

(1993) 08 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

SHUSAMA RANI CHAKRABORTY

APPELLANT

Vs

DIVISIONAL MANAGER, NATIONAL INSURANCE CO.LTD

RESPONDENT

Date of Decision : 11-08-1993

Acts Referred:

Citation : 1993 3 CPJ 1698

Hon'ble Judges : S.N.Phukan , A.C.Bora J.

Final Decision : Petition disposed of as directed

Judgement

1. THE complainant took out a policy of insurance under fire scheme since 1989 from the National Insurance Company Limited, i.e. the opposite party, which was renewed from time to time. Due to earth-quake on the mid-night of 9.1.90 in the retaining-cum-boundary foundation of the land of the petitioner there appeared some cracks and according to petitioner the amount of loss was Rs. 23,980/-. A claim was preferred on 30.1.90. A Seismological report was also submitted. An estimate was also obtained from a Government Contractor. It was also surveyed by the Insurance Company. Though the above claim was not paid, there was another misfortune and the entire boundary-wall was damaged and it fell down due to flood on 28.6.91 causing a loss of Rs.35,000/- and accordingly another claim was filed on 1.7.91. But this was also not satisfied by the Insurance Company inspite of repeated reminders and visits by the complainant to the office of the Insurance Company. has claimed Rs. 8,000/- for such visits and also for compensation for mental sufferings amounting to Rs. 35,000/-. THE Insurance Policy is marked as Ext. 1(2). A copy of the letter of the Insurance Company dated 22.2.91 has been marked as Ext. 7. THE petitioner has also annexed a map. In support of the first claim amounting to Rs. 22,981/- an estimate from the Contractor has been annexed and marked as Ext.10. Petitioner has also annexed to the petition other documents including the letters to the Insurance Company.

2. THE Insurance Company has raised a preliminary objection that the petition is not maintain-able as there is a provision for a arbitration vide Clause (ii) of the

policy. According to Insurance Company, the Surveyor for the first claim assessed the damage at Rs. 2,294/-. Regarding the second claim of Rs. 35,000/-, the Insurance Company has stated that the petitioner did not file any claim. According to Insurance Company, the petitioner is only entitled to get a sum of Rs. 2,294/-. Policy has been annexed as Annexure-2 and also the report of the Surveyor. 3. Heard learned Counsel for the parties. 4. From the letter dated 13.5.91 we find that petitioner filed a claim for Rs. 35,000/- receipt of which has been denied. But the Insurance Company has not produced the register to show that it was not received as stated in the counter. THEREfore, the plea taken by the Insurance Company cannot be accepted. 5. From the report of the Surveyor vide Annexure-IV to the counter affidavit, we find that the Surveyor assessed a sum of Rs. 3058.75 for the damage caused due to earth-quake. Nothing has been shown by the petitioner that this assessment is not correct. THEREfore, we are of the opinion that the petitioner is entitled to get this amount. 6. As regards to second claim of Rs.35,000/- no supporting evidence is available. THEREfore, we are unable to award this amount in favour of the petitioner. However, the petitioner shall be entitled to get damage of Rs. 5,000/- for mental sufferings and delay in settling the claim. 7. Regarding jurisdiction of this Commission, the National Commission in *Oriental Insurance Company Ltd. v. M/s. New Joypur Dyeing and Tents Works*, reported in 1991 (2) CPR 149 has held that in case of deficiency in service on the part of an Insurance Company, Consumer Forums have got jurisdiction. THE National Commission also considered the Arbitration Clause vis-a-vis Section 3 of the Consumer Protection Act, 1986, and held that the provisions of the above Act are in addition to but not in derogation of any other law enforced and consequently a complainant has the option to seek redress either under the Act or under the provisions of any other law including to arbitration as provided in the policy of insurance. THEREfore, we hold that this Commission has jurisdiction to entertain the present petition. 8. Accordingly, the petition is disposed of with the direction that the petitioner shall be entitled to get Rs. 8058.75. THE amount shall be paid within 3 months and thereafter it shall bear an interest of 12% per annum. THE petitioner will also be entitled to a cost of Rs.100/-, Petition disposed of as directed.