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(1999) 05 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

SUSHILA KAUL APPELLANT

Vs

ORIENTAL INSURANCE Company RESPONDENT

Date of Decision : 27-05-1999

Acts Referred:

Citation : 1999 0 CTJ 759 : 1999 2 CLT 570 : 1999 2 CPC 259 : 1999 2 CPJ 575

Hon'ble Judges : J.B.Garg , P.K.Vasudeva , Devinderjit Dhatt J.

Final Decision : Appeal allowed

Judgement

1. ON a complaint instituted by Smt. Sushila Kaul claiming compensation in respect of residential house which was set ablaze in Srinagar (Jammu and Kashmir). The District Forum-I ordered that a sum of Rs. 3,40,463/- shall be payable by the Insurance Company together with interest at the rate of 12% p.a. for the period 15.8.1993 to 31.12.1994. Aggrieved against it, the present appeal has been preferred by Smt. Sushila Kaul.

2. THE facts that the residential premises of Smt. Sushila Kaul bearing house No. 220, Narsinghgarh, Srinagar were insured with the respondent for the period 30.5.1992 to 29.5.1993 for a sum of Rs. 8 lacs is not disputed. At the same time, the fact that the aforesaid premises were set ablaze by miscreants on account of militancy prevailing there on 14.4.1993 and that it was reported to the Insurance Company is also not disputed. THE first Surveyor M/s. Consolidated Surveyors (P) Limited, submitted a report that he loss was to the tune of Rs. 3.8 lacs and this report was dated 31.1.1994. A subsequent Surveyor M/s. Mita Marine and General Survey opined that the loss was to the tune of Rs.. 3,13,667/- reported in August, 1994. THE third Surveyor Engineering Project Planners, who assessed the loss at Rs. 3,40,463/-. THE main plea of the complainant has been that it was in compelling circumstances, she acknowledged the payment of Rs. 3,40,463/- offered by the respondent however, there was no reason why she should not have been paid the sum of Rs. 3.8 lacs assessed by the first Surveyor. During the course of arguments, we find that the first Surveyor actually visited the premises and had given the details of the gutted

portion of wood work especially intrusses, purloins, rafters, posts, wall plates trimmed which were of class-I tie beams, struts deodar wood. THE specialist who prepared and submitted this report was not cross-examined by the respondent. As compared to this report, reliance on the third report by the assessor who did not even visit the premises could not have preference in the circumstances of the case. The main plea of the learned Counsel for the respondent is that once the complainant had given consent and acknowledged the sum of Rs. 3,40,463/- as assessed by the third Surveyor, there was no justification for her to come forward and to challenge her own admission. In support of this contention, the learned Counsel for the respondent has referred to Jogendra Narayana Prasad v. The Divisional Manager, Oriental Life Insurance Company Limited & Anr., decided by National Consumer Disputes Redressal Commission, New Delhi on 10.3.1990 and it has been stressed that once the claimant voluntarily agreed to accept the proposed sum, it could not be challenged under Consumer Protection Act. Similarly, in the decision of United India Insurance Company Limited v. M/s. Hayagriv Textile Ind. (P) Ltd., III (1994) CPJ 165 (NC) decided by the National Consumer Disputes Redressal Commission, New Delhi on 10.10.1994 observed that if the respondent had received the claim in full and final settlement, he was estopped from making a supplementary claim.

To the contrary, the learned Counsel for the appellant has drawn our attention to M/s. National Insurance Company Limited v. M/s. New Bharat Rice Mills, II (1997) CPJ 77 (NC)=1997 (2) CPC 160, where the "full and final settlement" of the claim was set aside. The complainant is a sufferer on account of riots and other destruction which remained prevailing in Srinagar that she shifted to Chandigarh. It appears that she had no option but to accept the amount offered due to financial constraints and the compelling reasons. The occurrence took place on 14.4.1993 and after three reports of different Surveyors, the appellant decided to remit the sum of Rs. 3,40,463/-. It is a matter of common knowledge that unless all the certificates and undertakings suggested by the Insurance Company are clearly signed and permitted in advance by a claimant he or she would not get even a penny.

3. WE have considered all the facts and it has also come to our notice that only the first Surveyor visited and inspected the premises in question with expertise and no other Surveyor ever visited. The conclusion is that we accept the appeal and set aside the impugned judgment and hereby order that a sum of Rs. 3.8 lacs together with interest at the rate of 12% p.a. after excluding a period of three months from the date of occurrence shall be payable to the appellant minus the amount already paid to her, failing which, the appellant shall also be entitled to future interest from the date of announcement of this order till realisation. The appellant is also entitled to costs of Rs. 2,000/-. Appeal allowed.

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