

(2016) 11 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

Case No : 1295 of 2016

UNITED INDIA INSURANCE CO. LTD. & ANR.

APPELLANT

Vs

M/S. BABULAL OM PRAKASH THROUGH MANAGER/PROP.
BABULAL GUPTA

RESPONDENT

Date of Decision : 04-11-2016

Acts Referred:

Citation : (2016) 11 NCDRC CK 0006

Hon'ble Judges : V.K. Jain

Advocate : Nanita Sharma, BABULAL OM PRAKASH

Final Decision : Petition Dismissed

Judgement

1. The complainant / respondent Babulal Om Prakash purchased 670 bags of coriander and got the same insured with the petitioner company. On 15.4.2009, when the goods were being carried to Jaipur in a truck, high tension electric wire touched the bags loaded in the truck as a result of which, the said goods caught fire. Later, the fire was extinguished by the Fire Brigade personnel. On intimation of the loss being given to the petitioner company,

Mr. V.K. Gupta was appointed as surveyor to assess the loss. The said surveyor assessed the loss to the complainant at Rs.3,97,960/-. The claim however, was rejected by the insurer primarily on the allegation that the complainant had lodged an inflated claim and the transporter had denied having issued damage certificate to the complainant. The said certificate, according to the insurer, was necessary. Being aggrieved from the rejection of the claim, the complainant / respondent approached the concerned District Forum by way of a consumer complaint.

2. The complaint was resisted by the petitioner company which admitted the insurance of the goods. It was alleged in the reply that on considering the report of the surveyor they had found that the complainant had not obtained damage certificate from the carrier / transporter of the goods and there was contradiction

as regards the cause of burning of the goods. An investigator was therefore appointed who found that there was no major fire and only few bags were burnt due to hanging electric wires touching the bags. It was further alleged that the transporter had informed the insurer that only nine bags containing coriander had got damaged.

3. The District Forum vide its order dated 28.7.2015 directed the petitioner company to pay a sum of Rs.3,97,960/- to the complainant, along with interest @ 10% per annum from the date of filing the complaint, along with compensation quantified at Rs.5,000/- and the cost of litigation quantified at Rs.2,000/-.

4. Being aggrieved from the order passed by the District Forum, the insurer approached the concerned State Commission by way of an appeal. The said appeal having been dismissed, the insurer is before this Commission by way of this revision petition.

5. A concurrent finding of fact with respect to the damage of the goods and upholding the claim lodged by the complainant has been returned by both the fora below. This Commission will not be justified in interfering with the aforesaid concurrent finding of fact, unless the same is shown to be perverse. A finding will be perverse when it is shown that no reasonable person, acting upon the material available to the fora below, could have rendered such a finding. If the finding returned by the fora below is reasonably possible on the basis of the material which was produced before the fora below, this Commission will not be justified in interfering with the said finding, while exercising its revisional jurisdiction.

6. A perusal of the survey report shows that when the truck carrying the goods of the complainant was entering the cold storage, high tension wire came into contact that the bags containing coriander and the truck caught fire. The persons who had gathered on the spot started throwing water on the truck. The fire brigade reached the spot after sixty minutes and the bags containing coriander were found burnt and lying scattered on the spot. The delivery was taken by the consignee after the goods had been weighed. The survey was conducted on 16.4.2009 and 17.4.2009, soon after the incident of fire had occurred. The surveyor noticed that the total net quantity of coriander was 21243 kg. and there was a shortage to the extent of 4887 kg. Based upon the cost of coriander he assessed the value for the lost coriander at Rs.1,90,593/- and the value of the empty burnt bags at Rs.5,049/-, thereby making a sum of Rs.1,95,642/-. The remaining coriander was found to be wet / burnt with burning smell coming from it. The damaged coriander was sold in the open market at Rs.30/- per kg. The net loss to the complainant on account of damage to coriander was assessed by the surveyor at Rs.2,03,083/-. After deducting the value of the salvage the net total loss was assessed at Rs.3,97,960/-

7. There is absolutely no material on record to impeach the aforesaid report of

the surveyor appointed by the insurer. There is no material on record to prove that there was no incident of fire or that the actual loss sustained by the complainant was substantially lower than what had been assessed by the surveyor. No affidavit of the driver of the truck or any eye-witness of the incident was filed by the insurer to impeach the report of the surveyor.

8. The insurer contended before the State Commission that the transporter should have been impleaded as a party to the complaint. I however, find no merit in the contention. The goods having been got insured with the petitioner company, the complainant was required to implead only the insurer, the transporter being neither a necessary nor a proper party to the complaint. If the insurer wanted to impeach the report of the surveyor appointed by it, on the basis of some information received from the transporter, it was necessary for the petitioner to file the affidavit of the transporter or the driver who was driving the truck in which the goods were carried. That having not been done, the report of the surveyor, in my view, could not be impeached and therefore, the complainant is entitled to reimbursement of his loss in terms of the said survey report.

9. For the reasons stated hereinabove, the revision petition is hereby dismissed, with no order as to costs.