(1997) 05 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD. APPELLANT

Vs

BEARING TRADERS AND MILLS STORES RESPONDENT

Date of Decision : 29-05-1997

Acts Referred:

Citation : 1997 0 NCDRC 18 : 1997 2 CPC 485 : 1997 2 CPR 132 : 1997 3 CPJ 104 : 1997 5 CTJ 919

Hon'ble Judges : V.BALAKRISHNA ERADI , C.L.CHAUDHRY , R.THAMARAJAKSHI , S.S.CHADHA J.

Advocate : S.M.SURI , SUNIL KAPUR

Judgement

1. THIS appeal is directed against the order of the State Consumer Disputes Redressal Commission, Punjab, Chandigarh dated 31.8.1995 in Complaint No. 22/95.

2. THE facts giving rise to this appeal are that the Complainants filed a complaint before the State Commission for the recovery of Rs. 6,87,250/- against M/s. United India Insurance Company, the Opposite Patty. The Complainants got all the goods in the shop insured alongwith fixtures with the Opposite Party for a total sum of Rs. 4,50,000/-. The duration of the policy was from April 20, 1993 to April 19, 1994. The policy covered the risk of fire also. On the night between 14th and 15th October, 1993 fire broke out in the shop. It was noticed by the brother of the Complainant who was residing on the upper storey. Despite best efforts made by the Fire Brigade Staff, the entire stock in the shop including Accounts Book, records, furniture and fixtures were completely burnt. On 15th October, 1993 the Insurance Company was informed about the fire. A report on the daily diary register of the Police Station, Division No. 3, Jalandhar was got registered. Necessary information was also given to all departments concerned. The Opposite Party appointed M/s. Arun Kumar and Associates to survey and assess the loss. The Complainants were asked to submit all the necessary documents so as to enable the Surveyor to assess the loss. It was noticed that the goods were pledged with the Punjab National Bank from whom the

Complainants had raised loan. The Surveyor estimated the value of salvage at Rs. 40,000/-. As the Complainants were suffering losses on account of non-settlement of the claim, the Opposite Party was requested to settle the claim. In January, 1995 the Opposite Party informed the Complainants that the matter would shortly be finalised. As the Opposite Party failed to settle the claim the Complainants approached the State Commission with a complaint. The claim was contested by the Opposite Party. It was, inter alia, stated that the report of the Surveyor, M/s. Arun Kumar and Associates was not final. The Complainant did not cooperate with the Surveyor and the Investigators appointed. Records, Account Books, Stock Registers etc. were not produced. Cause of fire was alleged to be short circuiting from electricity, which was ruled out by the Fire Brigade. It was pleaded that the fire was not accidental. On the pleadings of the parties the State Commission framed the following questions for consideration :- (i) Whether there is any deficiency in service on the part of the Opposite Party when the Opposite Party has repudiated the claim of the Complainant in the written statement; (ii) Whether repudiation of the claim by the Insurance Company was bonafide or otherwise illegal; (iii) How much amount the Complainant is entitled to, if the questions aforesaid are decided in his favour.

On the first two questions the State Commission returned the finding that the repudiation of the claim made by the Insurance Company as late as filing of the written statement was not bonafide and non-settlement of the claim by the Insurance Company in the facts of the case amounted to deficiency in rendering service, entitling the Complainants to award of compensation. On the question of quantum of damages, the State Commission came to the finding that the Complainant was entitled to Rs. 2,77,229/- alongwith 18% interest thereon from the date of occurrence of fire till payment. The Complainant was also allowed Rs. 5,000/- on account of harassment caused due to non-settlement of the claim and cost of Rs. 2,000/- was also awarded to the Complainant. Aggrieved by this order, the Insurance Company filed this appeal which is under disposal.

