(1992) 04 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

S B Enterprises APPELLANT

Vs

NATIONAL INSURANCE COMPANY LTD RESPONDENT

Date of Decision : 06-04-1992

Acts Referred:

Citation : 1992 2 CPJ 547

Hon'ble Judges : R.N.MITTAL , B.L.ANAND J.

Judgement

1. PETITIONER is the owner of a factory and carrying on the business of manufacturing Crown Caps. Shri Som Prakash Garg is the sole proprietor of the said concern. He got the factory insured with respondent No. 1 vide policy dated 27.9.89. It is alleged that on the night intervening 29/30th Oct., 1989 fire broke out in the factory resulting in heavy damage to the building, stock and machinery. The First Information Report regarding the incident was lodged with the Police Station, Model Town, Delhi.

2. ACCORDING to the terms and conditions of the Fire Insurance Policy the following risks were covered to the extent of the amounts mentioned against each: - 1. Building Rs. 47000/ - 2. Fixture and Furniture Rs. 5000/ - 3. Machinery Rs. 2,00,000/ - 4. Stock including raw materials etc. Rs. 48,000/ -

Respondent No. 2 is carrying on the business as a surveyor. They were appointed by respondent No. 1 as surveyor to visit the petitioner unit and assess the damage cause to it. On 30.10.89 Shri A.K. Gupta conducted survey and found the machinery, stock and building damaged. It is further alleged that Shri Gupta informed the complainant to submit the balance sheets along with trading account for the last 3 years, Income Tax assessment order for the last 3 years, copies of the purchase orders and copies of sale/bills, machineries bills etc. to him on 2.11.89. At the request of respondent No. 2 he submitted the documents and also submitted the estimate of repairs of the building, electric wiring etc.

3. IT is alleged that instead of finalizing the report regarding damage caused to the complainant by fire, the surveyor; with a mala fide intention and in order to

avoid the finalization of the claim demanded audited balance sheets by Chartered Accountant, since the inception of the unit in the year 1978. It is further alleged that the petitioners unit was a small unit and they did not get their balance sheets audited from a Chartered Accountant (C.A.) nor they were required under Income Tax Act or any other law to get the same audited from C.A. However, they had already furnished the other documents required by the respondent. Regarding the claim for the machinery, building and electrical wiring respondent No. 2 advised the complainant to undertake actual repairs and submit the bills alongwith supporting documents. The complainant got the machinery and building repaired as advised by respondent No. 2 and submitted the bills vide letter dated 1.2.90. The total amount for repairing the machinery came to Rs. 85,130/ -, for repairing the building Rs. 45,620/ -, for laboratory replacement Rs. 10,190.99. Regarding the damage to the stocks, they submitted physical inventory of the stock. The price of the said stock was Rs. 49,081.92. They also submitted survey report from Shri Umesh Kumar Ramani Engineer vide a letter dated 1.12.89 to the effect that finished and unfinished crown caps could not be used for packing food products due to rust caused by water, fire and smoke. It is further alleged that after the lapse of more than 6 months the petitioners claim has not been settled by respondent No. 1. They have been suffering immensely on account of non -payment of their claim. They have claimed Rs. 1 lakh on account of loss in business. Consequently, they filed a claim for the recovery of Rs. 2,88,940.99p.

4. THE respondent contested the claim of the claimants and controverted his allegations. The incident, however, has been admitted by them. The respondent after the incident appointed respondent No. 2 as Surveyor for the purpose of submitting the report after inspecting the site. He insisted that the complainant should get the balance sheets and had since the inception of the business from a Chartered Accountant. No law or statutory rule has been brought to our notice under which the complainant could be asked to submit the balance sheets duly audited from a chartered accountant. The complainant has been filing the returns with the Income Tax Department and the same had been accepted by them. He produced the copies of the returns alongwith the profit and loss account filed therewith. It is stated that those were accepted by the Income Tax Department. In our view that was sufficient compliance and the surveyor should have submitted his report on the basis of those documents. He, however, for the reasons best known to him, did not prepare the report till the complaint was filed. He submitted an interim report dated 3.10.90. The complaint was filed somewhere in July 90. The incident took place in October 89. If he had to submit the interim report he should have done it within a month or so from the date when the matter had been referred to him. It appears from facts and circumstances of the case that the conduct of the surveyor has not been above board. The complainant at the time of arguments levelled a number of allegations against him. It is expected from the surveyor that they should do the job honestly and expeditiously. However, in the present case the conduct of the

surveyor does not inspire confidence. The Corporation should hold enquiry into the conduct of the surveyor and if ft. is found guilty should take appropriate action against him. It is desirable that the Corporation should entrust the work to such surveyors whose integrity is beyond doubt.

5. THE complainant in order to support the case produced his own affidavit and affidavits of the parties from whom he got repaired the machinery in order to bring the same into working condition. He also filed the receipts of the payments made by him and for repairs of the building, machinery etc. The amounts claimed by the complainant, the amount allowed by us and the documentary evidence produced by him, in support of the claim have been incorporated in Annexure A. It has also been mentioned in the said Annexure whether the bills supporting his claim have been accepted or not, alongwith brief reasons. The total amount to which the claimant is entitled as detailed in Annexure A is Rs. 1,34,706/ - say Rs. 1,34,700/ -.

6. WE also grant interest to the claimant by way of damages @ 16% p.a. from 1.3.90 to the date of the order i.e. 1st March, 1990. The total amount comes to Rs. 1,80,498.00. Consequently we partly accept the claim with costs and direct the respondent to pay the amount of Rs. 1,80,498.00 with interest @ 16% p.a. w.e.f. the date of the order till the date of payment within 3 months. Costs Rs. 1500/ -. Annexure -A S. No. Item Claimed Amount Claimed Amount Allowed Remarks/Findings 1. Damaged stocks Rs. 47,156.92 Rs. 47,156.92 Supported by the affidavit of complainant - 2. Repair of building Rs. 45,620.00 Rs. 41,950.00 Supported by affidavit of Naresh -Chander wherein he admits the estimates of Rs. 41,950/ -. 3. Repair of machiner (i) Rs. 8,700.00 Rs. 8,700.00 Supported by Bill -cum -receipt dated1.12.89 (ii) Rs. 22,500.00 Nil Bills/receipts dt. 7.12.90,29.12.90 and 6.1.90 for Rs. 7,000/ -, 8,000/ - and 7,500/ - respectively appear to be fabricated hence rejected (iii) Rs. 35,000.00 Rs. 27,500.00 There was no receipt for Rs. 7,500/ - which was stated to have been paid later hence rejected for want of evidence (iv) Rs. 3,530.00 Nil No receipt. The bill produced appeared to be fabricated. Rejected for want of authentic proof. (v) Rs. 7,400.00 Rs. 7,400.00 Supported by receipts dated 6.12.89'' . and 30.12.89 for Rs. 3,500/ - and Rs 3,900/ - respectively 4. Consultancy charges Rs. 8,000.00 Rs. 2,000.00 No receipt produced for the balance Rejected for want of authentic proof 5. Lab equipment Rs. 10,190.00 Nil Not covered of under the terms of Insurance. Hence rejected Order accordingly.