
(2011) 01 AHC CK 0177
In the Allahabad High Court
Case No : Original Petition No. 8 of 2001

Sahib Exports India

APPELLANT

Vs

New India Assurance Co.Ltd.

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Citation : (2011) 01 AHC CK 0177

Hon'ble Judges : K.S.Gupta, J and S.K.Naik, J

Final Decision : Partly Allowed

Judgement

S.K. Naik, Member.

This original petition has been filed by M/s. Sahib Exports India against the New India Assurance Company Limited, the opposite party, with the prayer to (i) declare and hold the opposite party Insurance Company grossly deficient and negligent in its services, (ii) grant actual losses/damages of Rs. 44,17,999/ with interest, (iii) grant compensation of Rs. 10,00,000/; and (iv) grant pendente lite and future interest @ 18% per annum on the amount of actual losses/damages.

FACTS AS ALLEGED BY THE COMPLAINANT:

The complainant is a registered partnership firm engaged in the business of manufacturing and exporting high quality fashionable readymade garments, fabrics etc. to various foreign countries. The stitching plant and finishing plant of the complainant firm are situated at 198A, Neb Sarai, New Delhi 110068 and the garments manufactured by it are classified in two categories viz. (i) Sample Category and (ii) Finished Category. The garments in the Sample Category are very expensive products as the prospective buyers place their orders on the basis of evaluation of the quality of the garments under this category. When an order is placed by the buyer, then according to his choice based on the concerned sample, the garments of required quantity are prepared, which are classified as Finished Category garments. To safeguard their business involving expensive garments and fabrics the complainant firm procured a comprehensive insurance

policy, namely, "Miscellaneous Accident Insurance Policy" from the opposite party Insurance Company for the insured value of Rs. 50,00,000/ against premium of Rs. 28,351/. The said insurance policy, which was valid and effective w.e.f. 5.1.1998 to the midnight of 4.1.1999. states as under :

"INSURANCE COVERAGE

BURGLARY (BUSINESS PREMISES) INSURANCE)

SUM INSURED : RS.50,00,000/

On stock of all kinds of raw material, stock in process, finished goods, semifinished goods and other allied goods pertaining to the Insured's trade whilst stored and/or lying in the Insured's premises occupied as godbwncumfactory (Garment Mfg.) built of 1st Class construction, situated at the above mentioned address."

2. The complainant alleges that by issuing this insurance policy the opposite party Insurance Company promised to indemnify the complainant in the event of any burglary or house breaking.

3. On 25/26.1.1998, a burglary took place at the complainant's business premises. In this burglary a gang of unidentified robbers had locked up the night watchman (chowkidar) of complainant firm and carried away assorted merchandise. In the morning of 26.1.1998 the incident of robbery came to notice of the partner of complainant firm, who immediately informed the opposite party Insurance Company and lodged an F.I.R. with the Police. A letter in this regard was addressed to opposite party Insurance Company on 28.1.1998. On being informed, the opposite party Insurance Company appointed Shri H.L, Ahuja to investigate the claim of the complainant. The complainant made available to the investigator the statements of the persons concerned and later the Untraced Report dated 27.4.1998 issued by the Mehrauli Police Station, New Delhi. The opposite party Insurance Company appointed M/s. Atul Kapur and Company as the Surveyors in this case. The complainant also made available all information, documents, statements as desired by the Surveyor. Both the Investigator and the Surveyor inspected the premises of the complainant for onthespot assessment of robbery on 11.2.1998. In August, 1998 the opposite party Insurance Company provided the Burglary Claim Form to the complainant, which was submitted by the complainant, raising a claim of Rs. 14,17,999/ on account of loss/damage suffered. On 9.7.1999 the opposite party Insurance Company informed the complainant that claim to the tune of Rs. 3,70,241/ has been approved by the competent authority but the complainant did not accept the same alleging improper assessment by the Surveyor. The complainant requested the opposite party Insurance" Company to appoint some other Surveyor. In the meantime, amount of Rs. 3,50,000/ out of Rs. 3,70,241/ was released by the opposite party Insurance Company as part payment in respect of claim. However, they also appointed another Surveyor M/s. R.N. Behal & Co. for conducting a fresh survey. The Surveyors and the opposite party Insurance Company inspected the

complainant's premises and also conducted surprise inspection, wherein the complainant extended all help to them. Though 28 meetings were held between the complainant and the opposite party Insurance Company and/or their Surveyors, there was no tangible result. Even after submission of report by the second Surveyor and lapse of more than two and a half years, the opposite party Insurance Company did not settle the claim of the complainant. In this background, the complainant has filed the present complaint alleging mala fide, grave dereliction of duty and deficiency in service on part of the opposite party Insurance Company seeking aforesaid reliefs.

