(1996) 03 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

SANJIB KUMAR MAJUMDAR — APPELLANT

Vs

UNITED INDIA INSURANCE CORPORATION LTD. — RESPONDENT

Date of Decision : 25-03-1996

Acts Referred:

Citation : 1996 2 CPJ 149

Hon'ble Judges : A.K.Bhattacharjee , Sunil Kanti Kar , S.Dutta J.

Final Decision : Complaint allowed with costs

Judgement

1. IT is admitted that there were two valid insurance policies bearing Nos. 130801/57/1/00604/87 and 130801/57/31/00030/90 valid upto 14.10.91. IT is not disputed that during the validity of insurance policy a devastating fire broke out on 16.12.90 in the insured shop room. The complainant lodged a claim for Rs. 5,48,545/- which was disputed by the Insurance Company and it settled the claim at Rs. 1,13,102/- as against said claim of Rs. 5,48,545/-. The complainant wrote to different authorities for reconsideration of the claim amount as the settlement of the claim at Rs. 1,13,012/- is very meagre as against claim of Rs. 5,48,545/- made by the complainant but all the efforts of the complainant proved futile. As a result, the complainant filed the present complaint before this Commission claiming Rs. 5,48,545/- against the loss suffered by the devastating fire breaking out in the medical shop room of the complainant and further prayed for award of Rs. 2,500/- per month towards loss of profits from January, 1991 till the date of payment together with interest charged by the opposite party No. 4/ Bank and for compensation for loss of goodwill and Rs. 15,000/- for legal expenses etc.

2. THE contention of the opposite party/ Insurance Company is that the complaint petition is not maintainable before the State Commission, West Bengal for lacking in jurisdiction inasmuch that none of the opposite parties resides or carries on business or personally works for gain within the State of West Bengal at the time of institution of the complaint and that the question of acquiesce by any of the opposite parties or of granting permission of leave by the learned

State Commission to institute the complaint cannot arise in this case. It is further alleged that the contract of Insurance was entered into at Shillong and that the properties insured under the insurance policy were also at Shillong and that the finance given by the State Bank of India is at Shillong and that the fire on 17.12.90 also took place at Shillong, so no part of cause of action of the case arose within jurisdiction of the State Commission, West Bengal. THE Insurance Company further contended that the Insurance Policy embarks a condition of arbitration as per provisions of Arbitration Act, 1940 provided it would not be referred to arbitration if the Company has disputed or not accepted liability under or in respect of policy and provided further that it is hereby expressly stipulated and declared the it shall be condition precedent to any right of action or suit upon this policy that the award by such Arbitrator or Arbitrators Umpire of the amount of the loss or damage shall be first obtained and provided further that it is hereby expressly agreed and declared that if the Company disclaim liability to the insured for any claim hereunder and such claim shall not within 12 calendar months from the date of such disclaimer have been made the subject matter of the suit in a Court of Law, then the claim for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder and in the premises aforesaid no cause of action can be alleged to have arisen for the alleged dispute in terms of arbitration agreement, particularly, in view of the letter dated 29.6.92 written by the complainant to the insurer/opposite party No. 2. THE Insurance Company further contended that by virtue of an agreed Bank claim the insured has declared its nominee i.e. the State Bank of India/the opposite party No. 4 for settlement and acceptance of the claim, accordingly the Bank, the opposite party No. 4 being nominee of the insured duly accepted of the settlement of the Insurance Company and thereafter there is no deficiency in service on the part of the Insurance Company and the complaint petition filed by the complainant is liable to be rejected. On the point of territorial jurisdiction, the complainant added a branch office of the Insurance Company at Calcutta in the proceeding and by virtue of the Consumer Protection Amended Act, 1993 which came into force on 18th June, 1993 fully empowers the complainant to lodge this complaint within the territorial jurisdiction of this commission, if any branch office carrying on similar nature of any situation within said jurisdiction. Hence branch office of Insurance Company at 38B, Chowringhee Road, Calcutta-71 being one of the opposite parties within West Bengal affords ample jurisdiction to this Commission to entertain the complaint.

