(2014) 01 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

Sunanda Kishor Bhand APPELLANT

Vs

UNITED INDIA INSURANCE COMPANY LIMITED RESPONDENT

Date of Decision : 15-01-2014

Acts Referred:

Citation : 2014 0 NCDRC 62 : 2014 1 CPJ 369

Hon'ble Judges : J.M.MALIK , S.M.Kantikar J.

Advocate : GAUTAM GODARA , RAVI BAKSHI , Dibya Kumari

Judgement

1. THE key controversy swirls round the report of a surveyor appointed by the Insurance Company. Mrs. Sunanda Kishore Bhand and Mr. Manoj Eknath Bhand, the complainants are partners of Gajanan Corrugation Industries. They are transacting the business of manufacturing corrugated boxes, sheets and rolls at village Satral, District Ahmednagar. Their factory premises were insured through four Insurance policies with United India Insurance Company Limited. Unfortunately on 30.03.1998, their factory was gutted in fire and all the machinery, raw material, furniture and fixtures, ready material, documents relating to the day -to -day function of the business such as stock registers, bills of creditors, order register, all types of accounts were totally burnt out at once and the entire goods were reduced into ashes. The insurance company and police were informed. The loss of materials was in the sum of Rs. 32,53,000/ - and costs of machinery was in the sum of Rs. 7,55,253/ -, which were burnt in the fire. The surveyor visited the spot. The Insurance Company settled the claim by paying Rs. 4,37,477/ - on the basis of the assessment made by the surveyor. According to the complainant, it accepted that amount under protest. The present complaint was filed in this Commission on 15.05.2000 with the following prayers: - ''''(8) THE COMPLAINANTS THEREFORE PRAY THAT: A) The opponent be directed to re -assess the claim of the complainants. B) The balance amount of Rs. 35,00,000/ - approximately be awarded to the complainant from the opponent. C) The interest on the above amount be awarded to the complainants at the rate of 18% p.a. from May, 1998 till realization. D) The complainants be awarded Rs. 1,00,000/ - towards mental torture suffered by them during the

period. E) The costs of this complaint application Rs. 10,000/ - be awarded to the complainants from the opponent. F) Grant any other relief, which the Hon. Court thinks fit and proper. ''''

2. THE Opposite Party has hotly contested this case. We have heard the counsel for the parties at length. The first question which falls for consideration is, ''''whether the complainant had received the amount of Rs. 4,37,477/ - in a full and final payment of the dispute pending between the parties ''''. The learned counsel for the complainant argued with vehemence that they have taken this amount under protest. In this connection he has invited our attention towards the voucher at page No. 88, which clearly goes to show that voucher was accepted by S.K. Bhand under protest. Counsel for the complainant also submitted that this fact stands further established by the affidavit filed by the Bank by Murlidhar Tribak Sarode. The relevant extract is reproduced here as under: - ''''The voucher annexed to the petition which as shown to me, is the same voucher sent by the bank to the Insurance Company. In this voucher partner of M/s. Gajanan corrugation accepted the amount under protest. The contents i.e. ''''Agree under protest '''' is true and correct. ''''

3. ON the other hand, counsel for the Opposite Party strenuously argued that this voucher is false and manipulated. The words ''agreed under protest '' were subsequently interpolated. In order to demolish the charge of the Complainant, the Ld. Counsel has invited our attention towards his own file, where the copy was given for Nagar Urban Bank Limited to its agent, there is no protest mentioned thereon. We have kept those copies from the counsel ''s file at this eleventh hour on the record. Affidavit of Mr. Prakash Kokane, employee of the Insurance Company was filed. The relevant extract runs as follows: - ''''I submit that copy of discharge voucher placed on record by the opposite party / insurance company is that of the original discharge voucher which was received by the Insurance Company from the Bank and it had no endorsement of the complainant to the effect ''''agreed under protest '''' or the signature of the complainant thereon. ''''

4. AFTER having subjected the evidence to a closet scrutiny we find that a clear picture does not begin to jell. The voucher produced by the complainant is signed by the complainant itself. The copy of the voucher produced by Murlidhar Tribak Sarode pertains to the Bank. It is quite possible that the complainant might have accepted this amount under protest. Consequently it does not stand established that the complainant had manipulated the said voucher. The original disbursement voucher did not see the light of the day. It should have been produced before this Commission to clear the air of doubts. It would have gone a long way to bring us face to face with the reality. However, the possibility of its manipulation by the complainant cannot be ruled out. Consequently due to lack of cogent and plausible evidence, we decide this case in the favour of the complainant. The second submission made on behalf of the complainant is that the claim granted to the complainant is inadequate. The OP has considered the

four policies and the complainant should have been granted the remaining Rs. 35,00,000/ - with interest alongwith compensation for harassment and mental agony. He has invited our attention towards two authorities.

5. IN Koyal Textiles Verus United India Insurance Company Ltd. [I (2007 CPJ 135 (NC)], it was held that genuine bills regarding purchase of stock were produced on record. The commission found it difficult to conclude that the said stock were was not kept in factory premises at relevant time. Books of account and purchase bills fully supported the claim of the complainant. The matter was decided in favour of the complainant.

