(2009) 01 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

Case No : 787 of 2005

Rajinder Sanitary Fittings Co. Ltd. APPELLANT

Vs

National Insurance Co. Ltd. and others RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

Consumer Protection Act, 1986, Section 21 - Jurisdiction of the National Commission

Citation : (2009) 01 NCDRC CK 0049

Hon'ble Judges : Ashok Bhan, B. K. Taimni

Judgement

1. Complainant petitioner has filed this revision petition under Section 21 of the Consumer Protection Act, 1986 (hereinafter referred to as ''the Act'' for short) against the common judgment and order passed by the State Consumer Disputes Redressal Commission, Lucknow (hereinafter referred to as ''the State Commission'' for short) dated 17.1.2005 in Appeal No. 837/SC/2001 and Revision No. 28/SC/2002 thereby partly allowing the appeal filed by the respondent/ opposite party and disposing of the revision petition.

2. The petitioner is a partnership firm registered under the Indian Partnership Act, 1932 and engaged in the manufacture of metallic valves and cocks, etc. The petitioner manufactures the goods on the machinery installed with patterns prepared for the purpose of manufacture by using the raw material like brass rods, gun-metal, lead, etc. Petitioner had obtained a Burglary and Housebreaking policy of insurance for the period 14.9.1996 to 13.9.1997 from the National Insurance Company Ltd., (hereinafter referred to as ''the respondent'' for short) covering the plant and machinery for a sum of Rs. 2,00,000 ; furniture and fittings for a sum of Rs. 5,000 and the stocks and value, sanitary fittings, finished and ; unfinished goods in process and all similar goods pertaining to insured''s trade lying or stored at the factory for a sum of Rs. 4,00,000.

3. On 11.8.1987, the respondent company received intimation from the petitioner that a theft had been committed in the factory premises of the

petitioner in the night intervening 10/11.8.1997. Immediately, on receipt of intimation from the petitioner, the respondent company appointed Er. Pradeep Potdar, surveyor for conducting the survey and for assessing the loss. The said surveyor visited the insured premises on 11.8.1997 and carried out detailed survey. As per Surveyor''s Report, on the 1st day of visit, he requested the petitioner to submit the record and the accounts books. Except the stock register, no other record was produced. The Surveyor noted down the figures from the stock register and signed it. The surveyor continuously kept on asking the respondent vide several letters of different dates to produce the record and documents. Petitioner submitted a part of documents on 14.10.1997 and thereafter, the petitioner did not send the balance set of documents even after reminders dated 5.12.1997, 8.12.1997, 5.1.1998 and 27.1.1998. The surveyor, on the basis of available record, prepared the report dated 10.8.1998 and submitted the same. It was observed that on the first day itself, he was informed verbally that the loss was within the range of Rs. 2,00,000 and later on, the petitioner exaggerated the loss and claimed that the loss was to the tune of Rs. 4,25,000. F.I.R. was registered under Section 380, I.P.C. after a delay of two months. The first impression of the surveyor after surveying the insured premises was that it was not a smoothly running unit and only a small part of unit was operational. That the production activity was at a low level. That the petitioner failed to produce and submit the relevant documents and record prepared, in the normal course of business. According to him, there was no sign of forcible entry in the alleged portion where alleged stock of finished goods/raw material was lying. The bank statement was not submitted and the stock register, which was shown to him earlier and signed by him, was not produced. That the photocopies of the record produced by the petitioner showed that the same had apparently been prepared for compiling the claim. The writing flow in the statement reflected that it had been prepared in a continuous manner. Purchases shown to have been made in cash were not duly supported by any documentary evidence. Besides this, other glaring contradictions and discrepancies were detailed in the report. That the claim of the insured was not supported by any cogent evidence. The Surveyor assessed the net loss at Rs. 1,01,791.20 subject to production of duly maintained accounts and evidence of purchase.