4. On notice being served, New India Assurance Company Limited, the opposite party, filed their reply and opposed the complaint, whereafter evidence in the form of affidavits were filed from both the sides. On behalf of the complainant, Shri Manjit Singh, one of the partners of the complainant firm, and Shri Gaurav Kumar, Manager (Production) have filed their affidavits while the evidence on behalf of opposite party Insurance Company has been filed in the form of an affidavit by Shri Amit Biswas, Manager.

5. The main submission of the learned Counsel for the complainant is that the investigator and the surveyors appointed by the opposite party Insurance Company having categorically come to the finding that the burglary indeed had occurred during the night of 25th/26th of January, 1998, they ought to have considered and accepted the claim of the loss suffered by the complainant on account of the theft of the garments and the loss of business as they had undertaken to indemnify the contingent incidents, for which the complainant had paid a huge amount of premium. Quite to the contrary, however, the opposite party Insurance Company has resorted to arbitrary rejection of their major legitimate claim. Learned Counsel contends that even though the entire information asked for by the first surveyor M/s. Atul Kapur and Company was provided, the said surveyor without appreciating the fact that the complainant's firm is engaged in the business of knitting and stitching of fashionable garment for which numerous types of fabrics in the form of raw material are required which lay scattered all over the factory premises and further that in such an environment there are chances of mixup of various types of garments, has erroneously disallowed the claim with regard to the sample items. Explaining that the storekeeper was not a technical person on the basis of whose statement the surveyor has considered the finished products to be sample items, the Counsel contends that the surveyor ought to have considered the plea of the complainant that some of the cartons in which the finished products were packed have been erroneously counted as samples.

6. Learned Counsel for the complainant in the next limb of his argument has submitted that the first surveyor M/s. Atul Kapur and Company have erroneously and grossly underassessed the loss as they mistook the finished goods as samples and hence wrongly disallowed the loss towards the samples. Further, the loss on account of collars and towards the item Nos. 5 and 8 not mentioned in

the F.I.R. have been wrongly disallowed. Contending that the surveyor has ignored the new purchases made by the complainant between 26th of January, 1998 and 31st of January, 1998 i.e., after the incident, the Counsel submits that because of this omission the surveyor has wrongly held that there was underinsurance. According to the learned Counsel, the complainant had lodged a strong protest with the opposite party Insurance Company with regard to the arbitrary manner in which M/s. Atul Kapur and Company conducted the survey and the fact that the opposite party Insurance Company had appointed a second surveyor proves the fact that the first surveyor was not fair and objective in its assessment. Referring to the report of the second surveyor M/s. R.N. Behal and Company, the learned Counsel submits that the second surveyor has pointed out a number of flaws and discrepancies in the report of first surveyor. The second surveyor has also rejected the contention of first surveyor that there was any underinsurance. However, rather than considering the report of the second surveyor as the material to base the claim of the complainant, the opposite party Insurance Company has referred the report of the second surveyor for comments to the first surveyor. This was not expected of the opposite party Insurance Company as it virtually amounts to abdication of its duties and responsibilities. Naturally, the first surveyor had to defend his own assessment. Even then the fact that the first surveyor had improved his own assessment from Rs. 3,70,241/ to Rs. 4,19,612.62 ps. goes to show that his initial assessment was not just and fair. Learned Counsel for the complainant has very strongly urged that the surveyors have given undue weightage to the presence of the store incharge (storekeeper) of the complainant during the physical verification of the stock. According to him, the storekeeper was not a technical person and just because he happened to be present at the time of physical verification and signed the report should not be taken as the final proof of the type and quantum of the garments. In a godown of the nature already explained he submits that samples do get packed into finished product cartons and vice versa and the surveyor ought to have accepted the subsequent clarification of the complainant. With regard to the acceptance of the part payment of Rs. 3,50,000/, the Counsel submits that the complainant had no other option but to accept the same due to financial constraints suffered by him on account of loss of business. That being only a part payment, the complainant is entitled to his claim of Rs. 14,17,999/ with interest.

