(1993) 08 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

SATSANDH COTTON FACTORY APPELLANT

Vs

Oriental Insurance Co. Ltd. RESPONDENT

Date of Decision : 18-08-1993

Acts Referred:

Citation : 1993 3 CPJ 1781 : 1993 3 CPR 390 : 1994 1 CPC 222

Hon'ble Judges : S.S.Dewan , R.L.Gupta , Gurkanwal Kaur J.

Final Decision : Complaint allowed with costs

Judgement

1. THIS is a complaint under Section 17 read with Section 12 of the Consumer Protection Act, 1986 (for short ''the Act'').

2. THE issue herein lies in a narrow compass and the relevant facts are not in serious dispute. THE complainant-Firm had taken out four insurance policies operative from different dates in the year 1989 and 1990 for a total sum of Rs. 4,50,000/-. It is alleged that on 23rd March, 1990 there was a fire in the factory premises of the complainant-Firm at Lehragaga in which it claimed to have suffered a loss of Rs. 5.5 lacs. THE matter was reported to the Fire Station, Sangrur and the Oriental Insurance Company Ltd., Mansa was duly informed of the said incident on the same day. THE opposite party offered to pay Rs. 84,074/- vide its letter dated 16.3.1993 (Annex. C-8). THE said offer was not acceptable to the complainant. THE surveyor appointed by the opposite party Insurance Company however, assessed the loss due to fire at Rs. 1,69,413/-. THE complainant requested the opposite party to pay Rs. 2 lacs for the loss suffered by it but the latter refused to review its decision. Hence the complainant has filed this complaint for the recovery of Rs. 2 lacs together with interest @ 24% p.a. and Rs. 1 lac as compensation for the mental agony and harassment suffered by it. On notice being issued, the complaint was resisted by the opposite party by contending inter alia that they have assessed the damage/loss suffered by the complainant-Firm at Rs. 84,074/- as against his claim of Rs. 2 lacs; that the issue between the parties is not one that can be adjudged by this Commission; that even according to the complainant there has been breach of

contract by the opposite party and the said matter cannot be adjudicated by this Commission; that this is not a case of deficiency in service to be rendered by the opposite party to the complainant; that the complainant had not suffered the loss of Rs. 2 lacs and that it is not entitled to the said amount.

In support of its case, the complainant put in 8 documents (Annexures C-1 to C-8) and the opposite party filed 9 documents (Annexures R-1 to R-9). In the rejoinder filed by the complainant, all the allegations made by it in the complaint were reiterated. No oral evidence was however, let in by either side.

3. THE first point that arises for determination in this case is as to whether this Commission has jurisdiction to entertain this complaint. Mr. Raj Kumar, learned Counsel for the opposite party has strenuously urged that as the dispute between the parties in this case is in regard to the quantum of damages suffered by the complainant, the Commission has no jurisdiction to decide the said point. In support of his contention, he relied upon a decision in Janata Machine Tools v. Oriental Insurance Company Ltd., I (1991) CPJ 234 (NC). In the said case, the allegation of the complainant was that there had been deficiency in service of the Insurance Company. The Insurance Company after due investigation came to the conclusion that the claim put forward by the complainant was false. Under those circumstances, it was held by the National Commission that the said controversy between the parties cannot be decided by the Consumer Forum. In this case, the Insurance Company has assessed the damages at Rs. 84,074/- as against the claim of the complainant of Rs. 2 lacs. The Insurance Company has not come to the conclusion that the claim made by the complainant is false. Hence the decision relied upon by Mr. Raj Kumar is not applicable to the facts of the present case. It is clear from the decision of the National Commission in Shri Umedi Lal Aggarwal v. United India Insurance Company Ltd., I (1991) CPJ 3 (NC) that a fault or negligence in regard to the settlement of an insurance claim constitutes a ''deficiency'' in service within the meaning of the Act. In that decision, the National Commission was pleased to observe that it is not possible to hold that the settlement of a disputed insurance claim will not be covered by the expression'' service'' occurring in Section 2(d) of the Act. In view of the said decision of the National Commission, we have no hesitation in holding that this Commission has jurisdiction to entertain this complaint.

4. THE next point that arises for determination in this case is as to what is the amount payable by the Insurance Company to the insured under the terms of the policies (Annexures C-1 and C-2). THE following facts are no longer in dispute before us : (a) That the complainant had insured its factory premises at Lehragaga against fire and the Surveyor and the Investigator appointed by the Insurance Company had reported in their reports (Annexs. R-1 and R-2) that the complainant-Firm was liable for the fire loss. (b) That the complainant had insured its factory premises for a total sum of Rs. 3,50,000/- from 21.3.1991 to 20.3.1991 under the policies issued by the Oriental Insurance Company Ltd., Mansa and on 23.3.1990 due to fire the factory premises were destroyed. THE

Insurance Company has assessed the loss caused to the complainant at Rs. 84,074/- whereas the Surveyor, Mittal Associates appointed by the Insurance Company assessed the loss at Rs. 1,69,413/- (Annex. R-8). Mr. Rajesh Garg, learned Counsel for the complainant has urged that the complainant is entitled to the amount of Rs. 1,69,413/- as determined by the Surveyor appointed by the Insurance Company. Mr Raj Kumar, learned Counsel for the opposite party has, however, contended that the Insurance Company has correctly assessed the loss at Rs. 84,074/- and this amount has been arrived at after taking into account the depreciation on machinary and wooden structure @ 50% and wall repairs @ 40%. THE Surveyor appointed by the Insurance Company had determined the loss at Rs. 1,69,413/-. We feel that it is not fair now for the Insurance Company to dispute the factum of loss and to suggest that the complainant-Firm had exaggerated the damage sustained by it. THE Insurance Company in our opinion is estopped from reopening the case and reassess the damage.

Hence we accept the report of the Surveyor (Annex. R.8) and assess the amount payable by the Insurance Company to the complainant-Firm at Rs. 1,69,413/-. This brings us to the question as to what is the rate of interest and from what date it should be paid to the complainant on the said amount. The Insurance Company has to be given a reasonable time for deciding the claim and according to us, a period of about six months would be reasonable time for the insurer to decide the claim. The fire broke out in the factory premises of the complainant-Firm on 23.3.1990 and the claim was filed by the complainant immediately thereafter. Allowing a margin of about six months from the date of that claim, we think it reasonable to award interest to the complainant by way of damages for the delay caused by the Insurance Company in settling its claim from 23.3.1990. We also hold that the rate of interest @18% p.a. would be proper. In the result, the complaint is allowed and the opposite party Oriental Insurance Company Ltd. is directed to pay Rs. 1,69,413/- together with interest @ 18% p.a. on the said amount from 23.3.1990 till the date of payment and costs of Rs. 1,000/- to the complainant within one month from the receipt of the copy of the order. Complaint allowed with costs.