4. The respondent had also deputed an independent agency M/s. Safex India to ascertain the veracity of the claim made by the petitioner. The investigator, in its report, reported that the police did not register the F.I.R. lodged by the petitioner-insured as it was not convinced that a theft had actually taken place. After taking into consideration the discrepancies and contradictions regarding the access and escape routes, not disclosing the whereabouts of the chowkidar who was reported to be an eye-witness as well as the whereabouts of those from whom the raw-material was purchased, the investigator came to the conclusion that the incident of theft, as claimed by the petitioner-insured, was not true.

5. After taking into consideration, the report of the Surveyor and the

investigating agency, the respondent came to the conclusion that in fact no theft had taken place. Accordingly, the respondent repudiated the claim of the petitioner by its detailed letter dated 15.3.1999.

6. The petitioner, thereafter, filed a complaint before the District Forum, Agra (hereinafter referred to as ''the District Forum'' for short), claiming a sum of Rs. 4,63,294 together with interest @ 20%. The complaint filed by the petitioner was contested by the respondent insurance company.

7. The District Forum vide its order dated 13.3.2001 allowed the complaint and directed the respondent to pay a sum of Rs. 3,80,000 together with interest @ 12% w.e.f. 1.12.1998 till its realization. Rs. 10,000 were awarded by way of cost.

8. Being aggrieved by the order dated 13.3.2001, passed by the District Forum the respondent filed an appeal before the State Commission. During this period, the petitioner had filed an execution application before the District Forum, which was allowed. Aggrieved against the order passed in the execution petition, the petitioner filed a Revision Petition No. 28/SC/2002, which was clubbed and disposed of with the appeal. By the impugned order, the State Commission allowed the appeal in part and reduced the amount of compensation to Rs. 1,01,800 alongwith interest @ 6% from the date of filing of the complaint till the realization of the amount. The State Commission, in its order, observed as under : "In the instant case we find that the theft/burglary has taken place but the claim is exaggerated. It is also clear that the surveyor was not offered all the facilities and some obstacles were also caused by the complainant in the smooth functioning of the surveyor, but that apart since the loss has been occasioned during the course of currency of insurance, the appellant cannot shirk from its responsibility of indemnification. The finding that there is a purposive delay in submission of survey report and as such it loses value is a finding which is not sustainable. The surveyor Engineer Sri Pradeep Kotdar in his survey report dated 10.8.1998 has taken the relevant materials into consideration with regard to coming to the conclusion about net loss occasioned to the complainant because of the theft committed on 10/11 August, 1991, we are of the view that the net loss assessed of Rs. 1,01,791.20 (to make it a round figure of Rs. 1,01,800) is the correct assessment and only the compensation should have been awarded by the learned District Forum up to that extent and in not doing so the District Forum committed an error apparent and to that extent thus we are tempted to modify the impugned judgment and order. The complainant ; in the circumstances, is only entitled to 6% interest from the date of the complaint till the date of payment. The contrary order is thus liable to be modified. The complainant is also not entitled for compensation of Rs. 10,000 for mental torture and harassment. Conditional order is also liable to be set aside. Since the order on merits is passed, execution proceedings also stands terminated in view of the order subject to the deposit of the compensation as ordered in the appeal and in case that money is deposited, execution is not to proceed. The revision is also accordingly disposed of. ORDER The appeal is allowed in part. The appellant

is directed to make payment of Rs. 1,01,800 alognwith interest @ 6% per annum from the date of complaint till the date of payment. Revision No. 28/SC/2002 is disposed of : Parties are directed to bear the cost. Let copy as per rules be made available to the parties."

9. Vide order dated 10.8.2001, the State Commission directed the respondent to deposit the amount of Rs. 1,01,800 through F.D.R. in the name of the President, District Forum, Agra and accordingly, the said amount was deposited by the respondent company by way of Fixed Deposit Receipt (F.D.R.) dated 20.8.2001, drawn in favour of the District Consumer Forum, Agra. Subsequently, on 17.1.2005, the State Commission directed the respondent to deposit another sum of Rs. 16,610 being the interest amount with the District Forum. This direction was complied with by depositing Cheque No. 117864 dated 18.2.2005.

