(1994) 04 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

SOHAN SINGH And SONS — APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. — RESPONDENT

Date of Decision : 27-04-1994

Acts Referred:

Citation : 1994 2 CPC 348 : 1994 2 CPJ 477 : 1994 2 CPR 589 : 1995 1 CLT 74

Hon'ble Judges : V.K.Mehrotra , Banarsi Das J.

Final Decision : Complaint dismissed

Judgement

1. M/s. Sohan Singh and sons through its partner Rajender Singh seeks relief for loss of stocks, furniture etc. destroyed by rioters, in what has been described as anti-sikh riots said to have taken place in Rishikesh now in District Haradwar in U.P., from the New India Assurance Company Ltd., which is the sole in this case. It has been said in the complaint that business of automobile workshop had been carried on by M/s. Sohan Singh and Sons which had a workshop at Laxman Jhoola Road in Rishikesh where mostly repair of Government vehicles was undertaken. In the workshop complex there was a store room which contained furniture and automobile spare parts. On the security of the stocks, which were hypothecated to it, the State Bank of India, Railway Road, Rishikesh had extended financial assistance to the complainant. The stocks were insured with the New India Assurance Company for the period 30.3.1987 to 29.3.1988 in the joint name of the Bank and the complainant under Policy No. 7553200597 against risks of Fire, Riot Strike, malicious damages and burglary.

2. THE Complainant says that in the riot that took place on July 8, 1987 the workshop suffered heavy losses and the stocks were totally destroyed by the fire caused by the senseless mob. A claim was lodged with the Opposite Party which got enquiry made by two Surveyors but thereafter illegally repudiated the claim through its letter dated March 8, 1989 on the ground that the policy did not relates to the premises where the loss is said to have taken place. The complainant also says that the policy of insurance was with the Bank and not with the him. The Insurance Company did not send a copy to him nor supplied a

copy of the proposal form relating to the policy inspite of request to do so. As such, it was not possible to say that the policy did not relate to the premises in question or to repudiate the claim on that ground. A claim for compensation amounting to Rupees Three Lakhs twenty-five thousand and interest at the rate of 14% thereon with effect from the date of the incident (July 8, 1987) till the date of payment has been made in the complaint.

The Insurance Company filed a written statement though with delay, pleading therein that M/s. Sohan Singh and Sons and its sister concern M/s. Himalayan Automobiles were running their respective businesses and having their stock-in trade etc. at a shop bearing No. 7, Laxman Jhoola Road, Rishikesh. They submitted their proposal and obtained separate insurance policies from the Insurance Company in November 1984 and got their policies renewed in the years 1985-86, 1986-87 and 1987-88. Details of these policies have been mentioned in paragraph 1 of the additional pleas in the written statement. According to the next paragraph, M/s. Sohan Singh and Sons had also a separate workshop situate at Municipal No. 195 Opposite Gurudwara Hemkund, Laxman Jhoola Road, Rishikesh for which a separate Insurance Policy No. 1553200059 for the period 30th March, 1987 to 30th March, 1988 for a total value of Rupees Seventy five thousand in respect of Crank-shaft grinding machine and Lathe Machine had been obtained from the Opposite Party. There was no insurance in respect of any stocks or furniture etc for these premises. No claim for any loss for these could be made to or entertained by the Insurance Company and the repudiation of the claim made in regard thereto was valid. In the written statement it has also been pleaded that the copy of the proposal form for the Multi-perils Insurance policy taken in the year 1984 has been placed on the record and is the basis for the policy taken by the complainant in that year and subsequently got renewed for the three succeeding years. That policy related to the premises at No. 7 Laxman Jhoola Road and not those at No. 195 (Opposite Hem Kund Gurudwara), Laxman Jhoola Road where the loss is said to have taken place.

3. SEVERAL documents have been filed by the Insurance Company, with an affidavit of its Senior Divisional Manager, Lucknow to establish its version. The Complainant has traversed the version of the Insurance Company in the written statement by filing a detailed rejoinder and placing on record voluminous documentary evidence, running into nearly one hundred pages, on affidavit.

4. BASICALLY, the parties are at issue on the question whether the premises at which the loss of property is said to have taken place were covered by the Multiperils insurance policy at the relevant time or not. Upon the answer to this question would depend the answer to the further question whether the repudiation of the claim by the Insurance Company was justified and if not, what was the relief to which the complainant would be entitled in these proceedings. There is serious dispute between the parties on the basic question itself. The Insurance Company has been-emphatic in its stand that the premises where the

loss is said to have taken place, that is, workshop situate in the premises Opposite Gurudwara Hem Kund on Laxman Jhoola Road, Rishikesh were not insured for any loss under the Multi-perils insurance policy. That policy related to the premises at 7 Laxman Jhoola Road at a distance of about half a kilometre from the premises Opposite Gurudwara Hem Kund. The complainant is equally emphatic in his plea that the premises in question were duly insured. Both the parties have filed affidavits in support of their plea and placed documents on record. The complainant says that the real proposal form, which is the basis for the insurance policy, is being suppressed by the Company. What has been placed on the record of these proceedings, according to the complainant, as the proposal form is not relatable to the policy which covers the risk. The company says it is the real proposal form which is the basis for the Multi-perils policy and the subsequent renewals thereof and pertains to premises No. 7 Laxman Jhoola Road. There is oath against oath.

5. THE documents filed by the parties include a number of policy documents, letters from the State Bank, Income Tax Assessment orders, Sales Tax Assessment orders, partnership Deed, Bills and Vouchers from various dealers and the like. In these summary proceedings it is neither feasible nor desirable to decide the contentious issues particularly when it appears necessary, in the State of pleadings and the evidence brought on record, to examine oral evidence for the purpose.

6. WE hold that in the circumstances of the present case parties should get their dispute resolved by recourse to appropriate legal forum and that it is not appropriate to decide the claim in these summary proceedings. The complaint shall stand dismissed without going into the merits of the claim. Costs on parties. A copy of this order shall be made available to parties in accordance with Rule 4 (10) of the U.P. Upbhokta Sanrakshan Neyamawali, 1987. Complaint dismissed.