(2003) 01 NCDRC CK 0087

In the National Consumer Disputes Redressal Commission

R.K.SUITINGS LTD. APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 23-01-2003

Acts Referred:

Citation : 2003 2 CPR 118 : 2003 3 CLT 275 : 2003 4 CPJ 72

Hon'ble Judges : J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Petition disposed of

Judgement

1. THIS original petition has been filed by M/s. R.K. Suitings Ltd., a public limited company incorporated under the Companies Act, 1956 against M/s. New India Assurance Co. Ltd. alleging deficiency in service in settling the claim put forward by the complainant. The facts in brief are as under :

2. THE complainant had got his factory insured which is at Akash Ganga Industrial Estate with the opposite party Insurance Company for Rs. 70 lakhs for a period of one year from 24.10.1994 to 23.10.1995 and a sum of Rs. 13,965/- was paid as premium. Against this, a cover note was issued by the authorised person of the opposite parties. It was later pointed out by the opposite party No. 1 that extra premium of Rs. 2,006/- had to be paid which was promptly paid by the complainant against which payment a receipt was also issued by the opposite parties specifying that correct computation of the premium had been made on the basis of stock laying at various places/premises of the factory. THE complainant states that on the night of 22nd May, 1995 at about 2.30 a.m. a fire broke out in the godown. THE complainant gave necessary information to the police station at Sanand who had prepared a Panchnama, and to the Superintendent of Excise Department, who had also prepared a Panchnama. THE Insurance Company deputed a Preliminary Surveyor on 23.5.1995 and, thereafter it had appointed M/s. Mehta & Padamsey, Surveyors for assessing the loss. THE complainant states that he had submitted all the required information to the Surveyor as and when called for. It is alleged by the complainant that he had been corresponding with the Insurance Company for early settlement of the

claim who kept on delaying settlement of the claim on one pretext or the other. It is also alleged in the complaint that since the Surveyors refused to send the survey report to the insured for more than seven months, the complainant, in the interest of speedy settlement, reduced his claim to Rs. 24,59,652/-. Thoroughly dissatisfied with the attitude of the Insurance Company who had not cared even to reply to the legal notice, the complainant filed this complaint claiming a sum of Rs. 61,91,646/-. On notice being issued, the opposite party filed reply contending therein no deficiency in service on their part and the stand taken by the opposite parties is that the complainant had failed to submit the required details/information at one-time; that after going through the papers certain doubts were expressed regarding the coverage of goods held in trust under the policy as the basis of this was that there was variation in the handwriting of the two proposal forms and also because the proposal forms were not processed by the handwriting department of the branch. It is also stated that in order to provide relief to the complainant a sum of Rs. 8,13,000.27 was granted to the complainant pending disposal of the claim. The further contention of the opposite party is that the cover note covered the risk of the goods belonging to the complainant and not the goods held in trust. They further submitted that the claim of the complainant has been settled on the basis of the survey and investigation reports and only the goods belonging to the complainant were taken into consideration for the assessment of the loss. According to the opposite parties the Surveyors had assessed the loss at Rs. 24,04,046.00. Lastly, the opposite parties prayed that the complaint be dismissed with costs. Both the parties have filed their respective affidavits by way of evidence.

Heard Counsel appearing on both sides. We have also gone through the various documents including the above mentioned affidavits by way of evidence filed by both the parties. In this case the controversy is very short inasmuch as the Insurance Company has prima facie argued that in the proposal form there has been a subsequent insertion of ''yes'' against Column 7(b)(2) whereas there was no such ''yes'' mentioned originally. The contention cannot be sustained in the face of the statement of their own officers, i.e., the Development Officer Shri Surya Pal and the statement of Shri Narain Singh, Branch Manager of the Insurance Company who have confirmed that the said column was filled up at one and same time in their presence. In the face of cover note construed before excluding liability sought to be insured as mentioned in Column 7(b)(2) of the proposal form and the Insurance Company could not be given any different meaning. Mr. Raina, learned Counsel for the Insurance Company pointed out that a Hand Writing Expert has opined that the word ''yes'' has been subsquently written. This was examined by the investigator appointed. We have ourselves examined the form and we are in agreement with what has been stated. All the three ''yes'' written in column 7(b)(2) are in the same handwriting and in the face of categorical statement of two responsible officers of the Insurance Company, the contrary view sought to be expressed by the investigator cannot be accepted. In fact, it is to be noted that this case brings to light yet another aspect of the malpractices adopted by the insurers in the field of insurance where they try unscrupulous means to avoid the liability and harass the insured. Our attention has been brought to the letter of the insured dated 8.1.1996 wherein they have agreed to accept Rs. 23,57,592.57 in full and final settlement. This amount is slightly less than the amount assessed by the Surveyor. The Surveyor assessed the total loss at Rs. 24,57,601/-. We fee that this will be in the interest of justice if the complainant is awarded the sum which they did agree to accept in full and final settment at Rs. 23,57,592.57. Out of this amount, Rs. 8,13,027/- has already been paid in August, 1997. This amount was paid after the complaint had been filed. In any event the amount of Rs. 23,57,592.57 after deducting Rs. 8,13,027/- shall be paid by the insurer to the insured together with interest at the rate of 10 per cent from two months after the receipt of the Surveyor''s report till the date of payment. The original petition is disposed of in the above terms. The complainant will also be entitled to costs assessed at Rs. 5,000/-. Petition disposed of.

