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(2009) 03 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

S.M. Herbals Ltd. APPELLANT

Vs

New India Assurance Co. Ltd. And Anr. RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Citation : 2009 4 CPJ 50

Hon'ble Judges : K.S.GUPTA , RAJYALAKSHMI RAO J.

Advocate : B.S.BANTHIA , SUKUMAR PATTJOSHI

Judgement

1. COMPLAINT was filed alleging that the complainant is engaged in manufacturing and developing Ayurvedic based pharmaceuticals. On behalf of complainant the State Bank of Bikaner and Jaipur, Bhiwadi had purchased a Fire Policy of Rs. 70.00 lakh for the period from 4.9.1998 to 3.9.1999 covering damage to the stocks of raw material, stocks under process and finished product and packing material due to cyclone and earthquake, from the opposite party - Insurance Company Insured stocks were hypothecated with the said bank. It was alleged that on 10.5.1999 at about 6.00 p.m. there was severe storm accompanied by cyclonic winds and heavy rainfair in Bhiwadi industrial area. Due to storm, one of the long side walls of the godown collapsed causing damage to the drums and carboys containing Taxol syrup and solvents. Contents spilled over the floor of the godown as also outside. Complainant immediately informed the Insurance Company about the incident who appointed Rajender Arya to conduct preliminary survey. Shri Arya visited the site on 13.5.1999. Opposite party - Insurance Company appointed M/s. Crystal Visions (P) Ltd., as Surveyors and on its behalf B. Tayal visited the site on 15.5.1999. He lifted the samples of the split syrup. This Surveyor submitted the report on 26.11.1999 assessing loss at Rs. 22,49,107. It was further alleged that the Insurance Company with intention to further delay the settlement of claim, appointed M/s. Basheer and Associates Surveyors Private Ltd., as Surveyors. Insurance Company finally offered a meagre sum of Rs. 7,09,405 by way of settlement on 15.6.2001. Complainant was compelled to sign the discharge voucher which stated that the said amount was paid towards full and final payment. Complainant wrote a letter of protest to

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the Insurance Company on 15.6.2001 itself. It was stated that the Insurance Company committed deficiency in service by reducing the claim amount to 1/3rd of what was assessed by M/s. Crystal Visions (P) Ltd. Direction was sought to be issued to the Insurance Company to pay the balance amount of Rs. 15,39,702, interest @ 18% p.a on this amount from 10.8.1999 to 25.11.2001 amounting to Rs. 6,35,127, interest @ 18% p.a. from 10.8.1991 to 15.6.2001 on the amount of Rs. 7,09,405 amounting to Rs. 1,08,451 and compensation of Rs. 1.00 lakh.

2. OPPOSITE party - Insurance Company contested the complaint by filing written version. It was alleged that the complaint was not maintainable as the amount of Rs. 7,09,405 was received towards full and final settlement by the complainant. Issuance of the policy in question was not denied. However, it was stated that the Drug Controller had issued the licence to the complainant on 22.4.1999 and the complainant, thus, could not have produced such a large quantity of Taxol syrup within a short span of 20 days. M/s. Crystal Visions (P) Ltd.''s report raised reasonable doubt regarding correctness thereof as the complainant had not marketed the Taxol syrup till date of loss and the alleged Taxol concentration on laboratory analysis did not tally with the concentration of the samples of the spilled Taxol syrup collected by the Surveyor. M/s. Basheer and Associates Surveyors Private Ltd. was, therefore, appointed and this Surveyor assessed the net loss at Rs. 7,09,405 which was paid to the complainant. Receipt of complainant''s letter dated 15.6.2001 was admitted. It was alleged that delay in settling the claim was because of non -supply of relevant documents by the complainant. It was denied that there was deficiency in service on the part of opposite party - Insurance Company as alleged.

3. WE have heard Shri B.S. Banthia for the complainant and Mr. S. Pattjoshi for the opposite party - Insurance Company. Points which arise for determination in this complaint are - (i) whether amount of Rs. 7,09,405 paid on 15.6.2001 to the complainant by the opposite party - Insurance Company was towards full and final settlement and (ii) whether complainant is entitled to the compensation as assessed by M/s. Crystal Visions (P) Ltd. in the report dated 26.11.1999.

4. IN the complaint, it is alleged that the complainant was compelled to sign the, discharge voucher for Rs. 7,09,405 on 15.6.2001 towards full and final settlement of the claim and on 15.6.2001 itself the complainant wrote a letter of protest to the opposite party - Insurance Company. This letter (copy at page 110) would show that the said amount was not accepted as full and final settlement of claim but towards part payment and it was threatened that for the remaining amount, if not paid, the complainant would approach the competent Court of Law. Obviously, above amount was received under compulsion/ protest and the present complaint is, therefore, maintainable.

5. COMING to the point (ii) above, it was urged by Shri Banthia complainant is entitled to be compensated for the spilled over Taxol syrup on cost basis. Aforesaid survey report dated 26.11.1999 would show that 302 kgs of Taxol syrup was spilled out of the drums and the estimate of loss of Rs. 25,21,070

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submitted was computed by the complainant taking the price @ Rs. 8,000 per kg. Complainant had, however, not furnished any document in support of the price of Rs. 8,000 per kg. Surveyor was not satisfied with the direct cost for producing the said quantity of Taxol syrup supplied by the complainant. Complainant did not keep the comprehensive process stock records. Report further notices that the spilled over Taxol was sent to M/s. Analyst, an ISI approved laboratory in Rajasthan which reported that its concentration was much less than what the complainant represented. Loss was, thus, estimated at Rs. 20,49,071 by the said Surveyor not on cost price but on selling price. As may further be seen from the said report, pure Taxol was being manufactured only by two Pharmaceuticals companies in the world, namely, M/s. Bristol Myers of USA and M/s. Rhone Poulence of France and in India pure Taxol was being produced by M/s. Sanat Products Limited, an associate unit of Dabut India Ltd. under licence from M/s. Bristol Myers of USA under payment of royalty. J. Basheer and Associates Surveyors Private Ltd. deputed by the opposite party -Insurance Company, by the letter dated 3.10.2000 had asked the complainant to furnish, amongst others, the sale details along with invoices and payment proof to which reply dated 19.10.2000 was sent by the complainant admitting that they had not sold any Taxol syrup by then. Insurance being a contract of indemnity, the complainant is not entitled to be compensated on selling price. Claim for the balance amount of Rs. 15,39,702 based on aforesaid report dated 26.11.1999, therefore, cannot be allowed. There seems to be no delay in making payment of the said amount of Rs. 7,09,405 as J. Basheer and Associates Surveyors Private Ltd., Surveyors/Investigators, had submitted their report on 10.5.2001.

6. FOR the foregoing discussion, the complaint is dismissed being without any merit. No order as to cost. Complaint dismissed.

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