10. Learned counsel Shri Asheesh Jain, appearing for the petitioner, contended that the impugned order of the State Commission is erroneous, contrary to law and the material placed on record and therefore, unsustainable and liable to be set aside. That the State Commission ought to have rejected the report of the surveyor, which was an interim report and full of inconsistencies. That the State Commission failed to appreciate that the report of the surveyor was not a regular and final report but an inconclusive report and it was subject to verification of the account books, purchase register and stock register. It was submitted that the District Forum, having examined the documents which were filed before the surveyor and later on before the District Forum, had come to the conclusion that the petitioner had in fact suffered a loss to the extent of Rs. 4,63,294 but found the petitioner to be entitled to recover a sum of Rs. 3,80,000 only. The State Commission erred in reversing the order of the District Forum by blindly accepting the report of the surveyor without analyzing the material forming the basis of the conclusions arrived at by the District Forum. That the report of the surveyor was also liable to be rejected as the same had been submitted after a purposive delay of more than one year. Findings recorded by the State Commission that the petitioner had put obstacles in the smooth functioning of the surveyor, are erroneous being without any basis. According to the learned counsel, the petitioner had fully co-operated with the surveyor and provided all the documents and information sought by the surveyor.

11. As against this, learned counsel appearing for the respondent insurance company supported the reasoning adopted by the State Commission. Learned counsel went a step ahead and submitted that the claim was liable to be rejected as the petitioner had failed to prove the theft.

12. We have heard the learned counsels appearing for the parties at length. We have perused the order passed by the State Commission as well as that of the District Forum. We have also gone through the report submitted by the surveyor as well as the other documentary evidence present on the record.

13. The order passed by the State Commission as against the respondent has

contained finality, as it has not challenged the same by filing the revision petition.

14. It is not disputed before us that the alleged burglary/theft had taken place in the factory premises of the petitioner on the night intervening 10/11.8.1997. Immediately, on the receipt of the intimation, the respondent had appointed a surveyor to visit the premises of the insured on 11.8.1997. Except the stock register and the set of papers submitted on 14.10.1997, the petitioner failed to submit any other papers/account books in spite of surveyor''s sending reminders dated 5.12.1997, 8.12.1997, 5.1.1998 and 27.1.1998 to submit the entire set of papers. In the absence of complete papers, the surveyor submitted interim report and assessed the loss at Rs. 1,01,800. This was subject to production of the complete evidence of purchases made. Learned counsel appearing for the petitioner, even today, was unable to substantiate the cash purchases made by it with any documentary evidence. The petitioner failed to produce the account books to show that it had cash-in-hand to purchase the goods in the market on cash-basis. Petitioner has not been able to show that its factory was running on regular basis by producing vouchers showing the purchase of raw materials or electricity bill showing consumption of electricity or copies of sale vouchers, etc. The stock register, which has been produced before the surveyor and signed by him, was not produced subsequently. There were only two operators manning the machines. There was no operating foundry. Labour record produced showed that only 3 persons were working and out of these 3, one was a helper, meaning thereby, activity in the factory was at a low level and poor. Last Bill No. 11864 for Rs. 29,952, was issued on 2.8.1997. No Form C and Form 31 had been issued in the entire year. From the record, we find that a total sale between 1.4.1997 to 10.8.1997 was of Rs. 1,08,072.

15. M/s. Safex India Ltd., the investigating agency, reported that the chowkidar, who was present on the spot at the time of theft, was not produced. The affidavit in evidence of the chowkidar who was present at the time of theft, has not been filed. None of the neighbours have come forward in support of the allegations made in the complaint. The investigator had approached the District Statistical Department, Baluganj, Agra and National Samples Survey Office, Lajpatkunj to know whether they have any record about the goods produced in the factory of the petitioner. He also tried to confirm whether the factory in question existed as a manufacturing unit with them. He was informed that petitioner was not a manufacturing unit and was engaged in trading only. As the investigator was unable to get much help from these two offices, he approached the District Industries Office Nunahai, Agra but nothing much could be found there as well. Investigator tried to locate the sellers whose names were given in the purchase vouchers submitted by the insured. The addresses given in the purchase vouchers were found to be superficial and fictitious. When the insured was asked about their addresses, he replied that they were kabaries and their addressees were not known to them. No material has been placed on record by the petitioner to displace the correctness of the report of the surveyor or of the investigating agency. In the absence of any such material, it is not possible to

completely ignore the findings recorded by the surveyor or by the investigating agency.