7. Per contra, learned Counsel for the opposite party Insurance Company has submitted that occurrence of the theft in a burglary during the night of 25th/26th of January, 1998 is not in dispute. The investigator and the surveyor both confirmed the incident. However, the dispute pertains to the types and quantum of items that were taken away by the thieves and their value. To make a real assessment in this regard he submits that both the investigator as well as the first surveyor experienced considerable difficulty in getting the correct and requisite information from the complainant. Despite a number of letters written to the complainant by the first surveyor M/s. Atul Kapur and Company (R2, R3,

R7 to R9) asking him to supply duly filled in claim form and other documents, there was no response. While the incident had occurred on the 25th/26th of January, 1998, despite reminders and goading, the complainant submitted the claim after a long delay only in November, 1998. The opposite party Insurance Company, on the basis of the assessment made by the first surveyor agreed to settle the claim as recommended at Rs. 3,70,241/-. However, it was the complainant who refused to accept the said amount and requested for the appointment of a second surveyor. The Insurance Company agreed to his request and appointed a second surveyor, who assessed the loss at Rs. 6,61,248/-. Since there were apparent contradictions in the report of the first and the second surveyors, the Insurance Company referred for comments the report of the second surveyor and thereupon the first surveyor only marginally improved his earlier assessment and recommended the loss at Rs. 4,19,612.62 ps. which the Insurance Company even today is willing to pay after deducting the amount of Rs. 3,50,000/- which has already been paid to the complainant as requested by him towards the part payment.

8. The thrust of argument of the learned Counsel for the opposite party Insurance Company is that firstly the complainant did not properly cooperate with the investigator and the surveyor with regard to production of documents and register relating to exact stock position of various types of garments and fabrics and secondly, despite their repeated requests the complainant dragged on filing his claim with details of loss. The apathy of the complainant is evident from the fact that at the time of physical stock verification he only deputed his storekeeper in whose presence the surveyor had undertaken the physical verification and obtained the signature of the storekeeper. While the complainant does not deny that his representative storekeeper was present at the time of stock verification, his contention that storekeeper is not a technical person to certify as to whether an item was a sample or a finished product is simply not believable. If a storekeeper is not aware of the quality and description of an item of garment, obviously he cannot either do the packing or accounting of such garments in its appropriate head. With regard to item Nos. 5 and 8, he contends that there is no proof of supplementary report having been submitted to the police, which goes to show that the details of the types of garments and fabrics furnished at the first instance at the time of registration of the FIR to the Police were correct. The complainant's contention that the police authorities had refused to accept the supplementary list cannot be believed in the absence of any cogent evidence.

9. The learned Counsel for the opposite party Insurance Company, therefore, submits that the complaint is without any substance and the complainant having received the part payment of Rs. 3,50,000/- is only entitled to receive the balance amount of Rs. 69,612/- (i.e., Rs. 4,19,612/- Rs. 3,50,000/-) as recommended by the revised assessment of the first surveyor.

10. Having heard the learned Counsel for the parties and having carefully

perused the records of the case, we take note of the following facts. A burglary had taken place on the 25th/26th of January, 1998 in the insured premises of the complainant. An F.I.R. to this effect had been lodged with the police giving details of the types of garments and fabrics stolen in the burglary. Information had also been given to the opposite party Insurance Company, who promptly appointed the investigator and a surveyor. We are inclined to believe, on the basis of evidence that both the investigator and the surveyor made several attempts to elicit adequate information from the complainant so as to assess the loss as accurately as possible but they did not appear to have received the requisite cooperation from the complainant. In this regard, letters written by first surveyor M/s. Atul Kapur and Company (R2, R3, R7 to R9) to the complainant are relevant. However, the fact that blame on account of delay in filing the claim would largely rest on the complainant is borne out from the complainant's own letter dated 13th of June, 1998 (page 95 of the paperbook), which reads as under : "Dated : 13.6.1998 TO,