3. MR . S. M. Suri, learned Advocate appearing on behalf of the Appellant contended before us that there was no deficiency of service or delay on the part of the Appellant-Insurance Company in settling the claim. The delay was entirely on account of non-cooperative attitude of the Complainant who purposely did not cooperate with the Investigator. Moreover, the documents were submitted quite late inasmuch as the fire brigade report was submitted only on 29.4.1994. It was further concluded that the Surveyor having recommended the investigation, the Company had no option but to investigate into the matter due to the fact that the cause of fire was not established and further the accounts submitted by the Complainant were not proper. The Investigator could only submit his report on 28.2.1995 as he had to inspect and verify the record of the police station, fire brigade, bank accounts and the accounts of the Complainant Firm. In these facts and circumstances, there was no deficiency of service on their part and, therefore, the learned State Commission erred in holding that there was deficiency in rendering service on the part of the Appellant-Insurance Company.

4. ON the other hand, Mr. Sunil Kapoor, Advocate for the Respondent supported the judgment and contended that the view taken by the State Commission was justified in the facts and circumstances of the case and the State Commission was right in concluding that the repudiation made by the Insurance Company as late as filing of the written statement was not bonafide and non-settlement of the claim by the Insurance Company in the facts of the present case amounted to deficiency in rendering service, entitling the Complainant to the award of compensation. We have carefully considered the relevant contentions of the parties and gone through the record. The Insurance Company did not repudiate the claim prior to filing of the written statements. Normal period during which the Insurance Company was expected to repudiate the claim was three months from the date of the report of the Surveyor or Investigator. In this case, the Surveyor submitted the report on May 5, 1994. The Insurance Company appointed the Investigator in September, 1994 who submitted the report on 28.2.1995. The complaint was filed in May, 1995 and the Opposite Party was served in June, 1995. The claim was repudiated in the written statement filed on 8.8.1995. The explanation given by the Insurance Company that they did not repudiate the claim as the matter was sub-judice has no merit. The Investigator submitted the report on 28th February, 1995 and they should have repudiated the claim within 3 or 4 months from that date. The delay in repudiating the claim remained unexplained. Even otherwise, we find that the repudiation of the claim in the written statement was not bonafide. We find that the Insurance Company was not justified in repudiating the claim on the basis of factors which had been taken into consideration. On this point, the learned State Commission dealt with the matter elaborately and with cogent reasons. We do not find any legal flaw in the reasoning of the learned State Commission. The State Commission had taken into consideration the relevant material and based its finding on correct appreciation of the evidence. No case is made out to differ with the finding of the State Commission. Thus, we confirm the finding of the State Commission that the repudiation of the claim made by the Insurance Company as late as filing of the written statement was not bonafide and non-settlement of the claim by the Insurance Company in the facts and circumstances of the case amounted to deficiency in rendering service, entitling the Complainant to the award of compensation. Mr. Suri further contended that the State Commission wrongly assessed the damages at Rs. 2,77,229/-. M/s. Arun Kumar & Associates, the Surveyor assessed the loss at Rs. 2,45,000/- on the date of fire. After taking into consideration all the relevant factors, the State Commission returned the finding that the Survey Report could be relied upon. The State Commission observed that a sum of Rs. 40,000/- was deducted by the Surveyor as value of the salvage left with the Complainant. The State Commission allowed a sum of Rs. 2,77,229/- as found by the Surveyor, M/s. Arun Kumar and Associates alongwith 18% interest thereon from the date of occurrence of the fire till payment. We are of the opinion that the State Commission was right and justified in relying upon the report of the Surveyor and the compensation awarded at Rs. 2,77,229/- was correctly assessed.

5. WE uphold the order of the State Commission on this aspect. It was lastly contended by Mr. Suri that the State Commission went wrong in awarding interest from the date of occurrence of fire. We have examined this aspect. In our opinion, the contention raised by Mr. S. M. Suri has merit. The State Commission ought to have awarded the interest sometime after the submission of the report by the Surveyor. The Surveyor submitted its report on May 5, 1994. We feel it would be just and proper if the interest is awarded from 1.9.1994.

6. IN the result, the appeal is partly allowed and the order of the State Commission is modified to the extent that the interest shall be payable by the Opposite Party from 1.9.1994 on the amount of compensation awarded. The order of the State Commission, subject to the modification to the extent indicated above, is upheld. The appeal is disposed of accordingly with no order as to costs.

