(2012) 08 NCDRC CK 0058

In the National Consumer Disputes Redressal Commission

Ratan Tara Jewellers APPELLANT

Vs

National Insurance Co Ltd RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Citation : 2012 0 NCDRC 463 : 2012 3 CPJ 730 : 2012 3 CPR 560

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Advocate : Anirudh Sharma , Namita Sharma

Judgement

1. RATAN Tara Jewellers (hereinafter referred to as the ''Appellant'') has filed this Appeal against the order of the State Consumer Disputes Redressal Commission, Bihar (hereinafter referred to as the ''State Commission'') in C.C. No.4/2001. The National Insurance Co. Ltd. & Ors. are Respondents herein.

2. THE facts of the case are that the Appellant is a partnership firm dealing with jewellery and having a shop at Kadamkuan, Patna for which it had taken a Jewellers Block Policy from Branch Office of Respondent/Insurance Company for Rs.16 lakhs for the period from 30.06.1998 to 29.06.1999 covering jewellery and property in its shop. During the validity of the said policy, a dacoity took place in the Appellant''s shop on 07.06.1999 during which gold and silver ornaments were stolen. Appellant immediately filed an FIR with the Kadamkuan Police Station and on the basis of which a case was registered under Section 395 of IPC. Appellant also informed the Branch Manager of the Respondent/Insurance Company about the said dacoity vide letter dated 08.06.1999 enclosing copy of the FIR. The Police managed to recover ornaments worth Rs.3,49,471.42p during the course of the investigation. Respondent/Insurance Company appointed a Surveyor to whom all the necessary documents were provided. The Surveyor assessed the loss at Rs.12,52,486/- and submitted its report on 13.06.2000. Respondent/Insurance Company did not settle the claim of the Appellant, despite several letters requesting them to do so. Being aggrieved, Appellant sent a legal notice dated 19.12.2000 and in reply the Respondent/Insurance Company vide its letter dated 17.01.2001 asked for some more documents for scrutiny and

verification. Appellant stated that it was ready to supply whatever documents are required and it may be contacted for this purpose in the business premises but the Respondent did not reply and no one came for scrutiny and verification. Appellant thereafter filed a complaint before the State Commission on grounds of deficiency in service and requested payment of the sum assured i.e. Rs.16 lakhs together with interest at the market rate for delay in settlement of the claim along with litigation costs.

3. ON notice, Respondent/Insurance Company filed a written statement confirming that on receipt of intimation, one A.K. Ojha, Surveyor was immediately appointed to conduct a preliminary survey and some delay occurred because the Appellant did not provide him with necessary documents as requested, for in time. When the papers were finally received, M/s Mehta and Padmasay Surveyors (P) Ltd. assessed the loss at Rs.12,52,486/- vide its report dated 13.06.2000. Since the police had in the meantime recovered some of the booty, the final claim was assessed at Rs.9,03,014.58p. However, since sanctioning this amount was not within the financial authority of the Branch Office as well as the Regional Office of the Respondent/Insurance Company, the entire claim was sent for seeking directions to the Respondent''s Head Office at Kolkata. The Kolkata Head Office examined the case and approved the payment of Rs.9,03,014.58p towards full and final settlement of the claim. However, some additional papers were required by the Divisional Office of the Respondent/ Insurance Company for final scrutiny before making the payment which were not supplied by the Appellant despite requests to do so. Thus, there was no deficiency in service on the part of the Appellants and the delay if any occurred due to the non-cooperation of the Appellant.

4. THE State Commission after hearing the parties and on the basis of evidence filed before it held the Respondent/Insurance Company "deficient in service" and inter alia directed it to pay the Appellant, Rs.9,03,014.58p with interest @ 10% per annum w.e.f. 01.07.2000 till the date of payment and Rs.10,000/- as litigation cost. The relevant part of the order of the State Commission reads as follows: "From the above facts, we find that the alleged dacoity took place on 7.6.99 and the Insurance Company was informed through letter dated 8.6.99 and claim was submitted before the Insurance Company on 17.06.99 (Annexure-A). According to written statement the surveyor submitted his report dated 13.06.2000 assessing the loss at Rs.12,52,486.00 and from that amount Company deducted the amount of booty recovered by the police and the claim was assessed at Rs.9,03,014.58p. We further find from written statement that even in December, 2000 the Insurance Company was still demanding certain papers from complainant through the claim was already assessed and finalised. We further find from Annexure-B that even in November, 2001 the Insurance Company was still suggesting settlement of claim through the help of advocate of complainant dealing with the matter in the State Commission. Therefore, undue delay in payment of claim and deficiency in service on the part of Insurance Company in payment is writ large on the fact of admitted facts. We further hold

that Insurance Company was justified in deducting the value of recovered looted booty, of which the complainant is owner, of course in custody of court. It is not known whether complainant ever tried seeking delivery of possession of those recovered looted booty, whose price is appreciating day-to-day.Hence, in the light of above discussion, we hold the Insurance Company deficient in service. Hence, we directed the Insurance Company to pay Rs.9,03,014.58p with 10% interest per annum w.e.f. 01.07.2000 till the date of payment. We award Rs.10,000/- as litigation cost. No separate compensation is allowed for any mental agony. It is made clear that the complainant is entitled to seek delivery of possession of the recovered looted booty lying in the custody of court. We also make it clear that with above order, the prayer of complainant for payment of present price of 2792.640 Grms. Gold and 36,808.820 Grms. Silver according to the price quoted in money market on 16.01.2007 stands disposed of."