THE BRANCH MANAGER, THE NEW INDIA ASSURANCE CO. LTD., CDU: 310100

7E, JHANDEWALAN EXTN, DINDAYAL UPADHAVA BUILDING, 1ST FLOOR, NEW DELHI 110055 YOUR LETTER DATED 8.6.1998. REF : POLICY NO. 46/03541 CLAIM NO. 98/001 RESPECTED SIR,

YOUR LETTER DATED 8/6/1998 RECEIVED BY US ON 13/6/1998 WHERE IN YOU HAVE ASKED US TO FULFILL THE FORMALITIES FOR OUR CLAIM. WE ARE ALREADY IN THE PROCESS OF DOING SO. WE ARE AWAITING POLICE REPORT AND FEW OTHER REQUIREMENT GIVEN BY YOUR SURVEYOR. WE HOPE TO COMPLIED THE SAME IN A WEEK OR TEN DAYS AND SUBMIT TO YOU FOR YOUR EARLY COMPLIANCE. THANKING YOU YOURS FAITHFULLY for SAHIB'S EXPORTS (INDIA)

Sd/

(MANJIT SINGH) (PARTNER)"

11. It is obvious that the complainant was not ready with complete details of the loss on the 13th of June, 1998 i.e., even after five months from the date of the incident and to state that he was only awaiting a report of the police would not justify his silence with regard to the quantity and types of the garments stolen and the value thereof being projected to the Insurance Company. On the contrary, one would have expected of the complainant to have filed his claim promptly with a request to send a copy of the police report as and when received. Having said so, we also take note of the fact that on the protest of the complainant the Insurance Company had referred the matter for review/fresh, assessment by a second surveyor. The second surveyor, R.N. Behal and Company, vide their letter dated 12th of June, 2000 had submitted their report. Thereafter, there had been as many as 28 meetings between the complainant and the Insurance Company and their surveyors and it took more than five months for the Opposite Party Insurance Company to offer the revised loss

assessed by the first surveyor at Rs. 4,19,612/-. In between the Insurance Company had referred the report of the second surveyor for comments by the first surveyor, which, in our view, was totally unwarranted. Thus, the Opposite Party Insurance Company cannot be absolved of the delay on their part too.

12. With regard to the main grievance of the complainant that his major claim relating to loss of sample items have been erroneously disallowed, we have carefully perused the evidence on record. We are inclined to agree with the contention of the learned Counsel for the Opposite Party Insurance Company that only after being pointed out that the samples physically verified in the presence of a supervisor that they were more than the book balance and, therefore, there could not have been any theft of the item; that the complainant came out with the alibi that the items counted as samples were indeed finished items. It may be mentioned here that both the first as well as the second surveyor have arrived at the same conclusion.

13. With regard to excluding the alleged loss of items 58 just because these items were initially not reported to the police is concerned, the Opposite Party Insurance Company has gone by the reasoning given by the first surveyor that in the absence of any mention about these items in the F.I.R. the police could not have made any recovery of these items, we find it fallacious, inasmuch as the police ultimately has given "untraced report" and these items stood duly reflected in the stock register of the complainant.

14. With regard to alleged underinsurance, the Opposite Party Insurance Company does not appear to have applied its mind and has mechanically accepted the view expressed by the first surveyor. The second surveyor has given adequate explanation and justification for the stock position on the date of the incident being below the Rs. 50 lacs limits of the insured amount and, therefore, the Insurance Company had no justification for resorting to the average clause.

15. In the totality of the circumstances, therefore, we are of the view that the Opposite Party Insurance Company should have accepted the loss as assessed by the second surveyor which is Rs. 6,61,248/-. It is also to be noted that the complainant himself has given an undertaking to accept the assessment to be made by the second surveyor and, therefore, it was expected of the Opposite Party Insurance Company to have objectively analysed his report at their own level rather than resorting to delaying tactics of referring the matter for comments to the first surveyor, which has resulted in unnecessary delay for which the Opposite Party Insurance Company cannot escape the liability.

16. We, accordingly, while partly allowing the complaint direct the Opposite Party Insurance Company to pay within two months the balance amount of Rs. 3,11,248/ (i.e., Rs. 6,61,248 Rs. 3,50,000) to the complainant with interest @ 7% per annum from the date of filing of the claim till its payment, failing which it will attract interest @ 12% per annum. Cost of Rs. 10,000/ will further be paid

by the Insurance Company.

Complaint Partly Allowed.