(2017) 08 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Case No : 549 of 2013

SURINDER PAL SINGH S/O BALDEV RAJ PROP, M/S LUDDU DI HATTI — APPELLANT

Vs

UNITED INDIA INSURANCE COMPANY LTD., & ORS. — RESPONDENT

Date of Decision : 03-08-2017

Acts Referred:
Consumer Protection Act, 1986, Section 21(b) - Jurisdiction of the National Commission

Citation : (2017) 08 NCDRC CK 0001

Hon'ble Judges : Rekha Gupta

Advocate : GAUTAM GODARA, MAIBAM N. SINGH

Judgement

1. The present revision petition has been filed against the judgment dated 31.10.2012 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh (''the State Commission'') in First Appeal no. 299 of 2008.

2. The facts of the case as per the petitioner/ complainant are that Mr Surinder Pal Singh - petitioner herein is the proprietor of M/s Laddu Di Hatti, Beas has filed the present complaint alleging therein that the petitioner was running a shop for the sale of clothes for the last 15 years. The petitioner raised a loan to the tune of Rs.3,00,000/- as cash credit hypothecation limit from Central Bank of India, Branch Office, Beas for enhancement of petitioner''s business. The petitioner also got an insurance policy in-respect of the stocks lying with him to the tune of Rs.7.00 lakh on 11.10.2004 after paying the premium of Rs.3978/- which was effective from 10.00 AM on 12.10.2004 to midnight of 12.10.2005.

3. The petitioner has stated that his business premises caught fire on account of short-circuiting of electric connection on 13.10.2004 as a result of which the entire insured goods and the shop of the petitioner were burnt and the petitioner had suffered huge loss as his entire stock was damaged. The matter was reported to the police station on 13.10.2004 and the respondent - insurance company were also informed on the same day. Survey was also conducted on

13.10.2004 by Shri Sumant Sood, surveyor appointed by the respondents. The surveyor asked the petitioner vide letter dated 13.10.2004 to submit certain documents which were supplied by the petitioner. Thereafter, the petitioner visited the office of the respondents on number of occasions and submitted representation for consideration of the claim on 26.10.2005, 07.11.2005, 14.11.2005 and thereafter a legal notice dated 28.04.2006 was also served. It was further stated that the respondents had flatly refused to consider the claim of the petitioner. Alleging deficiency in service, the petitioner filed a consumer complaint before the District Forum seeking directions to the respondents to pay compensation of Rs.7.00 lakh along with interest at the rate of 18% per annum. He also demanded an amount of Rs.11,000/- for harassment and mental tension and Rs.3.00 lakh along with interest which was raised by him from the Bank to start his business. An amount of Rs.10,000/- was demanded as litigation expenses.

4. On notice, the respondents filed their written statement in which it has been submitted that the petitioner filed the complaint in his personal capacity and the insured, i.e., Laddu Di Hatti has not been impleaded as a necessary party. It was categorically stated that the petitioner had failed to supply the requisite documents to the surveyor as well as to the respondents. Therefore, the claim was closed as ''no claim'' in the month of September 2007. Hence, there was neither any deficiency in service nor any delay on the part of the respondents. The petitioner had claimed a sum of Rs.7.00 lakh as compensation which was without any basis because the independent surveyor, appointed by the respondents, had submitted a detailed survey report according to which the actual loss of the appellant had been assessed to the tune of Rs.62,907/- only. It was further pleaded that the petitioner had sold the salvage without the permission of the respondent - insurance company which was in violation of the terms and conditions of the insurance policy. The matter was also got investigated by the respondents through Mr Virender Kumar Bakshi, who in his report, found the claim preferred by the petitioner to be doubtful for the reasons mentioned in the said report. It was also stated that the petitioner had obtained the insurance policy for the first time and even thereafter he had never renewed his insurance policy from any insurance company. The loss had been caused within a period of three days of obtaining the policy in question which comes under purview of ''close proximity''. It was pointed out that in fact the petitioner was to pay huge amount to the bankers who had filed a recovery suit against him. The investigation has also pointed out that although the fire brigade was available locally but the insured did not bother to call the fire brigade in order to extinguish the fire and reduce the loss which was a clear violation of the terms and conditions contained in the insurance policy. It was specifically pleaded that the appellant did not supply the documents, i.e., estimate of claim, claim form duly filled by him, records of bank as well as other books of account either to the surveyor or to the respondents despite writing several letters by surveyor as well as by the respondents. Therefore, the claim file of the petitioner was closed as

''no claim'' in the month of September 2007 on account of non-submission of documents. Hence, the respondent prayed for the dismissal of the complaint.

