549/- from 1st June, 1992 till 17.7.1996, within a period of one month from the date of receipt of a copy of this order. There is no order as to costs.