(2009) 07 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

Sri Laxmi Jute Traders APPELLANT

Vs

Original Petition No. 365 Of 1999 RESPONDENT

Date of Decision : 01-07-2009

Acts Referred:

Citation : 2009 4 CPJ 35

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

Final Decision : Complaint partly allowed.

Judgement

1. COMPLAINT was filed, inter alia, alleging that the complainant, a partnership firm, has been carrying on business of jute bags, jute twins and jute products. It purchased policy No. 1161180206902 of Rs. 1 crore valid for the period from 18.3.1996 to 17.3.1997 and policy No. 1161180206555 of Rs. 50 lakh for the period from 29.12.1995 to 28.12.1996 covering the peril of fire to the stocks of all varieties of gunny, twin and other packaging material from the opposite party Insurance Company. On 8.11.1996, at about 3.30 a.m., fire broke out in the factory -cum -godown of the complainant due to short -circuit. Fire tenders put off the fire without much delay. Still the factory -cum -godown was completely gutted. Since FIR was not registered by the police, the complainant filed a complaint before the IV Additional Munsif Magistrate, Guntur. Pursuant to the direction passed in that complaint, an FIR was registered by the police on 31.12.1996. It was further alleged that opposite party Insurance Company was informed of the fire incident on 8.11.1996 itself. Between January 1997 and April 1998, the opposite party appointed 3 Surveyors/investigators. Complainant lodged claim with the Insurance Company on 30.1.1997 for an amount of Rs. 63,48,750. It was stated that when the opposite party failed to settle the claim, the complainant got a legal notice on 18.4.1998 served on it. In response to that notice, the opposite party got sent a reply on 26.5.1998, inter alia, alleging that the claim was fraudulent. Attributing deficiency in service, direction was sought to be made to the opposite party Insurance Company to pay a sum of Rs. 63,48,750 along with interest at the rate of 18% per annum from 8.11.1996 till date of payment, to the complainant.

2. OPPOSITE party -Insurance Company contested the complaint by filing written version. Purchase of two fire "C" policies by the complainant was not disputed. However, it was alleged that the fire was not due to electrical short -circuit but was a planned act of the complainant. Complainant grossly over -insured the stock for Rs. 1.5 crores with a view to gain unlawful gains. Answering Insurance Company at the request of complainant, made endorsement on Policy No. 1161180206555 on 13.5.1996 covering the financial interest of State Bank of India, Main Branch, Guntur with effect from 24.4.1996. At the request of complainant, the opposite party further made endorsement on two policies that the stocks covered by them be shifted to D. No. 19.7.682, godown belonging to Utmal Lakshmi Chand Jain. This endorsement was to have effect from 18.3.1996. On 8.11.1996, D. Srinivas Reddy on behalf of complainant intimated the opposite party of the damage to the stocks due to fire. Insurance Company immediately appointed S. Sitaramulu for conducting preliminary survey. This preliminary surveyor submitted his report on 11.3.1997. Considering this preliminary survey report, the Insurance Company appointed B. Nageshwara Rao to conduct investigation. Shri Rao submitted his investigation report on 21.7.1997. Insurance Company further appointed M/s. S. Sunder Raman and Associates, Surveyor to conduct the final survey. Surveyor held correspondence with the complainant on 13.5.1997, 14.5.1997, 25.5.1997, 31.5.1997, 9.6.1997, 16.6.1997, 28.6.1997, 5.7.1997, 8.7.1997 and 28.8.1997. Despite that, the complainant did not furnish complete information to the Surveyor. Surveyor made the interim report dated 7.9.1997. Final report was given on 8.1.1998. After carefully examining the reports of two Surveyors and the investigator as also the conditions of policies, the opposite party Insurance Company repudiated the claim by the letter dated 22.5.1998 on following grounds: (1) The alleged fire broke out at 3.30 a.m. on 8.11.1996 and Fire Brigade arrived at the spot by 3.45 a.m. and the fire was put off within short time. Hence, loss for a tune of Rs. 75,00,000 within short time is not possible.

(2) Complainant changed the alleged loss in the fire accident from time to time.

(3) Stocking area of the fire affected building cannot hold the material that was claimed as loss in the fire accident.

(4) Copies of credit bills that are submitted by the complainant are reportedly raised by non -existing company.

(5) The latest stock statement submitted to the bank prior to fire occurrence was indicating meagre stock value.