5. The District Consumer Disputes Redressal Forum, Amritsar ("the District Forum'') vide its order dated 10 th March 2008 while dismissing the complaint observed as under:

"We have elaborately examined the dispute placed before us for adjudication by viewing the same in the light of the pleadings and evidence brought on record by the parties. The factum of taking of an insurance policy by the complainant concern is not disputed by the opposite party and it is also not disputed that insurance claim of the complainant was filed as no claim. We have examined the present dispute from the angle as to whether the opposite party was justified or otherwise in closing the claim case of the complainant. After examining the dispute from different angle we have come to the following conclusions:

1. We have noticed that the story of fire due to short circuiting in the shop of the complainant is highly doubtful as no expert evidence has been produced by the complainant to prove the factum of there being a short circuit which caused the fire resulting into the damage/ loss to the cloths and other articles lying in the shop of the complainant. Complainant was certainly required to bring a very clear and cogent evidence to prove the cause of the fire.

2. It is an admitted fact that complainant has not called the fire brigade to extinguish the fire and he has admitted that the fire was extinguished by the neighbours. A fire which could be extinguished by some people cannot be called a huge fire as otherwise it should have been impossible to be extinguished. But it is highly doubtful that 06.00 a m, in the month of October so many people were around to notice the fire in the shop of the complainant except for the complainant, who was informed by someone. Ordinarily, no person would venture to break open the shutters of the shop of another. But according to the complainant the shutters were broken open and fire was extinguished by the people suspicion certainly surrounds the version given by the complainant about the incident of fire.

3. Complainant has not produced even an iota of evidence to establish that he has sustained a loss to the tune of Rs.7.00 lakh in this fire. The loss assessed by the surveyor comes to Rs.62,907/-. Complainant has also not been found to have come to the forum with clean hands as it stands established in the report of the surveyor that he has tried to conceal the factum of keeping certain cloths in the adjoining shop. In our considered opinion complainant was supposed to narrate this fact to the investigator and surveyor.

4. Complainant has disposed of the salvage without the prior permission of the opposite party and this act of the complainant amounts to breach and violation of the terms of the insurance policy.

5. Complainant has failed to adduce any documentary evidence or stock register

or any other records to evidence the facts that cloths worth Rs.7.00 lakh were lying in his shop and also the evidence to establish that the entire stock was completely burnt or damaged. The copies of various bills, i.e., bill Ex C 2 to C 81 does not lead the complainant anywhere and we have noticed that certain bills out of the exhibited bills are not authentic and bill Ex C 41, C 42 and C 43 are torn and mutilated. Even these bills are not going to prove that stocks worth Rs.7.00 lakh were lying in the shop.

In our considered opinion it should have been natural course of action for the complainant to have immediately called the fire brigade for extinguishing the fire in the fire brigade. But it has not been made clear by the complainant as to why the need of calling a fire brigade did not arise, once the fire, according to the complainant was a huge fire.

We would like to record that each penny claimed by the complainant in his complaint has to be justified through cogent and convincing oral and documentary evidence by clearly proving the extent of damage to the stocks, building and the cause of fire. But no such evidence has been found on the file. Before parting with the order we would like to record that act and conduct of the complainant also raises certain questions. It is an admitted fact that complainant is running a shop for the last more than 15 years. But he has never insured the stocks lying the shop and the insurance policy was taken by him for the first and the last time after taking of which his shop caught fire three days after the policy because operative. Why complainant was not having a habit of taking the insurance policy in the past and why he stopped taking the insurance policy even after the fire in his shop are the type of question which cause certain doubts about the entire alleged occurrence.

In view of the above, discussion, we find no merit and substance in the present complaint, which is hereby dismissed with no order as to costs. Copies of the orders be furnished to the parties free of costs. File is ordered to be consigned to the record room."

