

(2013) 08 NCDRC CK 0065

In the National Consumer Disputes Redressal Commission

Shiv Confectionary House Through Its Sole Proprietor APPELLANT
Vs

Bajaj Allianz General Insurance Co. Through Its Person RESPONDENT
Incharge

Date of Decision : 22-08-2013

Acts Referred:

Citation : 2013 0 NCDRC 605 : 2013 4 CPJ 8

Hon'ble Judges : AJIT BHARIHOKE , SURESH CHANDRA J.

Advocate : RAM EKBAL ROY

Judgement

1. THE petitioner who is the original complainant in this case has filed this revision petition challenging the order dated 31.1.2013 passed by the Punjab State Consumer Disputes Redressal Commission, Chandigarh in FA No.1315 of 2010 whereby learned State Commission allowed the first appeal filed by respondent No.1/opposite party No.1 and set aside the order dated 23.4.2010 passed by learned District Consumer Redressal Forum, Fatehgarh Sahib in complaint No.88-A. The District Forum vide its order had allowed the complaint of the petitioner. By its impugned order in appeal, the State Commission reversed it by holding that it is proved that the premises where the fire took place were not covered under the policy and hence the claim of the petitioner was rightly repudiated by respondent No.1. Respondent No.2 is HDFC Bank which was OP No.2 before the District Forum.

2. BRIEFLY put, the facts of this case which are relevant for disposal of this revision petition are that the petitioner had obtained a cash credit limit from respondent No.2 Bank against the stock and the entire stock of the petitioner was hypothecated with respondent No.2 Bank. It was pleaded that respondent No.2 Bank had arranged one insurance policy from respondent No.1 insurance co. w.e.f. 26.4.2008 to 25.4.2009 covering the stock of the petitioner hypothecated with respondent No.2. A fire broke out at the premises of the petitioner on 31.10.2008 and the stock of the premises got damaged. The petitioner lodged claim with respondent No.1 for Rs.11 lakhs which came to be

repudiated by the respondent insurance co. on the ground that the location where the stock was kept and where the fire took place was not covered under the insurance policy. According to the complainant/petitioner, the respondent No.2 Bank had given the cash credit limit against the stock stored in the premises where the fire broke up and thus the stock was clearly insured. It was also pleaded that the shop which the respondent insurance co. is supposed to have insured is not capable of holding the stock of the value of Rs.16 lakhs. It could hold stocks worth only Rs.2 lakhs. Since the claim was repudiated, the petitioner filed a consumer complaint before the District Forum alleging deficiency in service on the part of respondent No.1 seeking directions to pay a sum of Rs.11 lakhs along with interest @ 18% p.a. from 31.10.2008 besides cost and compensation. Upon notice, the respondents filed their written statement and contested the complaint. Respondent No.1 pleaded that the liability of the insurance co. shall be as per the terms and conditions of the policy as agreed to by the parties only if the property insured described in the schedule, or any part of such property, is destroyed by any of the specified perils during the period of insurance mentioned in the schedule. Admitting the incident of fire having taken place and also receiving intimation about it, the contention of the respondent insurance co. was that the location where the stock damaged by the fire was kept was not covered by the insurance policy and as such the insurance co. would not be liable to accept the claim and hence dismissal of the complaint was prayed. Respondent No.2 Bank prayed that the complaint be dismissed qua the respondent Bank because it had given only cash credit limit against the stock but there is no liability of the bank and hence it cannot be burdened with any compensation. The parties adduced evidence in support of their contentions and after going through the pleadings and the material placed before it, the District Forum allowed the complaint of the petitioner by directing respondent No.1/ opposite party No.1 to pay an amount of Rs.7,42,000/- with interest @ 7% from the date of filing of the complaint till its realization. On appeal filed by the respondent insurance co., the State Commission reversed the order of the District Forum and dismissed the complaint.

3. THE short issue which has arisen before us for our consideration is as to whether the claim of the petitioner in respect of damage to the stock in fire stored at the location not covered by the insurance policy can be allowed.

