(2016) 05 NCDRC CK 0080

In the National Consumer Disputes Redressal Commission

Case No : 933 of 2013

RAM LAXMAN MITTAL APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD. & ANR. RESPONDENT

Date of Decision : 06-05-2016

Acts Referred:

Citation : 2016 2 CPR 759

Hon'ble Judges : B.C. Gupta

Advocate : Raktim Gogoi, Kishore Rawat

Judgement

1. This revision petition has been filed against the impugned order dated 13.12.2012, passed by the Punjab State Consumer Disputes Redressal Commission (hereinafter referred to as ''the State Commission'') in FA No. 462/2008, " Ram Laxman Mittal vs. United India Insurance Co. Ltd. & Anr. ", vide which while allowing the appeal, the order passed by the District Forum Sangrur on 04.04.2008, dismissing the complaint and asking the parties to approach an appropriate forum was set aside.

2. Briefly stated, the facts of the case are that the complainant Ram Laxman Mittal stated in his consumer complaint before the District Forum that he obtained two insurance policies for his newly constructed house under cover note No. 793008 and 628670 for Rs.10.5 lakh, indemnifying the building for any type of losses including fire, flood, earthquake etc. The said cover note No. 628670 was issued on 2.01.2003 and the other cover note No. 793008 was issued on 11.03.2004 and the policies were valid for 5 years from the date of issue. It has been stated that on 08.10.2005, at about 8:45 AM, a powerful earthquake took place due to which there was total damage to the house of the complainant and it did not remain fit for human habitation. The complainant had to shift to a rented house alongwith his family. The complainant informed the Insurance Company about the loss which appointed a surveyor-cum-loss assessor. According to the complainant, all the documents asked for by the surveyor were supplied to him, but still the insurance company repudiated the claim on

03.10.2006 stating that, despite writing various letters by the surveyor and the insurance company, the complainant had failed to submit the required papers in support of his claim. The complainant filed the consumer complaint, seeking direction to the OPs to pay a claim amount of 10.5 lakh alongwith interest @18% p.a. from the date of loss, i.e., 08.10.2005, and further to pay compensation of 2 lakhs on account of delay, another 1 lakh as compensation for mental agony and 1 lakh for wrongful repudiation of the claim alongwith 11,000/- as litigation expenses.

3. The consumer complaint was resisted by the OP Insurance Company by filing a written reply before the District Forum in which they stated that the earthquake did take place on 08.10.2005, but no impact was found in and around Sunam, District Sangrur, where the complainant resides. The Insurance Company appointed a surveyor to assess the loss, who reported that the claim was not payable due to non-submission of certificate from the meteorological department, non-effect to other buildings in the area and delayed intimation of loss to the insurance company. The reason for the cracks that developed in his house was due to settlement of foundation and not due to earthquake. The OP further stated that even the insurance ombudsman dismissed his complaint vide order dated 20.07.2005. Further, in response to letter written to the meteorological department, they sent report dated 2.11.2006, saying that no earthquake of significance occurred near Sunam.

4. The District Forum after taking into account the contentions raised by the parties, concluded that the subject matter of the complaint involved complicated matters of facts and law, which required examination/cross-examination of witness including technical experts, which could not be done by the consumer Forum. They dismissed the complaint giving liberty to the complainant to go to the appropriate forum for the redressal of his grievance. Being aggrieved against the said order of the District Forum, the complainant filed appeal before the State Commission, which decided the same vide impugned order dated 13.12.2012 and gave direction to the OPs to pay a total sum of 2.5 lakh to the complainant. The OPs were also directed to pay interest on the amount of 1.50 lakh @9% p.a. with effect from 26.06.2006, i.e., one month after the date on which the surveyor submitted his report. Being aggrieved against the said order of the State Commission, the complainant is before this Commission by way of the present revision petition, seeking enhancement of the compensation awarded to him.

5. During hearing before me, the Ld. Counsel for the petitioner has drawn attention to a report made by Mr. Puneet Mittal, from M/s. Mittal Associates dated 17.02.2006, in which it has been

stated that the damage was about 7.5 lakh and a sum of 7 lakh to 10 lakh shall be required to build the house again. The Ld. Counsel stated that the State Commission did not give any attention to this important document before deciding the case. On the other hand, the Ld. Counsel for the OP Insurance

Company stated that the report contained in the document made by Mr. Puneet Mittal did not provide the exact estimate of damage, or for carrying out new construction etc. In fact, this report being superficial/vague, could not have been given effect by the State Commission. Referring to the report of the surveyor, the Ld. Counsel stated that the said surveyor was only a Chartered Accountant and hence, could not make exact estimate of the damage etc. The Ld. Counsel further stated that it was clear that the building in question had not fallen down and hence, the petitioner was not required to be given any relief.

6. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me.

7. On record, there is a copy of the report given by the Department of Meteorology, Government of India, in which it has been stated as follows:-

"It is hereby informed that no earthquake of significance with its epicenter in and around Sunam, district Sangrur (Punjab) was located on 08.10.2005 by our seismic network."

8. In his rejoinder to the written version of the OPs, the complainant has tried to say that the land in the area of Suam was uneven and inhabited on ancient huge mount. The earth in and around Sunam was very sensitive and minor movements could create big impact. However, the State Commission has rightly observed that the complainant did not file any evidence in support of his version that he deserved a compensation of 10.50 lakhs for damage to his house. The report made by Mr. Puneet Mittal on the face of it, is vague and does not contain any exact technical estimates about the damage etc.

9. On the other hand, the surveyor appointed by the Insurance Company stated that there was damage to the house to the extent of 1.25 lakh to 1.50 lakh. The State Commission relied upon the said surveyor report and found the complainant entitled to get compensation of 1.50 lakh for damage to its house. The State Commission also observed that the OPs had caused harassment to the complainant by asking him to procure certificate from the Meteorological Department. The OPs had also given false plea regarding intimation of damage to them. The State Commission directed the OPs to pay 1 lakh as compensation for causing mental and physical harassment to the complainant. The order passed by the State Commission has not been challenged by the OP Insurance Company by way of filing any revision petition etc. and hence, the said order has become final qua the OP Insurance Company.

10. Based on the aforesaid discussion, I do not find any justification or appropriate evidence, based on which, there could be a case for the enhancement of compensation awarded by the State Commission to the complainant. This revision petition is, therefore, dismissed, being devoid of any force and the order passed by the State Commission is upheld with no order as to costs.

