(2013) 10 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

Sarbati Steel Tubes Limited — APPELLANT

Vs

ORIENTAL INSURANCE CO. LTD. — RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : 2013 0 NCDRC 738 : 2013 4 CPJ 628

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : SANDEEP BISHT , R.B.SHAMI

Judgement

1. THIS revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 11.04.2008 passed by the Tamil Nadu State Consumer Disputes Redressal Commission (for short ''the State Commission '') in FA No. 603 / 2005, "Oriental Insurance Co. Ltd. versus Sri Sarbati Steel Tubes Ltd. " vide which appeal against the order dated 12.09.2005 passed by District Consumer Disputes Redressal Forum, Chennai (South) was allowed, the order of the District Forum was set aside and the consumer complaint no. 295/2003, in question was ordered to be dismissed.

2. BRIEF facts of the case are that the M/s. Sri Sarbati Steel Tubes Limited is a manufacturer of Steel Tubes having its registered office at Chennai and its two factories at Pondicherry. The complainant / petitioner obtained a fire insurance policy bearing no. 411600/0/0/F/11010/2002 from the respondent / OP, Oriental Insurance Co. Ltd. (hereinafter referred to as ''Insurance Company '') covering the risk of building, plant and machinery against the loss / damage caused by fire, storm, tempest, flood and inundation for its two factories at Pondicherry containing the product division and tube division respectively for a period of one year from 28.05.2001 to 27.05.2002 and the total sum insured was Rs.7,43,00,000/ - at an annual premium of Rs.1,00,055/ -. On 10.05.2002, at around 4:00 PM, due to strong winds, coupled with storm and heavy rain in the factory area, more than 100 asbestos sheets were blown off from the roof and the truss of the mill section was badly damaged. The Insurance Company was duly intimated and the complainant filed two claims with the Insurance Company

for the loss / damage for Rs. 50,000/ - and Rs. 2,50,000/ - respectively. The OP appointed M/s. Crystal Surveyor, Pondicherry, who visited the factory and submitted his preliminary report to the OP. Subsequently, the OP appointed a second surveyor, Mr. S. Jagadeeswaran. The said surveyor asked the complainant to furnish estimated cost of repair to the building, shed etc. The complainant stated that a sum of Rs.1,81,888/ - towards cost of material and Rs.66,746/ - towards cost of labour, the total being Rs.2,48,634/ - had been spent on repairs. The bills were furnished to the surveyor. The said surveyor, in his report estimated the total loss to be Rs.1,10,077/ - for the two divisions, Rs.88,912.50ps. was the estimate for the tube division and Rs.2,11,64.38ps. was the estimate for the flat division, including the labour charges. The surveyor also estimated that there was under -insurance to the extent of 51.9% in tube division and 76.8% in the flat division. After accounting for said percentage of under -insurance from the estimated value of loss / damage and after deducting Rs.10,000/ - for excess, the surveyor reported that the net liability for the Insurance Company was Rs.37,677/ - only. The insurance company sent a loss discharge voucher for Rs.37,624/ - by their letter dated 21.03.2003. It is the case of the complainant that the said amount was accepted under protest, whereas OP/ Insurance Company maintains that the amount was accepted by the complainant in full and final settlement. The petitioner/complainant filed the consumer complaint in question before the District Forum, claiming an amount of Rs.2,11,014/ - along with a sum of Rs.25,000/ - as compensation for mental agony and harassment and Rs.5,000/ - as cost of litigation. The District Forum after hearing the parties, passed their order on 12.09.2005, allowing the complaint and directing the OP to pay a sum of Rs.2,11,014/ - alongwith interest @ 9% p.a. from 24.03.2003 till realisation with cost of Rs.2,000/ - Against this order, an appeal was filed before the State Commission and vide impugned order dated 11.04.2008, the State Commission set aside the order passed by the District Forum and dismissed the complaint. It is against this order that the present revision petition has been made. The line of argument taken by the learned counsel for petitioner says that the complainant had received the amount sent to them by the Insurance Company under protest and not as full and final settlement as stated by the OP. Learned counsel stated that deduction could not be made for under - insurance and the depreciation could also not be allowed as per the terms and conditions of the Policy. Moreover, the insurance company should not have appointed the second surveyor to make report about the loss / damage. The learned counsel stated that the order passed by the District Forum was passed on sound reasoning and should be upheld, whereas the State Commission had committed error in passing their judgement on the report of the surveyor alone.

3. ON the other hand, the learned counsel for the respondent / OP stated that the report of the surveyor was based on sound reasoning and hence, it could not be brushed aside. The said report was prepared after checking the quantity of material replaced in the presence of an Assistant General Manager of the

complainant company. The learned counsel has also drawn our attention to a document issued by Insurance Institute of India, Mumbai entitled, "IC 56 Fire Insurance Claim ".

4. WE have examined the material on record and given a thoughtful consideration to the arguments advanced before us. A perusal of the impugned order passed by the State Commission reveals that they first dealt with the issue, whether the amounts sent by the OP to the complainant had been accepted as full and final settlement or under protest. The State Commission reached the conclusion that in the absence of any document saying that the said amount was accepted as full and final settlement, the version of the OP could not be believed and the District Forum was right in upholding that the claim amount was not accepted as full and final settlement. In so far as the quantum of compensation is concerned, the complainant had themselves given an estimate of Rs.2,48,634/ - including Rs.66,746/ - as labour charges. It is born out from the report of the surveyor however, that he made 5 visits to the premises in question before making his report, and the physical quantity of ACC sheets etc. replaced was checked in the presence of Mr. Seshadri, AGM of the company. After taking into account the cost of the material, the labour charges, etc. the surveyor reached the conclusion that the loss assessed in the tube division was Rs.88,912.50 and that for the flat division was Rs.21,164.38ps. and hence the total loss was calculated to be Rs.1,10,077/ - against an estimate of Rs.2,48,634/ - provided by the complainant. The surveyor has also brought out the factum of under -insurance in this case and came out with a figure of 51.9.% under -insurance for tube division and 76.8% of under -insurance for flat division. After accounting for these factors and deducting Rs.10,000/ - for excess, the final amount of Rs.37,677/ - was calculated. It is very clear from this report that the same is based on sound reasoning and the complainant/petitioner has not been able to bring out any deficiency or inconsistency in the said report. In the document issued by the Insurance Institute of India, it has been provided that while allowing claims in Fire Insurance Claim, the factum of under - insurance has to be accounted for on pro -rata average basis.

5. BASED on the discussion above, it is held that the order passed by the State Commission does not suffer from any illegality, infirmity, irregularity or jurisdictional error and does not call for any interference. The order passed by the State Commission is, therefore, upheld. The revision petition is ordered to be dismissed with no order as to costs.

