
(1997) 11 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

SHUSAMA RANI CHAKRABORTY

APPELLANT

Vs

DIVISIONAL MANAGER NATIONAL INSURANCE CO LTD

RESPONDENT

Date of Decision : 06-11-1997

Acts Referred:

Citation : 1997 1 CPC 472 : 1997 1 CPJ 6 : 1997 1 CPR 55 : 1997 2 CLT 189

Hon'ble Judges : V.BALAKRISHNA ERADI , S.S.CHADHA , R.THAMARAJAKSHI , C.L.CHAUDHRY , S.P.BAGLA J.

Judgement

1. THIS appeal by the complainant is directed against the Order dated 11.9.93 passed by the Assam State Commission at Guwahati in Complaint Case No. 44/93 awarding a sum of Rs. 8,058.75 towards loss suffered by the complainant in respect of its insured property besides costs of Rs. 100/- and interest at the rate of 12% per annum, if the payment was not made within three months.

2. THE complainant had taken a fire policy bearing No. 200110/3100173/89 for the period 5.1.89 to 4.1.90 which was subsequently renewed, bearing Policy No. 200110/3100281/90 for the period 8.1.90 to 8.1.91 and again renewed for the third term vide endorsement No. 31 -R/E -23/91. The sum insured was (a) on building (residential building) - Rs. 27,000/-, (b) on lavatory and extra latrine - Rs.20,000/-, (c) on boundary wall stone and concrete and retaining wall - Rs. 90,000/-, in all Rs. 1,37,000/-. An earthquake occurred on the mid night of 9.1.90 causing damage to the insured property. The complainant claimed a loss of Rs. 23,980/- in her claim preferred on 30th November, 1990. Another claim arose under the renewed policy due to floods on 28.6.91 causing damage to the boundary wall foundation. The complainant assessed the loss at Rs. 35,000/- and alleged to have filed a claim on 1.7.91. The claims were not settled by the opposite party -National Insurance Company Ltd. The complainant alleging deficiency in service on the part of the opposite party claimed the loss of Rs. 23,980/- under the 1st claim and Rs. 35,000/- under the second claim besides Rs. 8,000/- claimed to have been spent by the complainant for visits to the opposite party in pursuing the claims and also claimed compensation for mental suffering. The opposite party in its written version raised a preliminary objection

that the policy provides for settlement of disputes relating to quantum by arbitration as the claim of the complainant in respect of loss on 9.1.90 was quantified at Rs. 2,294/- and accordingly vide letter dated 10.2.93 the complainant was informed of the same but the complainant refused to accept the amount. The opposite party denied that the complainant had filed any claim of Rs. 35,000/- before the opposite party on 1.7.91 as alleged in the claim petition. The State Commission considered the claim of the complainant for Rs. 35,000/- but rejected it as there was no supporting evidence available on the record as to the cause of accident or the quantum of loss allegedly suffered by the complainant or of filing the claim before opposite party. As regards the damage caused due to the earthquake on 9.1.90, the State Commission accepted the report of the Surveyor in which a sum of Rs. 8,058.75 was assessed as loss. The State Commission directed the opposite party to pay to the complainant the sum of Rs. 8,058.75.

3. WE have gone through the records of the appeal seeking increase in the quantum of assessment of first claim and for grant of second claim. The appellant did not appear before us at the time of hearing but had sent a written note of arguments. The complainant had not placed on record any evidence as to the quantum of loss suffered due to the earthquake. No documents have been filed on the record in support of the assessment of the loss quantified by the complainant at Rs. 23,980/- in his complaint. The State Commission was thus left with no option but to rely on the quantification of the loss as assessed by the Surveyor or appointed by the opposite party in granting compensation of Rs. 8,058.75. The Surveyor had visited the site on 2.2.90 and demanded relevant documents from the complainant who failed to furnish the same. The Surveyor reported that no scientific measure or engineering design was adopted while constructing the wall. The Surveyor made his own assessment which is the only material on record to grant the relief of quantum of loss. The complainant failed to substantiate her loss by cogent and convincing evidence before the State Commission. The quantification does not call for any interference in appeal. We may notice that the opposite party has paid the amount of Rs. 8,058.75 vide cheque dated 25.1.94 before the State Commission. The complainant has neither placed on record any proof of the alleged loss on 28.6.91 nor any proof of having lodged any claim with the opposite party. The State Commission is fully justified in holding that there is no deficiency in service of opposite party.

4. THE appeal fails and is dismissed leaving the parties to bear their own costs. Appeal dismissed. ____