(6) Stocks sent by parties from out of state on consignment basis are recorded as own stocks.

(7) The salvage material and debris of the fire accident was removed without prior permission from the Insurance Company or the Surveyor.

(8) The debris in the accident was recorded by the preliminary Surveyor as

pieces of old gunnies.

(9) The fire markings in the premises involved in the fire accident is not indicating any loss to the stocked material of jute products. No damage to the building for which Rs. 75,00,000 worth of property was claimed as lost.

Liability to pay the amount claimed was denied.

3. ALONG with written version, the copies of reports of Surveyors and Investigator as also of the policies were filed on 12.7.2004. We have heard Mr. K. Maruti Rao for the complainant and Mr. S.M. Tripathi for the opposite party and have been taken through the record.

4. IN support of the complaint, affidavit of Donti Reddy Sambi Reddy, Managing Partner was filed. Affidavit of P.A. Jagannadha Rao was filed on behalf of Insurance Company in evidence.

5. PLEA in regard to the fire being engineered as taken in the written version was not pressed during the course of arguments.

6. PRELIMINAR Y survey report dated 11.3.1997 of S. Sitaramulu, who visited the site of fire on 8.11.1996 itself, has great bearing in the case and the material portion thereof is reproduced below: "Description of the insured and insured property -

The insured property is located on the Deccan premises and housed in a pucca shed measuring 47''x53'' bordered by the property belonging to Shantilal and Company on the north, on the west by that of Smt. Shanti Devi Recolchand Kora, on the south godown and on the east by a 19'' wide road.

The insured is a partnership firm with Sri Donti Reddy Sambi Reddy s/o Sri Venkata Reddy as Managing Partner and Sri Donti Reddy Sreenivasa Reddy and Sri Donti Reddy Madhusudana Reddy sons Sri Donti Reddy Sambi Reddy as partners. The insured firm hired the shed from Smt. Jannam Bai w/o Sri Shawotumal, the sole proprietor of Janta Tobacco Company. The insured located their industry Lakshmi Jute Industries, its activity being stitching of gunny bags etc. in the shed. The same shed was also used as a godown to keep the stocks of Lakshmi Jute Traders as sister concern a trading firm belonging to the insured.

The bag stitching machines mounted on wooden tables with motors and starters, 15 in number occupied a space of 1100 sq. ft. (this included the working space needed by the operators of the machines). Leaving the corridor 4'' wide and 50'' long connecting opposite doors on the gable walls thus the space available for storing the jute gunnies of the Lakshmi Jute Traders is 1100 sq. ft. only.

The insured obtained loan for his industry, i.e., Lakshmi Jute Industries and trade limits to Lakshmi Jute Traders from State Bank of India, Main Branch, Guntur.

The main activity of the insured firm Lakshmi Jute Traders is to deal in jute gunnies, i.e., purchasing and selling of the gunnies etc.

Description of damage

I found heaps of burnt and partially burnt jute gunny material spread on the floor on disturbing the heaps. I found underneath partially burnt and burnt jute rags and pieces of worn out and discarded jute bag pieces and to my surprise there was not even a piece of unburnt or burnt jute bags. Also strangely no attempt was made to retrieve or salvage the material by the insured or his people.

Five of the 15 stitching machines installed in the shed suffered complete damage along with entire wiring and the main switch board. The ceiling fans got their blades either twisted or disintegrated. I found no evidence of any gunny either loose or in the form of bales either in the burnt or semi -burnt form. Thus it is clear that the heaps of jute gunny cloth rags and useless and discarded old gunny pieces were only burnt.

Cause of occurrence

My close inspection of the burnt materials and the way the entire wiring was scorched led me to conclude that the cause of occurrence was neither due to electrical short circuit nor due to malfunction but may be due to human agency and the act may be deliberate and planned. Stocks position as per stock register for the year 1996 -97 furnished by the insured was that there was a stock of jute gunnies worth Rs. 43,11,627.

With regard to the stock shown in the register on 1.4.1996 no information is forthcoming from the insured such as the stock register for the year 1995 -96. The insured failed to produce the stock register for the year 1995 -96 despite our asking him to do so orally and through letters.

In the stock register it is shown that the insured purchased jute gunnies from Narayana Reddy Traders, Mandapeta worth of Rs. 2,59,582 on 3.11.1996 and on 4.11.1996 with Rs. 2,39,255. Also it was shown jute bags were purchased for Rs. 2,02,560 on 6.11.1996 and on the same day for Rs. 3,03,870 from Narayana Reddy Agencies, Mandapeta. Thus these purchases from both the suppliers totalled Rs. 9,96,861.25.