6. THE second authority is reported in New India Assurance Company Ltd. versus Pardeep Kumar (2009) 7 Supreme Court Cases 787, wherein it was held: - ''''22. In other words although the assessment of loss by the approved surveyor is a prerequisite for payment or settlement of claim of twenty thousand rupees or more by insurer, but surveyor ''s report is not the last and final word. It is not that sacrosanct that it cannot be departed from; it is not conclusive. The approved surveyor ''s report may be the basis or foundation for settlement of a claim by the insurer in respect of the loss suffered by the insured but surely such report is neither binding upon the insurer nor insured. ''''

Instead of touching to the heart of the problem, the learned counsel for the complainant just skirted it. We are of the considered view that both these authorities hardly dovetail with the facts of the instant case. It is well known that the report of Surveyor is the crucial evidence. In order to scrub it strong reasons are required, though it cannot be laid down as a rule of thumb that the report of the surveyor is to be accepted under all the circumstances.

7. IN United India Insurance Co. Ltd. and Others Versus Roshan Lal Oil Mills Ltd. and Ors. (2000) 10 Supreme Court Cases 19, in para No. 7, it was held: - ''''7. The appellant had appointed joint surveyors in terms of Section 64 -UM (2) of the Insurance Act, 1938. Their report has been placed on the record in which a detailed account of the factors on the basis of which the joint surveyors had come to the conclusion that there was no loss or damage caused on account of fire, was given and it was on this basis that the claim was not found entertainable. This is an important document, which was placed before the Commission but the Commission, curiously, has not considered the report. Since the claim of the respondent was repudiated by the appellant on the basis of the joint survey report, the Commission was not justified in awarding the insurance amount to the respondent without adverting itself to the contents of the joint survey report specially the factors enumerated therein. In our opinion, non - consideration of this important document has resulted in serious miscarriage of justice and vitiates the judgment passed by the Commission. The case has, therefore, to be sent back to the Commission for a fresh hearing. ''''

8. IT is well settled law that a surveyor ''s report has significant evidentiary value, unless is proved otherwise which the complainant has failed to do so in

the case. This view was taken in the case of D.N. Badoni Vs. Oriental Insurance Co. Ltd. I (2012) C.P.J. 272 (NC). The report of the surveyor has got infinite value and we have no reason to discard the same. The following extracts from the report submitted by the complainant are very material and clinching. (i) About 13 rolls partly burnt were found inside the shed & 6 rolls '' end faces burnt were found outside the factory premises. Some quantity of paper cutting/strips were found outside the factory shed; but was not burnt. (ii) But the insured reported that, all the records pertaining to his factory; such as bill books, delivery challans, purchase bills; as well as vouchers were gutted in the fire accident and it will take considerable time for him to recollect from the suppliers. (iii) Regarding the Balance Sheet & Sales Tax Challans, he reported that, some of the Sales Tax Challans have been filed; but the Balance Sheet for last 3 years is not prepared, as well as submitted to Income Tax Authorities. (iv) After receipt of our letter, insured approached his Chartered Accountant and in the consultation, has prepared the Balance Sheet for last 3 years. (v) 14.1. Valuation of Machinery The total sum insured towards the various machineries is Rs.7,55,283/ - The quotation submitted by the insured for the replacement of this machinery is taken into consideration, while calculating the replacement cost which works to JUDGEMENT_62_NCDRC_2014.htm Therefore, insurers '' share of loss due to under insurance will be (7,55,283 / 11,19,867) 67.44 %. (vi) 14.2 Valuation of Stock: - In absence of any authentic documents, we have obtained 3 methods to arrive the stock stored at the time of loss. Out of all these 3 methods, the maximum stock works to Rs. 1,80,000/ - stored at the time of fire. The insured has various policies of the stock amounting to total sum insured of Rs. 39 lakhs. (vii) . Hence only the Bank Statements, showing the deposits & withdrawals can be relied upon upto a certain limit. This unit is financed by The Nagar Urban Co -op Bank Ltd. But this bank account is not operated for considerable time & as per banking norms it is declared as Non Performing Assetts. (viii). Insured reported that operating accounts are in Canara Bank & Sangmner Merchant Co -op Bank Ltd. The scrutiny of the Canara Bank Statements indicate that, the insured has deposited cheques received from customers. Almost in all cases, the amount is withdrawn by the insured on the following day. ix) So it could be concluded that, the insured ''s turnover for 96 -97 was Rs.10.53 lakhs & for 97 -98 it was Rs. 4.57 lakhs. In the absence of evidence we have not taken into account cash sales if any. (x) Therefore Net Max. probably stock in the premises on the day of loss will be 33.07 * 0.4 = 13.23 M.T. * 12,000 = Rs.1,58,760.00. (xi) 15.00 Summary of assessment : - JUDGEMENT_62_NCDRC_20141.htm

9. IT is thus clear that the complainant is trying to make bricks without straw. Except the ipse dixit of the complainant, there is no material brought on record to support its claim. The production of stock -register, Balance sheet, Income Tax Returns, Sales Tax Challans statement of the bank account would have gone way to pave the way to reality. Recreation of stock register after the lapse of three years, NPA of assets, non production of any evidence, the case of the complainant collapses like a proverbial house of cards.

10. NO reason for discarding the evidence of the surveyor was suggested. The surveyor appears to be a guileless person. His evidence was never subjected to cross -examination. No interrogatories were ever put. The complainant ''s attempted tilt at windmills does not produce the desired result. The case of the complainant is dismissed. No costs.

