(2006) 05 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD. APPELLANT

Vs

AUTOMAC PLASTICS (P) LTD. RESPONDENT

Date of Decision : 03-05-2006

Acts Referred:

Citation : 2006 0 NCDRC 24 : 2006 2 CLT 441 : 2006 2 CPC 278 : 2006 2 CPJ 328

Hon'ble Judges : K.S.GUPTA , B.K.TAIMNI J.

Advocate : A.M.VENKATESH , S.K.UDAYA BHAN

Judgement

1. THIS appeal is directed against the order dated 26.8.2003 of Karnataka State Consumer Disputes Redressal Commission, Bangalore allowing complaint with direction to the appellant/opposite party to pay an amount of Rs. 4,49,120 with interest - 12% p.a. from the date of complaint and cost to the respondent/ complainant.

2. FACTS giving rise to this appeal lie in a narrow compass. Respondent took fire ''A'' policy from the appellant for the period from 9.4.1994 to 8.4.1995 covering the risk as under: Machinery Accessories Rs. 2,50,000.00 Raw materials and tools held in trust Rs. 4,00,000.00 Furniture and Fixture Rs. 10,000.00 Raw materials Rs. 50,000.00 Insured''s own tools Rs. 10,000.00 Rs. 81,10,00000 It was alleged that on 20.3.1995 at about 6.30 a.m. fire broke out in the factory of respondent. Major portion of the raw materials and finished goods was destroyed and some of the machineries/equipments, electrical wiring and furniture were also badly damaged. Appellant was intimated of the incident by the respondent on20.3.1995 itself. Complaints, were also lodged with the police and Fire Brigade. Appellant appointed M/s. R.A. Rajagopal as Surveyor to assess the damage. Claim for Rs. 4,49,120 was made by the respondent. Appellant offered amount of Rs. 1,12,194 which the respondent refused to accept. Alleging deficiency in service the respondent filed complaint claiming amount of Rs. 8,10,803 with interest which was contested by the appellant by filing written version Issuance policy in question was not disputed. However, it was alleged

that the value of insured assets as on the date of fire and also at the time of taking policy was Rs. 15,45,000 but the policy was taken for a sum of Rs. 8,10,000. There was, thus, gross under insurance by the respondent. It was further alleged that the Surveyor assessed the loss at Rs. 2,14,000 and recommended payment of Rs. 1,12,194 due to gross under valuation which amount was not accepted by the respondent.

3. WE have heard Mr. A.M. Venkatesh for appellant and Mr. S.K. Uday Bhan for respondent and have been taken through the record.

4. COPY of report dated 17.10.1995 of M/ s. R. A. Rajagopal, Surveyor is placed on the file. Details of the amount claimed by the respondent and the amount as assessed by the Surveyor are as under : Policy would show that the building was not insured. Considering the age, condition and usage the surveyor assessed the Loss of assets applying depreciation at 30% in respect of above items at serial Nos. 2 to 4. In case of item at serial No. 5 reasonable repair charges were allowed by the Surveyor. In respect of raw materials and finished products at serial Nos. 6 and 7 it was found by the Surveyor that not more than 60% of the materials claimed as damaged could have been actually damaged due to fire accident. Therefore, loss in respect of both these items was assessed at about 50% by the Surveyor. Amount of Rs. 4,49,120 awarded by the State Commission was the total amount for which the claim was lodged by the respondent. Contract for insurance is a contract of indemnity. The State Commission did not take note of the facts that the building was not insured under the policy; electrical installation, plant and machinery and furniture and fittings had suffered depreciation due to usage and age etc. and on spot inspection on the date of fire itself the Surveyor had found that not more than 60% of the raw materials and finished products claimed as damaged could have been actually damaged due to fire. Further, respondent had not given repair estimate and so reasonable repair charges of Rs. 10,500 for moulding dies was allowed by the Surveyor. In this backdrop, assessment of Rs. 2,14,000 against the claimed amount of Rs. 4,49,120 as made by the Surveyor was just and proper.

5. CONDITION No. 10 of the policy which is material, provides as under : "10. If the property hereby insured shall at the breaking out of any insured peril or at the commencement of any destruction of or damage to the property by any other peril hereby insured against be collectively of greater value than the sum insured thereon, then the insured shall be considered as being his own insurer for the difference, and shall bear a rateable proportion of the loss accordingly. Provided however, that if the sum insured hereby on the property insured shall at the operation of any of the peril insured under this policy or at the commencement of such destruction or damage be not less than 85% (eighty-five percent) of the collective value of the property insured, this condition shall be of no purpose and effect.-

6. APPELLANT alleged that the market value offsets on the date of fire accident and also at the time of taking policy was Rs. 15,45,000 and policy for Rs.

8,10,000 was grossly under valued. It "was contended by Mr. Uday Bhan that the valuation report of the assets of respondent as on 31.12.1993, was prepared by the same Surveyor - M/s. R.A. Rajagopal and the total value assessed by Surveyor was Rs. 8,14,300. According to him the value of assets, thus could not be Rs. 15,45,000 as alleged by appellant Insurance Company. Copy of said valuation report is placed on the file. It was pointed out on behalf of appellant that this report did not reflect the value of stocks of raw material, finished products, dies and stocks belonging to the respondent''s clients which were held in trust and value thereof is also to be added to the value as reflected in said valuation report. It was further pointed out that aforesaid value of Rs. 15,45,000 was based on the copies of stock statements forwarded by the respondent itself along with covering letter dated 19.5.1995. on file. Having considered the stock statements and the said valuation report the Surveyor in its report had rightly fixed the total market value of the assets at the time of fire at Rs. 15,45,000. Applying said condition No. 10 the claim was worked out because of under insurance in the Surveyor''s report thus: Rs. 2,14,00 0 x Rs. 8,10,000 /15,45,000 = Rs. 1,12,194.00 Respondent is entitled to this amount of Rs. 1,12,194 only. Order of State Commission, therefore, cannot be sustained and deserves to be modified to that extent. Order accordingly. Appeal stands disposed of. No order as to cost.