To enquire into this transaction we went to Mandapeta, East Godawari District. We found that the two firms Narayana Reddy Traders and Narayana Reddy Agencies are sister concerns in spite of the entries in the account books and bill books shown that the bills were false and people could not show us the way -bills they issued to transport these consignments. The consignments were claimed to have been sent by lorries bearing No. AP5T 6263, AP5x472 from Mandapeta to Guntur.

We enquired about the lorries and operators of the vehicle. When contacted they stated that they had not transported those consignments on their vehicles. The driver of the vehicle stated that vehicle was engaged in transporting rice to Kakinada and his vehicle was held up by the cyclone until 8.11.1996. The other vehicle driver also stated that he had not transported any consignment to the insured on these days. Thus these bills were only fictitious and false and fabricated as an afterthought falsely and the consignment relating to these bills never reached the insured.

I am of the conclusion that these entries are false beyond any doubt and entered falsely in the stock register entries dated 4.11.1996 showing purchases from Vigneswara Enterprises, Guntur for Rs. 2,47,250, on 5.11.1996 for Rs. 4,84,500 and 6.11.1996 for Rs. 2,42,250 led us to enquire about the suppliers.......... We combed the area for the address of the office of Vigneswara Enterprises but we could not find any office of the firm at the address given and the people of the area told us that they were not aware of the existence of any such business firm there.

With regard to the stock claimed to have been held and stored by the insured as shown in the stock register the following are my observations:

(1) Jute gunnies valued at Rs. 12,27,000 purchased from Kanorie Jute Industries, Calcutta in six consignments Nos. 1222, 1223, 1224, 1225, 1226 claimed to have been received and shown in the day book pages 87, 88 and 90 of 95 -96.

(a) All the materials under these consignments was brought on credit through G.M. Co -operation.

(b) The entries in the day book appear to have been made only after the fire accident as can be seen the way they were entered without accompanying details such as ledger page No. and consignment details etc. in contrast to the entries made in the similar cases.

(c) The insured had not made any payment towards the cost of these consignments till date.

(2) Jute gunny valued at Rs. 2,08,179 claimed to have been purchased by the insured and shown in the day book at page 87 dated 18.11.1995.

(a) It was shown that the materials were sent on credit.

(b) Entry in the day book appear to have been made at a later date, i.e., after the fire mishap, in the existing gap left in the account book.

(c) No ledger posting No. was shown against the entry and though the entry was made in the ledger the accompanying details were conscious by their absence.

(d) No payment has been made till date.

(3) In the day book big gaps were left and these gaps were used for the entries at a later date.

(4) Account for each day was not closed at the end of the day and balances were not shown clearly providing scope to make entries such as the above.

(5) The following pages from the ledger for the year 1995 -96 are found removed. Pages 9, 10, 11, 12, 45, 46, 137 and 138.

(6) The insured in spite of our several letters to produce the documents such as the stock register for the year 1995 -96 has not done so till date.

(7) The insured purchased the above stock of jute gunnies on credit only.

(8) In addition to the worth of Rs. 19,99,900 shown as held by the insured by 1.4.1996, his account books show that gunny bags worth Rs. 9,82,500 was purchased by him in contrast to the sales during the corresponding period only worth Rs. 6,37,205. Thus by 1.11.1996 he claims to have a stock worth Rs. 23,45,265.

(9) His stock register for the year 1996 -97 shows that he purchased jute gunnies worth Rs. 19,65,862 on 3.11.1996, 4.11.1996, 5.11.1996 and 6.11.1996 just before the occurrence of the fire incident. Thus the stocks shown in the above stock register were worth Rs. 43,11,127.

(10) The space available in the shed can hold only stocks worth Rs. 20,00,000 maximum. When as the space in the shed cannot accommodate stocks worth more than Rs. 20,00,000 the stock register for the year 1996 -97 of the Lakshmi Jute Traders shows stock worth Rs. 43,11,127 and the claim form submitted by the insured shows the loss to be Rs. 63 lakh approximately.

The apparent incongruity and contradictions clearly establish the mala fide intention of the insured to defraud the Insurance Company.

(11) The insured despite my instructions not to disturb the place of occurrence, removed all the burnt, semi burnt and unburnt jute gunnies scrap and failed to explain why he did so. Only to remove the evidence that the entire materials burnt was only scrap and rags.