6. Aggrieved by the order of the District Forum, the petitioner filed an appeal before the State Commission. The State Commission while dismissing the appeal observed as under:

"14. Even though the appellant has pleaded that he had supplied the documents as demanded by the surveyor but no such records has been brought on file to confirm the same. The appellant has placed on file the number of bills for the purchase of cloth Ex C 2 to Ex C 81 for the period starting from 06.02.2003 up to the date of incident of the fire in support of his contention that cloth amounting to Rs.6.00 lakh was stocked at the time of incident of fire but these purchases, made over a period of two years, do not substantiate the fact that the whole material, bought through these bills, was actually stocked when the shop caught fire. The surveyor had already demanded various documents from the appellant which included a copy of the stock statement filed with the bank for the month prior to the incident of fire but the same has not so far been supplied. In fact the appellant has neither prepared estimate of loss nor supplied the same nor submitted other relevant record to substantiate his claim on the claim form as demanded by the surveyor. Mere placing on record the bills pertaining to the two years does not prove that all the goods purchased was lying stocked at the time of fire and nothing was sold by appellant over the period. The appellant has only placed on record the account statement of the Central Bank of India as Ex C 94. In this account statement also no payment, on account of the purchases allegedly made by the appellant has been made through payee''s account cheque, and all the transactions in the Bank account are in cash or through bearer cheque. The respondents have proved on record the report of the surveyor as Ex R 7 in which the details of the stock partially damaged in the fire has been assessed as Rs.62,907/- only. Besides this, certain items were also found concealed by the appellant in the adjoining shop which were not damaged. The appellant has not disclosed why he kept these items concealed and not reported the same to the surveyor.

13. Thus, there is a wide variation of claim made by the appellant in respect of stock existing in the shop at the time of the fire and the assessment made by the surveyor. The appellant on the one hand relied upon the report of the surveyor to confirm that the incident of fire had taken place and that the stock in the shop were damaged whereas he is not accepting the assessment made by the same surveyor regarding the actual loss after the verification made at the site and is unnecessarily, without any basis, claiming the total insured amount. The respondents had also appointed Shri Varinder Kumar Bakshi as investigator to investigate the case and he had submitted his report which has been proved as Ex R 5 in which the investigator has clearly concluded that the insured Surinder Pal, i.e., the present appellant availed the limit of Rs.3.00 lakh from the Bank but same was not repaid and the bank had filed a suit for recovery and this incident of fire had been mentioned as intentionally created for getting the insurance claim to get rid of his loan. It was also pointed out that the appellant had been using the bank money for purchasing residential plot and later on he sold it off without permission/ NOC from the Bank and the Bank had filed the suit for recovery. It has also been pointed out that the appellant had been borrowing money from other banks also in his family name and he was defaulter of Canara Bank also. It has also been pointed out that in spite of availability of the fire brigade at Beas the appellant did not call the fire brigade to extinguish the fire.

15. Even though the appellant has contended that he had supplied the documents but all important documents demanded by the surveyor had not been supplied nor the copies of the same have been placed on record to substantiate his contentions. In view of non-submission of the documents by the appellants the respondents have closed the claim of the appellant as "no claim" vide letter dated 18.09.2007 proved as Ex R 9.

16. In view of the vague contentions, which are not at all supported by any

documents, we find no basis of lodging the claim amounting to the full insured amount of Rs.7.00 lakh by the appellant. Incident of fire occurring within 24 hours of purchase of insurance policy definitely raises serious doubts about the genuineness of the incident. Contention of the respondents that the appellant never purchased fire policy either prior to or after the incident of fire, remained un-rebutted. Since the appellant has failed to supply the documents demanded by the surveyor/ respondents, the claim of the appellant has rightly been closed as ''no claim''. Insurance claims, submitted without any supporting documents, cannot be settled by the insurance companies especially when the incident of fire occurs in close proximity of purchase of policy.

Accordingly, the appeal of the appellant, which is devoid of any merit and false and fictitious is dismissed with cost of Rs.10,000/- and impugned order of the District Forum dated 10.03.2008 is upheld".

7. Hence, the present revision petition.

8. I have heard the learned counsel for the parties. Shri Gautam Godara, learned counsel for the petitioner has stated that the lower fora had erred in coming to the conclusion that necessary documents were not given, aseven as per the survey report all the documents have been given. The fire department was not informed as the neighbours had doused the fire and as per the counsel for the petitioner the surveyor on investigation has found that the fire was due to short circuit.