5. THE present Appeal has been filed by the Appellant who was not satisfied with the relief/compensation awarded to it by the State Commission.

6. COUNSEL for both parties made oral submissions. Counsel for Appellant contended that even though the State Commission has given a clear finding that the Respondent/Insurance Company was guilty of deficiency in service, no compensation for the same was awarded for the loss suffered by the Appellant. Merely asking the Respondent/Insurance to pay Rs.9,03,014.58p i.e. the amount assessed by Surveyor with interest @ 10% per annum is not adequate compensation for the loss in business suffered by the Appellant. It was because of these reasons, that Appellant had requested the State Commission to permit it to modify its complaint and to consider compensation to be awarded to it in terms of the prevailing market value of the gold and silver which it had lost. This should have been sympathetically considered particularly in view of the inordinate delay in settling the claim. Counsel for Appellant specifically pointed out that following the final submission of Surveyor''s Report as far as back in 2002, the Appellant was ready to receive the assessed amount but admittedly, Respondent/Insurance Company did not settle the claim on one flimsy pretext or the other. On the other hand because the Appellant was deprived of its jewellery, it entire business suffered a loss from which the Appellant has not been able to recover till date. In support of his contention seeking higher compensation, Counsel for Appellant cited a ruling of the Hon''ble Supreme Court in United India Insurance Co.Ltd. Vs. Kantika Colour Lab and Ors. - (2010) 6 SCC 449 wherein the Apex Court had directed in that case that the total amount payable to the insured by way of compensation would be calculated on the value of the rupee vis-a-vis the Singapore dollar at the exchange rate prevalent as on the date of this judgment and not any earlier date(emphasis supplied). Counsel for Appellant further stated that even the National Commission had directed in a number of cases that the value of the gold at the current market rate should be paid as compensation instead of at the rate prevailing at the time of the loss or as per the indemnified.

7. COUNSEL for Respondent on the other hand denied that there was any deliberate delay on its part as is borne out by the fact that a Surveyor was immediately appointed and the value of the loss was correctly assessed which was also acceptable to the Appellant. Admittedly, some delay because of the laid down procedure occurred but there was no malafide in this delay. Counsel for Respondent further contended that the plea of the Counsel for Appellant for higher compensation is not admissible since it cannot be higher than the amount for which the goods/jewellery had been indemnified under the insurance policy. Further the interest @ 10% per annum awarded to the Appellant by the State Commission was adequate compensation for the loss suffered by the Appellant for the delay in final settlement of the claim.

8. WE have heard learned Counsel for both parties and have carefully considered the evidence on record. It is not in dispute that Appellant had taken a Jewellery Block Policy for an assured sum of Rs.16 lakhs and during the validity of this insurance policy, a dacoity took place in which the goods/jewellery assessed worth Rs.12,52,486/- was stolen. Since Police had recovered some part of the Jewellery, the net loss was Rs.9,03,014.58p as assessed by the Surveyor which was also acceptable to the Appellant. There is, however, no doubt that there was inordinate delay of almost 5 years in settling this claim which clearly amounts to deficiency in service as also concluded by the State Commission. Justifiably the Appellant needs to be compensated for this. Counsel for Appellant has forcefully argued that State Commission has not awarded any compensation for this deficiency in service whereas the claim of the Appellant seeking compensation in terms of the current value of the gold/silver ornaments (the price of which has geometrically increased) is fully justified. A ruling of the Hon''ble Supreme Court in Kantika Colour Lab(supra) was cited in support as discussed earlier. We have carefully gone through this judgment of the Hon''ble Supreme Court and it is apparent that the facts in this case are quite different and therefore not relevant to the present case. Further, in the very same judgment, the Hon''ble Supreme Court has observed that "upon proof of the actual loss, the assured can claim reimbursement of the loss to the extent it is established, not exceeding the amount stipulated in the contract of insurance which signifies the outer limit of the insurance company''s liability(emphasis supplied)". Clearly the judgment cited by the Counsel for Appellant does not help Appellant''s contention that it should be compensated in terms of the value of the ornaments at the prevailing market rate which would be much higher than the insured amount of Rs.16 lakhs. Counsel for Appellant had also contended that this Commission has given similar rulings. In this connection, we would like to clarify that these rulings pertain to cases where gold had either been pledged or deposited and not to cases of indemnification. Therefore, respectfully following the ruling of the Hon''ble Supreme Court as also our own judgments, we are unable to accept the contention of the Counsel for Appellant that the Appellant should be given the actual value of the gold and silver ornaments at the time when the case was decided by the State Commission. However, we find force in the contention of the

Counsel for Appellant that since this is a clear case of deficiency in service because of the inordinate and unavoidable delay in settling this claim Appellant is entitled to specific compensation for deficiency in service. Keeping in view the facts of this case, we are of the view that a compensation of Rs.1,50,000/- for deficiency in service would be justified. We, therefore, partly allow the First Appeal. Respondent/Insurance Company is directed to pay the Appellant Rs.1,50,000/- as compensation for deficiency in service. The rest of the order of the State Commission is upheld.