(12) He failed to show all the documents, account books, etc. on the day of my inspection i.e. 8.11.1996 and later on demand furnished us not all but some of the books and documents related to the claim very intriguingly the accounts of the insured shows that all the material was purchased on credit only. No payments were shown to have been made to the suppliers even after a year.

(13) The insured has not complied with my request to hand over the stock register of the Lakshmi Jute Traders for the year 1995 -96 to enable me to verify the stock position after beginning of the financial year 96 -97.

(14) Already showing a stock of 23,00,000 approximately the insured inscrutably boosted up the stock to Rs. 43,00,000 approximately by producing credit bills for Rs. 20,00,000 approximately just before the occurrence ...."

7. THIS report also deals with the claim of Lakshmi Jute Industries, sister concern of the complainant who purchased Policy bearing No. 1161180207643 covering the risk to the machineries, furniture and fixtures and generators

against fire, from the opposite party Insurance Company. As noticed above, copy of this preliminary survey report was filed along with the written statement. Despite mention being made in the above report dated 11.3.1997 about the size of space available being about 1100 sq. ft. and that space being sufficient to hold a maximum stock of gunnies of the value of not more than Rs. 20 lakh, Donti Reddy Sambi Reddy, Managing Partner of complainant, in his affidavit has not controverted that factual statement. He also not deny that the stock register of 1995 -96, despite being demanded by the preliminary as also final Surveyor, was not produced by the complainant. Investigator''s report dated 21.7.1997 notices that the closing stock as on 31.3.1996 of the complainant firm was Rs. 19,99,970 and as per the monthly stock statement submitted by the complainant to the bank, as on 20.10.1996, the stock value was Rs. 8,16,768. Fire had occurred after 18 days of the furnishing of this monthly statement. Stock position as obtaining in the said monthly statement is binding on the complainant. At this stage, it would be profitable to refer to the interim report dated 7.9.1997 given by S. Sunder Raman and Associates, final Surveyor. Para 4.3 onwards of this report being material, are reproduced below: "4.3 Though there was a drastic drop in the volume of sales during the period 1.4.1996 to the date of fire (Rs. 6,64,182) as compared with the earlier year ended 31.3.1996 (Rs. 55,30,121) the insured has indicated to have made purchases amounting to Rs. 29,49,361, of which Rs. 19,65,861 were made from 3.11.1996 to 6.11.1996, hardly 3 to 5 days before the date of fire.

4.3.1 Reference in this regard is sought to be made with the preliminary survey report on this matter.

4.4 Subject to confirmation of the purchases made during 1995 -96, the stock as on 31.3.1996 as per book furnished worked out to Rs. 15,81,740, whereas the figure was shown at Rs. 19,99,970 in the balance sheet as on 31.3.1996.

4.5. The debtors stood at Rs. 26,86,491 as on 31.3.1996, and the same have not been carried forward for the year beginning on 1.4.1996.

4.6. In respect of purchases stated to have been made during 1995 -96, the following are our observations:

S. No. Name of the Supplier Period of purchase Amount Rs. Remarks (a) Samnuggur Jute Factory Nov. 1995 2,08,179 No payments made upto 31.6.1996. Not carried forward as opening balance as on 1.4.1996. (b) Kanoria Jute Industries Nov. 1995 1,227,000 No purchase bill. These were actually received on consignment advice for sale. No payments upto 31.3.1996. Balance not carried forward as opening balance on 1.4.1996. (c) Union General Co. Feb. 1996 5,53,364 Purchase bill value Rs. 2,19,191 only. Balance not carried forward as opening balance on 1.4.1996. (d) Sri Bhajrang Jute Mill Bal. As on 31.3.1996 3,33,893 Carried forward opening balance on 1.4.1996 Rs. 2,73,559. (e) G.M. Corporation Calcutta -do - 6,75,632 Carried forward Rs. Nil, as opening balance on 1.4.1996. (f) East India Commercial Corpn. -do - 6,72,132 Carried forward

1.4.1996 opening balance Rs. 9.09.580.

4.6.1 Out of purchases made during 1995 -96 Rs. 66,95,474, we have so far received confirmation for Rs. 33,01,462, vide Annexure -2.

