(2014) 09 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

Ramdev Industries APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Citation : (2014) 09 NCDRC CK 0041

Hon'ble Judges : J.M.MALIK J.

Final Decision : Disposed off

Judgement

1. RAMDEV Industries, a partnership firm, the complainant, in this case, which was filed as back as on 7.1.2000, might be the oldest case of this Commission, has claimed a sum of Rs. 1,15,00,000 as a fire broke out in their factory, situated at Plot No. 2, Survey No. 55, Vadisong, Nava Ranuja, Taluk Kalavad, District Jamnagar, Gujarat, against the O.Ps. The said fire gutted the main building, godown, office, open land and the goods kept therein. The complainant transacts the business of its product, Groundnut oil known as "Gopi Kishan". The factory premises and/or machineries installed in the factory situated at the above address are hypothecated with the Gujarat Industrial Cooperative Bank Ltd., O.P. 3. The factory was inaugurated on 9.3.1999 for production of ground nut oil. The necessary power supply was not made available from Gujarat Electricity Board. On 12.3.1999, the Complainant had purchased New Ashok Make Diesel Engine and started production of oil. For convenience of and for office purposes, with the consent of adjoining factory Varudi Oil Mill, another connection from that factory was taken by the complainant firm.

2. ON 26.3.1999, at about 10.30 p.m., Sh. Rameshbhai L. Madhani, the partner of the complainant firm along with his father Sh. Lavjibhai Madhani, left the factory and went to sleep in the office of Varudi Oil Mill. At about 12.30 or 1.00 a.m. on the same night, (27.3.1999) one, Sh. Vithalbhai Patel and Rasikbhai Keshavbhai, another partner, went to the said office and informed regarding the fire in their factory. Rameshbhai L. Madhani and Lavjibhai Madhani went to the factory and saw the devastating fire which had engulfed the entire factory, entire

machinery and factory premises was blowing with massive fire. Information was given to the police. Fire Brigade of Jamnagar also arrived. Two Tankers were used to control the fire, at about 1.45 or 2.00 a.m. Out of the two Tankers, one was carrying water and the other was carrying foam. The foam was used time and again, after refilling up the same from the Fire Station, which was 42 kms away from the site of accident. The other Tanker, filled with water, was refilled time and again from one agricultural field, about 3 kms away, from the site of accident. It took considerable time to extinguish the fire because the Tankers had to go to and fro. The fire could be extinguished after six hours of the incident, i.e. at about 8.00 a.m. on 27.3.1999. Everything was reduced into ashes. The complainant''s firm suffered huge damage and loss of about Rs. 85.00 lakh in that unfortunate incident. The New India Assurance Co. Ltd. was informed about the incident, on 27.3.1999. It appointed Sh. Lalitbhai to visit the place. Thereafter, the Insurance Company appointed M/s. Mehta and Padamsey Private Ltd. Surveyors, for assessment of loss and instructed the complainant to cooperate with them for the assessment of loss. The complainant had cooperated with the said Surveyors. The Surveyor took time and did not decide and settle the claim of the complainant, despite the fact that the complainant had requested them, time and again, to settle the matter, orally, as well as through letters.

3. IN October, 1999, the complainant received similar queries from J. Basher and Associates Surveyors Private Ltd., Mumbai. It is well settled that the claim should be settled within a period of three months, but the needful was not done for a long time. It is averred that the above said inaction on the part of the O.Ps. 1 and 2 tantamounts to deficiency of service.

4. THE complainant had suffered huge loss regarding the premises, machinery and stock lying in godown. Ultimately, this complaint was filed with the following prayers: "(a) be pleased to award damage of Rs. 85,00,000 towards actual loss caused due to devastating fire which took place on 26/27.3.1999 in the factory premises of complainant against O.P. Nos. 1, 2 under Policy No. 11212200 04282, with 18% interest thereon from 26.3.1999 till realization;

(b) be pleased to award Rs. 5,00,000 towards general damages for hardships, mental torture and inconvenience;

(c) be pleased to award Rs. 25,00,000 towards loss of business after the incident since factory is closed since 26.3.1999 and production is stopped;

(d) be pleased to award Rs. 50,000 towards legal expenses and costs of this complaint;

(e) pleased to pass award of Rs. 1,15,50,000 (One crore fifteen lakh fifteen thousand) in all with 18% interest from date of this complaint till realization."

It may be also mentioned here that the Gujarat Industrial Cooperative Bank Limited, OP -3, was also arrayed as one of the O.Ps., in this case. During the final arguments, on 28.8.2014, the Counsel for the complainant admitted that he does not claim any relief against OP -3. Again he did not adduce any evidence against OP -3. Consequently, the complaint against OP -3 was dismissed on 28.8.2014.