9. Learned counsel for the respondent on the other hand has stated that the respondent had correctly closed the claim as ''no claim'' as no supporting documents were given to justify the claim of Rs.7.00 lakh. Even the survey report notes that the insured was not maintaining the book of accounts and records, except for some purchase bills and some bills of sales. The insured Surinder Pal Singh on enquiry by the surveyor had stated that the fire was due to electric short circuiting in the meter box. Learned counsel for the respondent has contended that the lower fora had correctly dismissed the complaint on a correct appreciation of the facts of case.

10. I have carefully gone through the records of case. In his complaint, the petitioner had mentioned that "the business premises got fire on account of short circuiting of electricity connection as a result of which the entire insured goods and the shop of the complaint were burnt, due to this incident the complainant has suffered huge loss meaning thereby has suffered entire loss of stock and damage caused to the shop/ building". However, he could not explain if it was a huge fire, the reasons why nobody either the neighbour or the petitioner thought of informing the fire brigade. If it was a huge fire, it is not possible that it could have been doused and put out within a short period of time by the neighbours using buckets of water.

11. It is also an admitted fact that the petitioner did not maintain the books of accounts and records except some purchase bills and some bills of sales. He had

given the surveyor the bills for purchase for a period of two years prior to the fire but he could not give the stocks records as also the records pertaining to the sale during the corresponding two years period. He could not also explain why the quantum of stock inspected in the burnt shop did not match either with the insurance or the extent of business being done by the insured. He could also not explain why quantities of undamaged stocks were kept separately in a nearby shop, which after repeated enquiry was opened for inspection. The purchase bills and also the sale could not be authenticated and tallied with the banks records as reportedly most of the transactions were not through the Bank and were supposedly done in cash.

12. The investigation report given by Mr Varinder Kumar Bakshi which is placed on record supports the dismissal of the complaint by the State Commission, reads as under:

1.

It also observed that the insured did not take any insurance policy of his shop prior to that and after that 11.10.2005. Though he has been in the business and he did not renew the present policy for further period which shows that he only took the insurance policy for getting the claim to fire his shop himself intentionally. On the date of loss he had to pay a loan of Rs.3.00 lakh to his bankers that are Central Bank of India, Beas. He fired his shop intentionally for getting the insurance claim and to get rid of his loan from taking the money from insurance company.

2. In the survey report the surveyor Shri Sumant Sood mentioned that the insured concealed some non-damaged/ minor damaged/ partially damaged items in the nearby shops after the fire and locked it and refusing to survey them. Which show that he had mala fide intention to getting the insurance claim by fraudulent means.

3. It also shows that the insured availed limit of Rs.3.00 lakh neither he re-paid the loan nor deposited the daily sale of the shop to the bank. Which shows his integrity and mala fide intention for using the public money and not returning the principal as well as the interest and he has become insolvent.

4. It is also on the record that the insured Shri Surinder Pal was using the bank money for purchasing the residential plot and later on he sold it off without the permission/ NOC from the bank and the bank has filing the suit for recovery of his money.

5. It is also noted that he has also borrowing money from other banks also in his family name and he is in the habit of not returning the principal as well as the interest amount in this cases pertaining to the Canara Bank. He also filed a suit for recovery of his loan amount.

6. It is also noted from the file that the though the fire brigade is locally available but the insured did not bother to inform them for fighting the fire and neither he

made telephone call to them informing them about the incidence.

7. It is also hearsay from the local people that the insured in full of dept and people are coming to him for taking the money given to him in our presence while interacting the insured 2-3 people are coming for claiming their dues but he denied and quarrelsome scene was arisen there.

8. It is also noted for the file that the insured has sold off the salvage without the permission of the company.

9. He did not cooperate in submission of the required documents to us which give us the exact information of the case.

Keeping in view the above, we feel that this case of fire is a doubt full and we are of the view the claim may be treated/ file as no claim. The case may be treated as per the terms and conditions of the policy".

13. Even today also, on my repeated enquiry, the counsel for the petitioner could not give any details of the documents and records that were made available to the respondents. He could also not give any facts to controvert the findings of the investigator.

14. The Hon''ble Supreme Court in Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd., 2011 (3) Scale 654 has observed:

"Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora."

15. In view of the discussion above, I find no jurisdictional error or material irregularity in the impugned order which may call for interference in exercise of powers under section 21 (b) of the Consumer Protection Act, 1986. Revision petition is, therefore, dismissed with no order as to costs.