4. WE have heard learned counsel Shri Ram Ekbal Roy, Advocate for the petitioner and perused the record. Learned counsel has submitted that the State Commission failed to appreciate that the contention of the respondent/opposite party regarding non-covering of the premised is not tenable. He pointed out that the State Commission should have appreciated that the shop which the respondent No.1 purports to have insured is not capable of holding the stock to the tune of Rs.16 lakhs. He further submitted that the State Commission also ignored the fact that the respondent bank had given the limit against the stock stored in the premises where the fire broke out and thus the stock was clearly insured and hence the allegation of the insurance co. against the petitioner in

this regard was false. To support his contention, he submitted that monthly statement of the stock was also given to the respondent bank with regard to the stock in question. He, therefore, contended the premises insured was actually "M/s Shiv Confectionary House Amloh Road, Mandi, Gobindgarh " and the fire which broke out in the premises damage the goods therein and hence the claim should have been admitted by the State Commission.

5. WE have given our anxious thought to the submissions of learned counsel. We may note that the incident of fire and the assessment of loss on account of this fire as reported by the surveyor are not under dispute. The main ground on which the State Commission has reversed the finding of the District Forum is that under the policy in question, a copy of which is placed at page 46 of the paper-book, only the shop of the petitioner at Amloh Road, Mandi Gobindgarh, District Feteahgarh Sahib was covered by the insurance policy. In view of this, the State Commission allowed the appeal because it found that the location of the stock which got damaged in the fire was different from the one covered by the policy. Perusal of the policy indicates that the location description of the covered place is mentioned in the following terms:- "Shop AMLOH ROAD, MANDI GOBINDGARH, DIST. FETEHGARH SAHIB (PUNJAB) "

6. THE plea of the respondents Insurance Co. to the effect that only the shop at Amloh Road, Mandi Gobindgarh, Dist. Feteahgarh Sahib is covered by the insurance policy is further corroborated by the statement made by the respondent Bank to which the petitioner was furnishing the stock statements because in these stock statements there was no mention of location of the stock made by the petitioner. No evidence is put up by the petitioner to dispute or contradict this aspect. In view of these aspects, the State Commission, relying on the ratio of judgements of the Apex Court in the cases of VikramGreentech (I) Ltd. & Anr. Vs. New India Assurance Co. Ltd. [II (2009) CPJ 34 (SC) and General Assurance Society Ltd. Vs. Chandumull Jain & Anr. [AIR 1966 State Commission 1644], accepted the appeal and dismissed the complaint by its impugned order. We agree with the view taken by the State Commission. As stated above, the location description of the place covered does indicate that it is the shop at Amloh Road, Mandi Gobindgarh which is covered and not any other place. The plea of the petitioner regarding the damaged stocks being part of the stock statements regularly submitted to the respondent Bank cannot provide any relief to the petitioner because the respondent Bank itself has clarified that the stock statements did not indicate the location of the stocks covered by the statements. We may note that even if it is accepted for the sake of arguments that location was mentioned in the statements submitted by the petitioner to the OP bank, this by itself cannot entitle the petitioner to get the amount of his claim unless it is established that the stock damaged was stored at the place covered by the policy. In the circumstances, the view taken by the State Commission is in line with the law laid down by the Apex Court. The Apex Court in the case of VikramGreentech (I) Ltd. & Anr.(supra) has held thus:- "16. An insurance contract, is a species of commercial transactions and must be construed like any

other contract to its own terms and by itself. In a contract of insurance, there is requirement of *uberimma fides* i.e. good faith on the part of the insured. Except that, in other respects, there is no difference between a contract of insurance and any other contract. 17. The four essentials of a contract of insurance are, (i) the definition of the risk, (ii) the duration of the risk, (iii) the premium and (iv) the amount of insurance. Since upon issuance of the insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of the risks covered by the insurance policy, its terms have to be strictly construed to determine the extent of liability of the insurer. 18. The endeavour of the court must always be to interpret the words in which the contract is expressed by the parties. The court while construing the terms of policy is not expected to venture into extra liberalism that may result in re-writing the contract or substituting the terms which were not intended by the parties. The insured cannot claim anything more than what is covered by the insurance policy. "

(Emphasis provided by us)

7. IN the other case of General Assurance Society Ltd. (*supra*) also the Apex Court has made similar observations which may be reproduced below:-
"In interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves "

8. IN view of the aforesaid discussion and the settled position in law, we do not find any infirmity in the impugned order which would call for our interference with it under section 21(b) of the C.P. Act, 1986 which confers very limited powers on this Commission while exercising its revisional jurisdiction under this section. We, therefore, dismiss the revision petition in limine with no order as to costs.