(2012) 12 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

Shiva Glass Works Co. Ltd — APPELLANT

Vs

NATIONAL INSURANCE CO. LTD — RESPONDENT

Date of Decision : 05-12-2012

Acts Referred:

Citation : 2012 0 NCDRC 927 : 2013 1 CPJ 241

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Final Decision : Appeal dismissed

Judgement

1. COMPLAINANT /appellant herein has filed the present appeal against the order dated February 14, 2007 passed by the West Bengal State Consumer Disputes Redressal Commission (in short, the State Commission) in Complaint No. 18 of 2001 dismissing the complaint with no order as to costs.

2. APPELLANT purchased an insurance policy No. 98/3300065/C overing glass factory of the appellant situated at 128, B.T. Road, Kolkata against losses and damages caused due to fire, cyclone or any other natural calamity as provided under the terms and conditions of the policy. Policy was issued for the period from April 29, 1998 to April 28, 1999. The risk covered under the policy was to the tune of Rs. 1,82,19,286. According to the appellant, on November 22, 2008, there was a cyclone together with rainfall which caused heavy loss and damage to articles and machinery in the factory. The chimneys of the glass factory fell down due to the effect of the cyclone. Considerable portion of the factory shed along with stocks of finished and un-finished goods lying at the height of 30 ft. to 40 ft. were also damaged. The furnace and plant and machinery of the factory were also damaged. Appellant informed the respondent-Insurance Company about the loss on Nov. 23, 1998 requesting it to take necessary steps to assess the damage and loss and to pay the compensation under the policy. On receiving the information, respondent Insurance Company appointed a surveyor namely M/ s. Mehta and Padamsey Surveyors Pvt. Ltd. to survey the alleged loss. The surveyor submitted its report on August 21, 1999. Since nothing was conveyed to the appellant, the appellant filed the complaint claiming a sum of Rs. 18.50

lacs as compensation as detailed in the prayer portion of the complaint. The respondent-Insurance Company, on being served, entered appearance and filed written statement denying its liability to pay any amount. Based on the report submitted by the surveyor it was contended that, in fact, no loss had been caused to the appellant; that the appellant failed to furnish the requisite material in support of the alleged damage or loss to the property of the factory in the cyclone or rainfall. As per Surveyor ''s report the alleged damage caused to the chimneys of the factory was due to dilapidated condition of the factory and the poor and faulty maintenance and not due to any alleged cyclone or rainfall. The respondent further alleged that the appellant had initially lodged a claim for compensation of Rs. 40,00,000 to Rs. 50,00,000 but subsequently for the reasons best known to it the appellant brought down the claim to Rs. 18,50,000; that the claim was not genuine and that the appellant had not come to the Court with clean hands. Another objection taken was that the appellant did not prefer his claim in the prescribed claim form; that the claim was preferred on a plain paper and not in the prescribed form in violation of the terms of the agreement and the Insurance Company was not obliged to entertain such a claim.

3. THE State Commission, on appraisal of the entire set of pleadings and evidence dismissed the complaint on three counts: (i) that non-submission of claim in the prescribed form deprived the Insurance Company to get the full picture for the purpose of taking its decision on the claimed amount; that the submission of the claim on a plain paper was in violation of the terms of the contract entered between the parties; (ii) that the appellant failed to produce any evidence that the loss was caused due to cyclone or rain; (iii) that the report of the surveyor could not be discarded in the absence of any evidence to the contrary led by the appellant. On merits, the State Commission in its order observed as under: "Be that as it may, let us determine the question whether the alleged loss and damage to the properties of the factory under insurance were substantiated and for the matter whether the complai-nant became able to substantiate the story of the emergence of cyclone and heavy rainfall causing damage to the chimney and other properties of the factory in question. As we have discussed, under the report of the surveyor the case of the complainant has not been found established. During the trial before us also the complainant could not adduce cogent evidence in support of its alleged story of loss and damage of the articles of the factory in consequence of cyclone and heavy rainfall. No iota of evidence worth the name has been produced before us to show that any such cyclone really lashed the disputed factory causing such loss and damage to its properties as alleged. It is an established position of law that the Consumer Court cannot sit in judgment over the report of a surveyor, who is specially an expert, for the reason that the Court does not possess such technical expertise and there is little scope, especially for this Consumer Court where trial is to be held in a summary way to dwell upon or adjudicate the correctness or incorrectness of the report of a surveyor which calls for expert knowledge. In the present case, the complainant has not been able to counter the contentions of

the OP as to the findings of the surveyor and it will not be worthwhile for this Consumer Forum to question the veracity of such reports, particularly when there is no independent and cogent evidence before us being adduced from the side of the complainant. "

4. AFTER hearing the learned Counsel for the parties we do not find any substance in this appeal. Initial burden to prove that loss was due to cyclone or rainfall was on the appellant which the appellant failed to discharge by leading any cogent and trustworthy evidence. In the absence of any evidence to the contrary the report of the surveyor could not be discarded. The appellant did not produce any evidence worth the name to show that the damage to the building was caused due to cyclone or the rainfall. It also failed to produce any evidence to prove the estimated loss. The report of the surveyor is an important piece of evidence and has to be given due weight. We agree with the contention of the Counsel for the appellant that report of the Surveyor is not sacrosanct but there has to be some trustworthy evidence to displace or discard the same. The appellant has not been able to counter the findings recorded by the surveyor by leading any independent and cogent evidence. In the absence of evidence to the contrary the report of the surveyor has to be accepted. For the reasons stated above, we do not find any merit in the appeal and dismiss the same with no order as to costs. Appeal dismissed.