5. O .Ps. 1 and 2 have contested this case. They have listed the following defences in support of their case. The original petition raises highly disputed questions of fact and the Law, as such, this is a case, which should be heard by the appropriate Forum. The jurisdiction of this Commission was called into question. The O.Ps. vide its letter dated 30.3.2000, had repudiated the claim of the complainant. The complainant did not have the sanctioned electricity connection in its factory. The factory was being run with the aid of Diesel Generator (DG Set) and the same was not the cause of fire accident. The accident did not take place due to short circuit. The factory remained closed, prior to the occurrence of fire and no manufacturing activity was going on in the factory for the three days, prior to the incident. The complainant did not have the valid licence to run the factory and even the bills and invoices pertaining to the plants and machinery were found to be fake, as during the investigation, it was found that the addresses of the shop indicated in the bills and invoices were non - existent. The payment scheme to have been made to the farmers towards the purchases of groundnut pods were found to be false and statement of the farmers were obtained to this effect. The machinery was found to have developed cracks and was not a new one. The O.P. deputed M/s. Indian Surveyors Pvt. Ltd. Rajkot to carry out the preliminary survey of the occurrence. The said surveyor reported, "Inquiries were made, but the exact cause of fire could not be ascertained. There was no production and oil mill was closed for last two days. However, as reported and learnt from Police -Authority, the fire occurred due to short circuit."

6. ON 31.3.1999, M/s. Mehta and Padmasey Pvt. Ltd. Surveyors, Loss Adjudicators, Valuers and Consultants were appointed for detailed survey. In its preliminary report, the Surveyor reported that the cause was yet to be ascertained. The Surveyor gave a very detailed report and came to the following conclusions: "In view of the observations given heretofore, we request the Insurers to look into the matter and if deem fit, appoint an independent Investigator to look into the circumstances of the claim and genuineness of the Insured''s purchase and sales."

Thereafter, M/s. J. Basheer and Associates Pvt. Ltd. were appointed. They also found various defects. They came to the following conclusions: "Based on our Inquiry/Investigation into the fire incident with various agencies and in the light of the discrepancies as observed during the course of our investigation, we are of the opinion that the fire incident of 26.3.1999 at Shree Ramdev Industries, Ranuja, Kalavad, would not have occurred due to Electrical Short Circuit and/or by any fortuity as alleged by the Insured."

7. THE final Surveyor''s report issued at paragraph 12.0 of the summary of the loss, so assessed by the said M/s. Mehta and Padmasey, mentioned as follows:

"Further in paragraph 12.0 the summary of loss so assessed by the said M/s. Mehta and Padamsey Pvt. Ltd. has been mentioned as under:

8. REGARDING liability of the opposite party, it was mentioned, as under: "In view of the several discrepancies in the information supplied by the insured, the unknown cause of the fire, we suggest that the Insurer decide on liability after taking into consideration the findings of the special investigator appointed by them."

It is contended that although the loss was assessed and quantified by the Surveyor at Rs. 21,50,000 but the same is not payable. The claim petition is liable to be rejected.

9. HEARD the Counsel for the parties. The crucial document in this case is repudiation letter dated 30.3.2000, (Annexure R -5), which is reproduced as follows: "With reference to the above, we have to inform you that we have investigated above said claim put forth by you and we have also considered the facts and circumstances of the present case. And after due inquiry and expert investigation of the above said claim we have found that the present loss not have occurred because of electrical shock circuit and/or by any fortuity as alleged by you.

During inquiry and investigation it is found that the construction of your Building is not legal. Further it is found that the electricity connection of your premises is not legal and junction box of electrical system was found undamaged. Further as per information received from GEB, this is not a case of electrical short circuit. It is further found that bill and invoices produced by you pertaining to the machinery purchases by you are not genuine and correct. It is further found that there is no proof about payment made by you to the farmer for the purchase of groundnut pods. The bills and voucher produced by you for purchase and sale are found incorrect and got up. It is further found that the present alleged loss has not occurred due to any peril covered under the policy.

For the above said reasons the above said claim put forth by you is found not payable after due inquiry and investigation by expert surveyor. By putting such false claim you have tried to mislead the Insurance Company and try to take mis -advantage of so called fire. In view of this your present claim is not payable and we regret to inform you that the competent authority has repudiated your claim which please note.

We treat this file closed which may please be noted.

Thanking you,

Sd/ -Sr. Divisional Manager."

