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(2016) 12 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

Case No : 198 of 2011

UNITED INDIA INSURANCE CO. LTD. — APPELLANT

Vs

M/S. SUPER BAKERS (INDIA) LTD. — RESPONDENT

Date of Decision : 16-12-2016

Acts Referred:

Citation : (2016) 12 NCDRC CK 0031

Hon'ble Judges : S.M. Kantikar

Advocate : Abhishek Kumar, Ankit Shah

Judgement

1. M/s Super Bakers India Limited is the complainant, a registered company at Odhav, Ahmedabad, running a flour factory. The United India Insurance Company (OP) issued a Standard fire and special peril policy covering risk of building, Plant/ Machinery and accessories, Furniture and fixtures and the stock of material. The policy was valid for one year from 10.1.2003 to 9.1.2004. During the subsistence of the insurance policy, on 23.8.2003, there was heavy rain in the midnight and entire Odhav area was under water. Due to water logging into the factory premises, the stock material, furniture amounting to Rs. 48 lakhs was damaged. On 25.8.2003, the complainant intimated the OP/insurance Company and submitted the claim form towards the loss occurred. The Surveyor, M/s. Bimani and Co was deputed by the OP, he issued the Survey report for net assessment and liability under said policy being Rs.41,04,083/-. The insurance company denied the payment towards the loss. Thereafter, on 6.10.2003, the OP appointed another Surveyor, M/s Rank and Associates from Chennai, who investigated the matter and found that there were false bills produced by the complainant. OP rejected complainant''s claim on the basis of M/s Ranka''s survey report, 2. Aggrieved by the rejection of the claim, the complainant filed a complaint before Gujarat State Commission, Ahmedabad and prayed for the claim of Rs.41,05,083/- along with 18% interest and Rs.20,000/- towards mental agony and Rs.15,000/- as expenditure.

2. The OP resisted the complaint by filing written version and submitted that the

1 st Surveyor, Mr. Nilesh Bimani was not appointed by proper authority of OP. There is no document to show that he had been appointed as Surveyor and the Divisional Office (OP) has no power to appoint any Surveyor for such huge amount. The survey report is not a Preliminary report, it is devoid of many details like date and time of inspection of premises, and the photographs are baseless. Surveyor ignored the forged documents. He in collusion with the complainant, had assessed the huge amount of loss. Therefore, the insurance company (OP) contacted the head office, thereby the Regional Manager of OP in consultation with IRDA had appointed M/s Rank Associates to conduct another surveyor, and there was no cooperation from the complainant. As per statement of complainant, water entered at the height of 14 inch whereas Mr. Nilesh Bimani had stated that water had entered at the level of 3 to 4 feet whereas, as per the report of M/s Rank Associates, it was six inch only. The scrutinized documents have not been signed. The complainant did not take any permission of OP while selling the salvage. M/s Rank Associates scrutinized the facts of the case scrupulously and gave the details, including verification of records and CD. Also submitted in the report that, the complainant had made a forgery of Rs.29,22,215/- in bills of purchase.

3. The State Commission after considering the pleadings and evidence allowed the complaint and directed United India Insurance Company (OP) to pay compensation of Rs.41,05,083/- with 9% interest from 2.9.2005 to the complainant, along with Rs.15,000/- towards mental agony and Rs.10,000/- as costs. Aggrieved by impugned order of State Commission, the OP preferred this appeal.

4. Heard learned counsel for both the parties. Learned counsel Mr. Abhishek Kumar for the appellant/OP vehemently argued and submitted the points mentioned in the written version. The 1 st Surveyor Mr. Nilesh Bimani was colluded with the complainant and he has assessed the huge amount of loss. Therefore, the repudiation of claim is justified.

5. Learned Counsel for the complainant advanced the argument and submitted the facts mentioned in the complaint. He raised objections for condoning the delay of 36 days in filing the present appeal. For the reasons stated in the application for condonation of delay, the delay of 37 days is hereby condoned.

6. I have examined both the Survey reports, evidence on the file and given a thoughtful consideration to the arguments advanced before me.

7. Regarding the Salvage value, as per 1 st surveyor the stock being deteriorated agro product waste. It was dumped and destroyed as per rules and instructions of the Health Department of Ahmedabad Municipal Corporation(AMC)Therefore, obtaining written consent from insurer or floating the tender did not arise. The Regional Office had appointed one local investigator M/s S.P. Singh Associates to get information from AMC. As per report, the investigators met Mr. Abid Ali Qadri working for AMC, who maintains the records of the vehicles coming to the

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sewage dump yard for dumping the waste. He confirmed about the receipt of subject material and sent it for composite fertilizer plant. Also, the certificate was issued with the details of weights and vehicle number etc. The investigators also submitted that they were not allowed to verify registers and AMC officials had refused to give any further information relevant to the insured. Thus, it is clear that the complainant disposed of the salvage as per law. The observation made by 2 nd surveyor about the salvage disposal is insignificant.

8. The issue for consideration in the present case is whether M/s Nilesh Bimani & Co. was properly appointed Surveyor by OP. The OP has failed to show any rule which refrain the OP from appointing a Surveyor in case of claim pertaining to loss to the extent of the subject insurance claim. It is pertinent to look in to the letter which Divisional Manager had given reply vide letter dated 25.11.2003, in which he has clarified his views; the same is reproduced below;

" Please note that when there was a heavy rain in Ahmedabad on 24.08.2003 and heavy inundation in certain areas, the insured has given us in writing a letter that due to inundation, flood he has suffered loss.

