

(2013) 12 NCDRC CK 0046

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD

APPELLANT

Vs

Bhriguram Mondal

RESPONDENT

Date of Decision : 09-12-2013

Acts Referred:

Citation : 2013 0 NCDRC 825 : 2014 1 CPJ 87

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : KISHORE RAWAT , S.S.Hooda

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 29.4.2008 passed by West Bengal State Consumer Disputes Redressal Commission, Kolkata (in short, "the State Commission ") in S.C. Case No. 203/A/2007 - United India Ins. Co. Ltd. Vs. Mr. Bhiringuram Mondal & Anr. by which, while allowing appeal partly, order of District Forum allowing complaint was modified.

2. BRIEF facts of the case are that complainant/respondent no. 1 was carrying on its business of selling battery under the name ""Debdut Battery "" and had also taken loan from OP no. 2/Respondent no. 2. Complainant insured the stock -in - trade for Rs.4,00,000/ - with OP no. 1/petitioner. On 16.12.2004, due to short - circuit, fire broke out and insured goods destroyed in the fire. Complainant intimated to OP no. 1 and OP no. 1 appointed surveyor for assessing loss. Surveyor conducted survey on 22.12.2004. Later on, complainant came to know that OP has made payment of Rs.79,058/ - to OP no. 2 from whom complainant had taken loan and this amount was adjusted against his loan amount without his consent and knowledge, whereas loss was caused to the tune of Rs. 4,00,000/ -. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP no. 1 resisted complaint and submitted that they asked complainant to receive payment of the claim, but as he did not respond, amount was deposited with the bank. OP no. 2 filed written statement and acknowledged receipt of the aforesaid amount. Leaned District Forum after hearing both the parties directed OP no. 1 to pay additional amount of Rs.2,90,000/ -. Petitioner

filed appeal before learned State Commission and learned State Commission vide impugned order partly allowed appeal and modified order of District Forum and directed OP no. 1 to pay Rs.2,21,000/- instead of Rs.2,90,000/- against which, this revision petition has been filed. None appeared for the respondent no. 2 and he was proceeded ex -parte.

3. HEARD learned Counsel for the parties and perused record.

4. LEARNED Counsel for the petitioner submitted that as per survey report, petitioner made payment of Rs.79,058/-; even then, learned District Forum committed error in directing petitioner to pay Rs.2,90,000/- and learned State Commission further committed error in dismissing appeal partly; hence, revision petition be allowed and impugned order and order of District forum be set aside. On the other hand, learned Counsel for the Respondent no. 1 submitted that order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed. It is not disputed that complainant was carrying on business of batteries. It is also not disputed that stock -in -trade of the complainant was insured by OP no. 1 and fire broke out due to short -circuit. Now, the question to be decided is what amount should have been awarded by OP no. 1 for settlement of claim.

5. LEARNED District Forum allowed additional Rs.2,90,000/-, but learned State Commission while reducing the amount observed that complainant should have come forward with additional evidence and as complainant has not filed any additional evidence, his claim was allowed on non -standard basis i.e. 75% of the loss.

6. PERUSAL of record reveals that except bank statement, we are not finding any document in support of bank statement for ascertaining price and quantity of batteries. Learned State Commission rightly observed that complainant filed stock statement to corroborate its claim, but he should have come forward with additional evidence. Complainant ought to have filed purchase bills to ascertain quantity of batteries in his shop as well as their price. Perusal of survey report reveals that fire was very small one and most of the affected items were identified physically in Annexure -1 of the survey report. Surveyor has given make of batteries, number and their rates, which do not tally at all with the stock statement given by the complainant to the bank. In the absence of purchase bills the quantity of batteries as well as their price cannot be ascertained. Claim is to be allowed on the basis of survey report alone. Complainant was under an obligation to file documents to rebut survey report otherwise survey report being an authentic document is to be relied. In survey report, make of batteries, their quantity and rates have been given, which do not tally at all with the stock statement and in such circumstances, no reliance can be placed on stock statement. Learned State Commission has committed error in allowing complaint on non -standard basis basing judgment on stock statement and learned District Forum committed error in allowing complaint solely on the basis of stock statement and brushing aside survey report without any cogent reason.

7. PETITIONER has already made payment of claim as per survey report and complainant is not entitled to get any additional amount by way of this complaint and complaint is liable to be dismissed.

8. CONSEQUENTLY , revision petition filed by the petitioner is allowed and impugned order dated 29.4.2008 passed by State Commission in S.C. Case No. 203/A/2007 - United India Ins. Co. Ltd. Vs. Mr. Bhirguram Mondal & Anr. and order of District Forum dated 15.5.2007 in Complaint Case No. 147/2007 - Mr. Bhirguram Mondal and Anr. Vs. United India Ins. Co. Ltd. is set aside and complaint stands dismissed with no order as to cost.