10. THE first point of rejection of the claim is that the loss did not occur because of electric short circuit and/or by any fortuity as alleged by the complainant. Learned Counsel for the opposite party vehemently argued that all the Surveyors/

Investigator stated in tandem that there was no evidence of short circuit. The Counsel for the complainant has argued that no cause of fire could be traced out. He also admitted that, although, the case of the complainant is covered with the veil of suspicion, yet, there is no solid or unflappable evidence that it was a stage managed fire. We also find that not even an iota of evidence was adduced in this regard. It is well settled Law that suspicion cannot take the place of evidence. The case of the O.P. must stand proved by concrete evidence. There is a lot of difference between the suspicion and evidence. The case of the O.P. must stand on its own legs. It was the bounden duty of the Investigators and Surveyors to find out the cause of fire. What is the use of that investigation, which could find no evidence in this regard? On the contrary, the Panchnama reveals that the cause of fire was short circuit as per the Panchnama prepared there. Whatever the reason may be, if the fire was not intentional, the complainant cannot be held responsible for the same. The submission, raised herein, must be eschewed out of consideration.

11. THE second ground taken in the repudiation letter is that the ownership and construction of complainant''s building was not legal. The electricity connection was not legal.

12. ALL these pleas lack conviction. If the building was not legal, electricity connection was not legal, why did the Insurance Company issued the Insurance Policy? Were they sleeping at the time, when the Insurance was effected and huge amount of premium was paid? They were still aware of all these things. They were aware that the electricity was being taken from a neighbour -sister concern. Moreover, the complainant has produced on the record Annexure P -13, which is permission for construction granted by Mr. D.M. Bhandari, Sarpanch, Vodisang Gram Panchayat, dated 29.11.1998. The B.D.O. of office of Taluka Panchayat, Land Branch Kalawad also gave the permission. The plan for the factory was approved, which has been placed on the record. Again the Gujarat Cooperative Bank Ltd. OP -3 gave the loan in the sum of Rs. 30,00,000 to the complainant vide letter dated 10.1.2008 Annex. P -14. Thereafter, there are number of affidavits given by the farmers to support the case of the complainant. In view of the documentary evidence, the findings given by the Surveyor are incorrect to this extent only.

13. THE third ground taken by the Surveyor is that the machinery purchased by the complainant was not genuine and there was no proof about payment made by the complainant to the farmers for the purchase of groundnut pods. The bills and vouchers produced by the complainant were found to be incorrect. It was argued that the claim made by the complainant is exaggerated and inflated.

14. HOWEVER , we find force in the argument urged by the complainant, in a measure. The final report dated 25.2.2000 reveals that as per the stock insured, consisted the following, at the time of the loss:

But the loss was assessed at point No. 5, which runs as follows:

Loss was assessed at Rs. 48,00,000 and depreciated value of the machine was worked out at Rs. 15,19,811.18, for the machinery which had been newly installed.

15. THE summary of loss was given at page 40 at point No. 12, by the Surveyor. It must also be borne in mind that the Surveyors called upon the complainant to furnish its comments on the following defects: "(1) About 46,000 kg of oil was reported to have leaked out from the overhead oil storage tanks and burnt. Factory floor below the oil storage tanks had no marks of oil or mixture of oil hand water.

Inner surface of the overhead oil storage tanks were totally dry and had no marks of oil and did not have sticky surface. One of the tanks had patch -work.

(2) Only west side wall had fire marks suggesting storage of bags of groundnut pods. From the markings, dimension of the stake was estimated at 18'' wide and 5'' ht. All other walls were free from any fire marks. Flooring of the groundnut storage area was not found damaged.

(3) There was very large difference between stocks as per records maintained by you and stocks which could be physically verified during our visit. Quantity of stock as mentioned in your stock records and reported to have burnt during the subject incident of fire did not match with the stock estimated to have burnt from the debris/salvage of burnt material and fire marks in the storage area.

(4) During our visit you handed over to us a list of three parties to whom you had sold groundnut husk. On our inquiry, with these parties, we were informed that they had no business transaction with you at any time.

(5) It was found that cast iron bracket of one of the Expellers had cracks and was strengthened by welding and providing a bolted plate support. B level wheel of one of the machines was found to have worn out. Also thread holes for fitting various accessories were found to have elongated. Reportedly, you had purchased these 3 Expeller machines in brand -new condition from M/s. Patel Enterprise at an aggregate value of Rs. 13,65,498. Please explain how the machinery which were only a month old had cracked brackets and other parts worn out.

(6) As per Invoice No. 232, dated 7.12.1998, issued by M/s. Samir Electrical, the factory was provided with three phase wiring at the expense of Rs. 1,37,770. It was noticed that the factory had single phase wiring provided for lighting only. Machinery were run by a Diesel Engine which drove the common overhead shaft. You have preferred a claim of Rs. 1,37,770 for the damage of 3 phase wiring. Please explain."