Due to heavy water log he was not able to give estimate and looking to the size of the client, we have appointed M/s Bhimani & Co. immediately to visit the site and to estimate the loss. We have also instructed them to assess the loss. Then, they have informed us that the loss is substantial but the exact estimation could not be arrived and they have requested us to visit the site also.

Thereafter, the undersigned informed to Dy. Manager of RO regarding the matter and with the permission of Manager, we have visited the site also. After that we have asked the insured to give rough estimate for finalization of the Surveyor. RO Manager and Dy. Manager have instructed the undersigned to inform RO in writing the approximate loss amount to this insured. Somehow or other, due to heavy work load also, the undersigned was not informed to RO and thereafter, the Surveyor is in hospital for around 15 days and the matter has been out of mind and we are not able to inform RO.

The statement which has been forwarded to you regarding estimate is rough statement just to show the number of claim, which we have received in flood . More over in the letter of insured, he has not given us estimate that is why for giving the number, it was entered Rs.50,000/- which is also rough.

Thus, on bare perusal of letter supra, admittedly M/s Bhimani and Co. was appointed by OP/Petitioner.

9. It is an admitted fact that the OP deputed M/s Bhimani and Co. as Surveyor, who assessed the loss and submitted the final survey report (Annexure C), as the net assessment of liability under the said policy being Rs.41,05,083/-. The cause of loss was due to insured peril. As per IRDA guidelines, the claim was to be settled within 30 days from the date of receipt of report. In the instant case, the report was received on 10.10.2003 but the OP did not settle the claim. It is

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pertinent to note that, OP appointed M/s Rank Associates the 2 nd Surveyor on 27.11.2003, whereas the permission was obtained by letter dated 12.2.2004(Annexure H). OP never produced said letter before the State Commission, but OP produced the IRDA sanctioned letter. Thus, it is clear that OP appointed 2 nd surveyor prior to obtaining permission from IRDA. It is the violation of IRDA guidelines; accordingly, the 2 nd surveyor''s report is not acceptable. Furthermore, M/s Rank Associates has given report that the complainant has produced the false and forged bills of Rs.29,33,215/- but, no supporting documents have been produced by the OP to prove their contention. Therefore, under the Clause No. 8 of the Insurance Policy, the OP Insurance Co. cannot repudiate the claim.

10. This Commission as also Hon''ble Supreme Court of India has adversely commented on the practice of some Insurance Companies in appointing one Surveyor after another without giving reasons for not accepting the report of the first Surveyor. Specifically Hon''ble Supreme Court in Sri Venkateswara Syndicate v. Oriental Insurance Co. Ltd. & Anr. [II (2010) CPJ 1 (SC)] has inter alia observed as follows :

21) The Insurance Regulatory Authority (`IRDA'' for short) has formulated Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000, which regulate the licensing and the work of surveyors. These regulations stipulate that the surveyor shall investigate, manage, quantify, validate and deal with losses arising from any contingency and carry out the work with competence, objectivity and professional integrity by strictly adhering to the Regulations.

22) The assessment of loss, claim settlement and relevance of survey report depends on various factors. Whenever a loss is reported by the insured, a loss adjuster, popularly known as loss surveyor, is deputed who assess the loss and issues report known as surveyor report which forms the basis for consideration or otherwise of the claim. Surveyors are appointed under the statutory provisions and they are the link between the insurer and the insured when the question of settlement of loss or damage arises. The report of the surveyor could become the basis for settlement of a claim by the insurer in respect of the loss suffered by the insured. There is no disputing of the fact that the Surveyor/Surveyors are appointed by the insurance company under the provisions of Insurance Act and their reports are to be given due importance and one should have sufficient grounds not to agree with the assessment made by them. We also add, that, under this Section the insurance company cannot go on appointing Surveyors one after another so as to get a tailor made report to the satisfaction of the concerned officer of the insurance company, if for any reason, the report of the Surveyors is not acceptable, the insurer has to give valid reason for not accepting the report. Scheme of Section 64-UM particularly, of sub-sections (2), (3) and (4) would show that the insurer cannot appoint a second surveyor just as a matter of course. If for any valid reason the report of the Surveyor is not

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acceptable to the insurer may be for the reason if there are inherent defects, if it is found to be arbitrary, excessive, exaggerated etc., it must specify cogent reasons, without which it is not free to appoint second Surveyor or Surveyors till it gets a report which would satisfy its interest. Alternatively, it can be stated that there must be sufficient ground to disagree with the findings of Surveyor/ Surveyors. There is no prohibition in the Insurance Act for appointment of second Surveyor by the Insurance Company, but while doing so, the insurance company has to give satisfactory reasons for not accepting the report of the first Surveyor and the need to appoint second Surveyor.

In the case of New India Assurance Co. Ltd. vs. Balbir Singh, first appeal No. 628 of 2007, decided on 2.4.2013, this commission took similar view about appointment of 2 nd surveyor.

11. Keeping in view the facts of this case and respectfully following the judgments of the Hon''ble Supreme Court in Sri Venkateswara Syndicate (supra) , I do not find any material irregularity in the well reasoned order of the State Commission and accordingly dismiss the present first appeal. However, there shall be no order as to costs.

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