16. The submission of the learned counsel for the petitioner that the surveyor gave biased report because his demand for illegal gratification was not fulfilled, cannot be accepted as the petitioner has not been able to substantiate the same by leading any evidence or producing any material to that effect. In the absence of material, we are unable to come to the conclusions that the report submitted by the surveyor was biased or that he had demanded illegal gratification from the petitioner.

17. The respondent, immediately on receipt of the information regarding theft, had deputed a surveyor to investigate and assess the losses. The State Commission has rightly observed that the petitioner had failed to co-operate with the surveyor. After going through the report, we have no doubt that the report submitted by the surveyor is correct.

18. Surveyor has assessed the loss at Rs. 1,01,791 by recording the following reasons : "Assessment of loss

In first phase whatever has been pointed out earlier, if incorporated and correlated shall only give us the correct figures for what stock should actually have existed with insured before the theft. However, based on our above analysis for the 3 balance sheet submitted and as per insured trends for the previous year, the closing stock difference of Rs. 1,00,000 is reflected. Besides this, for the current period if these figures are considered then following should be arrived at :

Opening Stock as on 1.4.1997 arrived above Rs. 1,39,935,03

Add material consumed as given in the Statement by insured. Rs. 1,12,802.80

Add expenses as given by insured Rs. 66,301.50

Total Rs. 3,19,039.33

Less sales as shown by insured Rs. 1,03,910.00

Net Rs. 2,15,129.33

Add G.P. as per previous trend 33% Rs. 34,290.00

Total Rs. 2,49,419.63

Therefore, total stock as per insured''s own figures of material consumed, manufacturing expenses and G.P. ratio and previous trend should be-Rs. 2,49,419.60 And it is as shown by insured-Rs. 4,47,794

Further even in these stocks so established by accounting norms the main discrepancy still continues is that insured has shown purchase by vouchers which have not been supported at all by payment and on which dates when the cash vouchers have been disbursed. Thus, the purchases for the period 1.4.1998 upto 10.8.1998 as Rs. 77,989.80 which is shown in the cash vouchers submitted, is not acceptable. Besides this as insured has stated Rs. 69,838 worth stock existed after the loss. Therefore, if these two figures are deducted net loss assessed is-Rs. 1,01,791.20 Net loss assessable-Rs. 1,01,791.20 Thus, although there are many accounting discrepancies, but giving weightage to insured''s own claim and statement, net loss assessable will not exceed-Rs. 1,01,791.20 This loss assessed once again is subject to verification of purchase bills and insured is to provide proper evidences of purchases for the period 1.4.1996 to 31.3.1997."

19. The surveyor after taking into consideration the opening stock, material consumed, expenses incurred, no sales made by the insured, rightly assessed the net sustainable loss at Rs. 1,01,791.

20. We have gone into the facts in detail in order to satisfy ourselves regarding the correctness of the decision of the State Commission, though strictly speaking, we were not required to do so while exercising revisional jurisdiction under Section 21 of the Act. In revisional jurisdiction, this Commission can interfere only if it appears that the State Commission exercised jurisdiction not vested in law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. The State Commission has not committed any jurisdiction error, which requires correction by us.

21. For the reasons stated above, we do not find any merit in this revision petition and dismiss the same with costs which are assessed at Rs. 5,000.

22. Petitioner would be entitled to withdraw the amount deposited by the respondent alongwith accrued interest, if not withdrawn already.