16. THERE are other defects pointed out by J. Basher and Associates Surveyors Private Ltd., Mumbai. The relevant of which are (page 50 of Paper -book, Part -IV), as follows: (1) The invoices/bills, which were submitted to the attending Surveyor, such as M/s. Patel Enterprise, Surat, M/s. Vishwakarma Engineering

Works, Surat, and M/s. Arti Fabrication, Surat, were non -existing at the addresses indicated therein.

The Registered letters sent to confirm the bona fide of bills to M/s. Samir Electrical, Kalvad, M/s. Ashirwad Industries, Shapat, Rajkot, has been returned back ''undelivered'' by the Postal Department.

(2) The invoice towards machinery were found very second -hand.

(3) The machinery were found second -hand.

(8) The quantity of stock of 46 MT Groundnut oil and 34 MT of groundnut pods in the factory would have kept the fire burning for 2 -3 days, and at least about 2T of foam would be required to extinguish the fire.

Whereas, according to the written statement of Mr. Kantibhai Bikabhai Gadia, the fire was found extinguished by 7.00 hrs on 27.3.1999, when he returned from Chotila in his Maruti Car.

However, on enquiry from Jamnagar Fire Brigade, we were given to understand that they had despatched only 2 Fire tenders at 1.25 hrs, on 27.3.1999 and which had reached the site at 2.25 hrs, and returned at 9.00 hrs, from the site. The effective time of fire fighting was only about 4 hrs, using 3 tanks capacity of water and 20 litres of foam. The fire brigade was of the view that there was no "short circuit".

(10) The Husk was reportedly sold to some brick manufacturing parties, but on query, from them, they had declined to have bought the husk.

(11) The deoiled cake, which was reportedly sold and against which payment had been received was also proved incorrect in most cases, as some said that they have not paid money and others said that they had not taken deoiled cake from M/s. Ramdev Industries.

(12) Most of the fanners from whom the groundnut pods had reportedly been bought, had not been found paid till 5.10.1999.

(14) One tank out of 3 was found with red oxide paint in place, which is an indication that there was no severe fire in tanks. Further, had there been intense fire, the oil tanks placed overhead, close to the ceiling, would have melted/blown out of the roof of G.I. Sheets. But we did not observe such severe damage to G.I. Sheets of roof above the oil tanks.

(17) The factory found to have stopped operation 2 days prior to the fire incident, as there was no oil storage space, since all three tanks were full.

However, on 24.3.1999, a heavy purchase of groundnut pods was shown.

Who were the customers who had ordered such large quantity of oil for which the factory had extracted and stocked almost 46 MT.

Normally, no oil mill extracts such large stock without firm orders from the clients, since the product is of very high value. Please submit the copy of the orders if any, for accounting the quantity of oil being claimed.

(20) The wall adjacent to where the groundnut pods packed in bags were lying had tell -tale marks of fire, i.e., heat/soot marks, on the walls as well as on the ground covering only a small area.

It is not incumbent upon the Commission to place reliance on the report of the Surveyor. On the face of it, the report of the Surveyors cannot be accepted in toto. It cannot be discussed out of hand. There lies no rub if it is accepted partly and that too, in the absence of other reliable and trustworthy evidence. The opposite side of the coin ought not to be overlooked.

17. ON the other hand, the complainant has made inflated claim and as pointed out above, he has not proved that he had suffered a loss, in the sum of Rs. 85.00 lakh. The new machines had rectified defects, such as cracks, etc. The Surveyor could not find the marks of huge oil which had allegedly been burnt there. The marks were few. The people who came into the contact of the complainant were not traceable. The fire was extinguished in a very short time, though the tankers had to go to and fro. Consequently, there is no inkling that huge materials were burnt. Again, the building was damaged to some extent only. The factory remained closed for 2 -3 days, prior to the incident. As such, there must not be big activity in the factory. Last, but not the least, the complainant did not co -operate fully. The posers put by the Surveyors were not answered till the eleventh hour. The documents produced by the complainant were not satisfactory and even valid. Loss assessed by the Surveyors is wee bit on the lower side. Either the Surveyors must say that the stock register must be rejected for the reasons mentioned therein or they should have allowed the goods as per stock register. However, no reasons were listed. Keeping in view all these facts and circumstances, we enhance the loss at Rs. 25,00,000 (instead of Rs. 21,50,000, as assessed by the Surveyor). The O.Ps. 1 and 2 are directed to pay Rs. 25,00,000 jointly and severally, with interest at the rate of 9% p.a., from the date of filing of this complaint, till realisation. We also impose compensation in the sum of Rs. 2,50,000 against the O.Ps. 1 and 2, mainly because they have acted laggardly, which be payable, jointly and severally, to the complainant, within 90 days from the date of receipt of this judgment, otherwise, it will carry interest @ 9% p.a., till its realisation.

