(1996) 08 NCDRC CK 0064

In the National Consumer Disputes Redressal Commission

RAM NATH KAW APPELLANT

Vs

Oriental Insurance Co.Ltd RESPONDENT

Date of Decision : 12-08-1996

Acts Referred:

Citation : 1996 3 CPJ 359

Hon'ble Judges : D.R.Vithal Rao , Susheela Cheluvaraju , Kumar Gowda J.

Final Decision : Complaint allowed with costs

Judgement

1. IN this complaint, under Section 17 read with Section 12 of the Act, the complainant has sought compensation in a sum of Rs. 5,12,723/- from the opposite party, the Oriental INsurance Company Ltd.

2. THE complainant, a resident of Srinagar city in the State of Jammu and Kashmir had insured his residential house and the household articles for the period from 22.1.1991 to 21.1.1992 covering the risks in respect of the building for an amount of Rs. 6,00,000/- and the valuables contained therein for an amount of Rs. 2,50,000/-. The complainant under the disturbing circumstances that were. prevalent in the year 1991 in the State of Jammu & Kashmir was to leave his place, and so, he left Srinagar under these compelling circumstances on 2.7.90.

The complainant subsequently was informed that his household articles were stolen away on 24.6.91 and the house itself came to be burnt down on 13.7.91.

3. THE complainant immediately thereafter made complaint of the occurrence to the concerned police at Srinagar and also filed claims before the opposite party at Srinagar. The opposite party, on receipt of the claims from the complainant, assessed the loss to the house property at Rs. 2,31,641/- and with regard to the loss of movable articles at Rs. 1,31,570/-. Though it averred to settle the claim of the complainant for both the loss at Rs. 3,64,359/- by its letter dated 9.11.1993 but failed to make the payment of the said amount. The complainant perused the matter with the authorities who ultimately agreed to settled the

claim of the complainant at Rs. 3,64,359/- and made the payment of the said sum on 25.1.94, on obtaining a discharge voucher from the complainant for having received the said sum in full and final settlement of the claim of the complainant.

4. THE complainant further averred that having regard to the adverse circumstances in which the was placed, he was compelled to accept the said amount of Rs. 3,64,359/- in full and final settlement of the claim. The complainant nextly averred there was inordinate delay in settling the claim of the complainant, in consequence of which, he was put to untold misery. So, the complainant, on the basis of these averments sought compensation in a sum of Rs. 5,12,723/- from the opposite party, the Insurance Company. The opposite party filed its version. Admitted the fact of the complainant having taken householders policy as averred by him. It also admitted that the complainant during the currency of the policy, suffered loss by burning of his house and the looting of the movable articles contained in the said house.

5. THE opposite party also admitted the fact that it has settled the claim for a sum of Rs. 3,64,359/- on 25.1.94 in full and final settlement of the claim of the complainant. THE opposite party nextly averred that the complainant has no right to claim any further amount when he had accepted the said amount in full and final settlement of his claim and passed a discharge voucher.

6. DURING enquiry, the complainant filed his affidavit in evidence. Got Exs. C 1 to C 62 marked in evidence. The opposite party filed its affidavit and got Exs. R 1 and R 2 marked in evidence We heard the learned Counsel for the parties. Perused the pleadings and the material on record.

It is an admitted fact that the complainant has received a sum of Rs. 3,64,359/- on 25.1.94 in full and final settlement of his claim regarding the loss to his house property and burglary of the household articles contained therein. The complainant has passed a discharge voucher on receipt of the said sum as per Ex. R2.

7. THE occurrence of the looting of the articles and the burning of the house took place on 24.6.91 and on 13.7.91. It is also no disputed, the complainant immediately thereafter filed the claims with the opposite party. THErefore, it is clear that the complainant filed the claims before the opposite party by about the end of July 1991. It is an admitted fact that the opposite party settled the claim of the complainant only on 25.1.94. Therefore, it is clear from these circumstances that opposite party had without any reason delayed the settlement of the claim.

8. HAVING regard to the prevailing circumstances in the State of Jummu and Kashmir at that time, we can say that the opposite party would have settled the claim within a period of one year from the date of claim. Therefore, the delay in settling the claim from the month of August 1992 till 25.1.94 is highly unreasonable, and for which, in our opinion, the complainant is entitled for the

interest on the said amount settled by the opposite party in favour of the complainant. The National Commission, while considering the such of the facts in R.K. Industries v. New India Assurance Company Ltd., reported in II (1995) CPJ 87 (NC) held as under : "It is evident from the record that the opposite party has deliberately delayed the settlement of the claim, so that the complainant may agree to the terms offered by them. The language of the affidavit dated 18.4.92 obtained from the complainant speaks for itself. It deposes "that we agree that the damages in the factory building were as under ....2" that we agree that the damages to our machinery were as under.."or "that we agree that the damages to our stocks of waste paper, lying in the open was as under...." ... The first payment of Rs. 16,67,528/-was made on 29th April, and the 2nd payment of Rs. 33,865/- was made on 30th December 1993. There is thus clear deficiency in service in not settling the claim of the complainant within a reasonable period of time which we consider on the facts and circumstances of this case should be six months. The complainant, is, therefore, entiled to payment of interest on the said amount for the period of delay in settling and payment of the claim. On a careful examination of the facts and circumstances we find that this is not a case where apart from agreeing on the quantum at which the loss caused by the fire should be assessed. There was a payment to and receipt by the insured of the principal sum so arrived at in full and final discharge and settlement."

"We therefore, allow the complaint partly and grant interest at the rate of 18% p.a. on the amount of Rs. 16,67,528 from 21.5.91 to 29.4.93 and on the amount of Rs. 33,865/- from 21.5.91 to 13th December 1993."

Having regard to this principle as laid down by the National Commission, we are of the opinion that the complainant is entitled to certain percentage of interest on the amounts so settled in his favour for this delayed period. The amount that was settled in favour of the complainant is a sum of Rs. 3,64,359/-. In our opinion, the complainant is entitled to a reasonable percentage of interest on this amount from 1.8.92 till 25.1.94.

9. IN the result, therefore, this complaint is allowed in part. The opposite party is directed to pay interest at the rate of 18% p.a. on the amount of Rs. 3,64,359/- from 1.8.92 till 25.1.94.

10. THE opposite party shall also pay to the complainant a sum of Rs. 2,500/- towards costs of this proceeding. The opposite party shall pay the sums so awarded to the complainant within a period of 60 days from the date of this order. Complaint allowed with costs.