4.7. The ledger folios (for the year ending 31.3.96) Nos. 0 -12, 45, 46, 123, 124, 137, 138 were missing.

4.8. In respect of purchase indicated to have been made from a party, M/s. Narayana Reddy Traders, for Rs. 4,90,421.25, the Way Bill of M/s. Lakshmi Jute Traders was attached as support in evidence of goods despatched by said suppliers.

4.8.1 We have asked for clarification on this from insured with supporting notification from Commercial Tax Authorities whether such procedures are permitted in Andhra Pradesh.

4.9 As per stock register furnished by the insured, the balance of stock was valued at Rs. 43,11,257 on the date of fire, whereas the claim was made for Rs. 63,48,7.50 and details have not been furnished in respect of the same.

5.0 ESTIMATE OF LOSS

5.1 In view of the foregoing lack of authenticities supporting documentation/ explanations from the insured, non -receipt of confirmation from any suppliers, difference between insured''s records and that of suppliers'' records in certain cases, wherever confirmation letters have been received at our end and also due to various specific observations mentioned earlier in our report, we based on available records are forwarding our Interim Assessment on Loss due to fire.

5.2 Based on reasons explained above, we give below Estimate of Loss in two different methods for the consideration of the insurers concerned.............."

8. UNDER Method -I, the estimated value of the stock on the date of fire was determined at Rs. 13,09,460. Under Method -II, same was fixed at Rs. 20,80,192 subject to certain confirmations noticed in para 5.2.2 of the report.

9. IN the final survey report dated 8.1.1998, the Surveyor finally recommended the payment of Rs. 3,12,589 observing in paras 3 to 4.2 thus: "3. Even though we had considered purchases from M/s. Vigneswara Enterprises, we have been seeking confirmation from the insured in the form of an affidavit, which they have now provided, is enclosed. (Enclosure -21)

4. We are enclosing copies of the consignment advice issued by M/s. Samnuggar Jute Factory Co. Ltd., Calcutta; and M/s. Angus Jute Works, Angus (West Bengal), and M/s. Kanoria Jute and Industries Ltd., Calcutta, vide Enclosure -3. From these 3 advices, it is clear that the above parties have requested the insured to act as consignment agent, wherein they are eligible for a commission against sales proceeds and in no way they would become the absolute owner of the property.

4.1 In this connection we are enclosing Enclosure -4, Commission Patti Statement, as provided by the insured.

4.2 From the above transactions, it is evident that they are acting as Consignment Agent drawing commission against sales and without any specific endorsement in the policy under Held in Trust'' clause, the stocks pertaining to the above parties do not entail admittance under the claim.

Further as there is a continuous insistance from the insured stating that they had carried out direct trading of the material, in spite of our having the above documents to confirm them as Consignment Sales'', we have given one another opportunity to provide us with copies of C'' Form under which the consignments have been purchased by the insured. Only against such confirmed C'' Form transaction, the ownership of these materials could be considered as that belonging to the insured.

Till today the insured has not provided copies of C'' Form; and further from the consignment advice letter from various parties provided with this report, under Enclosure 3, it could be seen that the parties have asked them to provide Form F'', which establishes that the transactions done by the insured on these supplies is only a Consignment Sale and not absolute ownership, as claimed by them.

Even though in our Interim Report under Method II we had considered the stock of material held by the insured under Consignment Sales for assessing the loss, we had made a specific recommendation that Method I as provided in our report should be adopted as the basis for settlement of claim, subject to admittance of liability by the underwriters.

We once again reiterate that for reasons explained above, the Assessment of Loss can only be considered as carried out by us under Method I, which again is now being reworked and given below for reasons explained in the paras 1 and 1.1 above:

Rs. Estimated value of stocks on the date of fire (As per Method I of our Interim Report) 13,09,460 LESS: Purchases from M/s. Narayana Reddy Agencies and M/s. Narayana Reddy Traders not considered for reasons Contained in paras 1 and 1.1 above 9,96,871 Value of stocks on the date of fire now estimated 3,12,589

10. MR . Rao, Advocate has not been able to convince us as to why on given facts, we should take a view different from that taken by the final Surveyor as regards quantum of loss. Insurance Company was deficient in service in having rejected the claim made in entirety.

11. ACCORDINGL Y , the complaint is partly allowed with direction to the opposite party Insurance Company to pay amount of Rs. 3,12,589 with interest at the rate of 12% per annum from after two months of the final survey report dated 8.1.1998, to the complainant. Insurance Company will also pay Rs. 20,000 as costs to the complainant. Complaint partly allowed.