So, we do not find that this Commission lacks in territorial jurisdiction as alleged by the Insurance Company, particularly, in view of a branch office of the Insurance Company situated at Calcutta in this proceeding.

3. WITH regard to the second contention that in view of the arbitration clause in the insurance policy which could only be applied subject to certain contingencies and in the event of fulfillment of those contingencies, the matter could be referred to arbitration. In view of the said matter, we hold that the said arbitration clause in the insurance agreement is undue enrichment and

oppression to the complainant/ consumer. Further the National Commission in the case of N.K. Modi v. M/s. Fair Air Engineers Ltd. and Another, reported in I (1993) CPJ 5 (NC)=1993 (1) C.P.R. 486 has held that the proceeding for adjudication of the complaint before the Consumer Forum is a legal proceeding but Consumer Forum is not a judicial authority as contemplated by Section 34 of the Arbitration Act, hence Section 34 of the Act has no applicability to the proceeding before the Forum. In view of the matter as aforesaid, we are unable to accept the said contention of the Insurance Company put forward before us. The third contention of the Insurance Company is that the said State Bank of India who financed the insured/complainant is the nominee of the complainant and the settlement of the claim at Rs. 1,13,012/- and accepted by the said Bank cannot be questioned by the Insured/complainant. We are unable to accept the said contention of the Insurance company, in view that the Bank by financing to the insured/complainant has not done any charity to him, on the other hand, the Bank realises its liability including interest at quarterly raised without relieving him by a single farthing. Moreover the Bank has not been empowered to settle the claim as allowed, it is simply nominised to accept the amount paid by the Insurance Company, this the acceptance of the amount arbitrarily decided by it does not discharge the liability of the Insurance Company which owes to the insured arising out of insurance agreement.

4. SO, the Bank/ opposite party No. 4 may be a nominee for acceptance of money received in this regard, but the Bank cannot be authority to settle the claim unreasonably and illegally. It appears from the report of the Drug Controller and other authorities that the Insured/complainant had suffered loss the entire stocks of the medical shop room being gutted by the devastating fire and he had to destroy the remnants of the medicines at the instance of the Drug Controller and as the claim of the Insured/ complainant is based on the Stock Register and other documents maintained by it in this regard and the insurance policy covers the value of the claim, the insured/complainant is entitled to the said sum of Rs. 5,48,545/-. It is curious to note that the Insurance Company conducted a survey but it has not put forward the report of the Surveyor or has neither been supplied to the complainant nor has been placed before this Commission.

5. SO, it is difficult for us to believe that if the Surveyor had recommended the loss of Rs. 1,13,012/- only on account of devastating fire and breaking out in the medical shop room of the complainant and even if such report is submitted by the Surveyor to Insurance Company that report is unreasonable and arbitrary and cognizance cannot be taken of such report.

6. IN view of the aforesaid facts, we are of opinion that arbitrary and unreasonable settlement of the claim of the insured/complainant is negligence and/or deficiency in service on the part of the INsurance Company. We, accordingly allow the complaint petition and direct the Insurance Company to pay Rs. 3,87,823/- on account of the loss suffered by the complainant/petitioner

together with interest at the rate of 18% per annum from January, 1991 until payment of the same and the said payment be made within 30 days from the date of communication of this order. As the payment of interest will compensate the loss suffered by the complainant/petitioner, we are not inclined to award any further compensation as claimed by the complainant/petitioner in this regard.

The complainant is also entitled to the cost of the present proceeding which is assessed at Rs. 5,000/- to be paid by the opposite party within the time stipulated above. Mr. Justice A.K. Bhattacharjee, President-I agree. In this connection, it is noted that the Drug Controller and Deputy Commissioner, Government of Meghalaya, had assessed the loss at an amount of Rs. 5,00,835/- (Rupees five lacs eight hundred thirty five only). Out of this amount, Rs. 1,13,012/- (Rupees one lac thirteen thousand twelve) has already been paid by the opposite party No. 1. Hence, the amount of compensation awarded by Dr. Sunil Kar, Member, amounting to Rs. 3,87,823/- (Rupees three lacs eighty-seven thousand eight hundred twenty three) appears to be a reasonable one and I endorse the order proposed by him. Complaint allowed with costs.

