(2013) 03 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD. APPELLANT

Vs

Subaco Exports Pvt. Ltd. RESPONDENT

Date of Decision : 21-03-2013

Acts Referred:

Citation : 2013 2 CPJ 633

Hon'ble Judges : ASHOK BHAN J.

Final Decision : Appeal dismissed

Judgement

1. APPELLANT Insurance Company which was the Opposite Party before the State Commission has filed this Appeal against the judgment and order dated 24.7.2006 passed by the State Consumer Disputes Redressal Commission, Delhi (in short, ''the State Commission'') in Complaint Case No. 177/95 wherein the State Commission partly allowing the complaint has directed the Appellant to pay the balance amount of Rs. 3,11,004 to the Respondent along with interest @ 9% p.a. from the date of filing of complaint till the date of passing of the order since a sum of Rs. 4,63,493 out of the awarded amount of Rs. 7,71,497 had already been paid by the Appellant to the Respondent towards settlement of its claim. Rs. 5,000 were awarded towards cost of litigation. Facts:

Complainant/Respondent Company which deals in the business of import and export of various goods obtained a Fire Cover Insurance Policy bearing No. 11/1/1690/90 from the Appellant for a sum of Rs. 16 lac covering the risk of fire to its stocks. The policy was valid from 25.5.1990 to 24.5.1991. On 25.9.1990, an extensive fire took place in the Madipur premises of the Respondent and the entire stocks lying therein reduced to ashes. According to the Respondent, the loss was to the tune of Rs. 9,98,010.25. Respondent lodged the FIR as well as informed the Appellant about the fire incident. Appellant, on being informed, appointed Surveyor, namely, M/s. Thapar, Srinivasan and Kapoor Pvt. Ltd. to conduct the survey and assess the loss. Surveyors submitted their report on 9.2.1993 assessing the total loss at Rs. 7,71,497.00. The net loss was assessed at Rs. 4,61,493.00 after deducting Rs. 2,15,004.00 towards the value of unaffected goods in the fire incident and Rs. 95,000 as salvage value. Appellant vide letter dated 16.9.1993 sent a cheque of Rs. 4,56,831 to the Respondent towards full and final settlement of the claims Respondent vide letter dated 27.9.1993 acknowledged the receipt of the cheque of Rs. 4,56,831 but not as full and final settlement of the claim and requested the Appellant for furnishing the basis of calculation of the claim and worksheet for their information and knowledge. Appellant furnished the necessary details to the Respondent on 9.11.1993. Thereafter, Respondent issued legal notice dated 31.3.1995 calling upon the Appellant to pay the balance amount of Rs. 5,41,179.25 along with interest @ 24% from 25.9.1990. Appellant did not respond to the legal notice. Complainant, being aggrieved, filed the complaint before the State Commission.

2. APPELLANT , on being served, put in appearance and filed its written statement resisting the complaint on the grounds that the Respondent was not entitled to any further amount as the discharge voucher was signed by them and their banker towards the full and final settlement of the claim; that the cheque of Rs. 4,56,831 was accepted by the Respondent unconditionally without any protest. State Commission after considering the material available on record and the evidence led by the parties came to the conclusion that even if the discharge voucher was signed by the Respondent towards the full and final settlement of the claim but it did not foreclose their right to seek compensation as to the actual loss suffered on account of loss to the goods damaged in the fire at the insured premises. State Commission allowed the complaint and directed the Appellant to pay the balance amount of Rs. 3,11,004 to the Respondent along with interest @ 9% p.a. from the date of filing of complaint till the date of passing of the order since a sum of Rs. 4,63,493 out of the awarded amount of Rs. 7,71,497 had already been paid by the Appellant to the Respondent towards settlement of its claim. Rs. 5,000 were awarded towards cost of litigation.

3. STATE Commission in its order observed as under: ....At the most the OP can have a valid defence as to the claim of the claimant as assessed by the Surveyor appointed by it. It appears that the procedure or the mechanism evolved by the Insurance Company is such as if the consent of the consumer is not necessary while appointing the Surveyors. Since Insurance Company appoints Surveyors on its own it has no reason to disagree with the report of the Surveyor appointed by it in whose competence and integrity it reposes its faith until and unless the report if affected by the misconduct of the Surveyor. As per report of the Surveyor the stocks were completely destroyed in the fire. Value was assessed at Rs. 7,71,497. However, while recommending the claim, the Surveyor reduced it to Rs. 5,56,493 without providing any reasons. Salvage was assessed at Rs. 95,000. In our view the whole stock lying in the premises was reduced to ashes.

In view of the above facts and circumstances, we allow the complaint to the extent that OP shall pay the value of actual loss of the stock lying at the risk premises as assessed by the Surveyor to the tune of Rs. 7,71,497 as the fire was of such high intensity that it has affected a major portion of the main work hall which was severally damaged. Overhead wooden shelves in the severely affected area had collapsed and the entire stock which was of the value of Rs. 7,71,497 was destroyed and therefore the observations of the Surveyor that out of debris water affected stocks, stock having a sound value of Rs. 1,60,000 was still saved is difficult to accept.

Appellant, being aggrieved, has filed the present appeal. We have heard the learned Counsel for the parties at length.

4. LEARNED Counsel for the Appellant relying upon the judgment of the Hon''ble Supreme Court in the case of United India Insurance Co. Ltd. v. Ajmer Singh, II : (1999) CPJ 10 (SC) : VI : (1999) SLT 590 : : AIR 1999 SC 3023, contends that the complaint was not maintainable as the Respondent had accepted the amount towards full and final settlement of the claim; that it is not the case of the Respondent that the discharge voucher was signed towards full and final settlement under influence or coercion, that the observations made by the State Commission to the effect that the settlement of the claim does not foreclose the Respondent''s right to claim actual loss suffered by it, are contrary to the law laid down by the Hon''ble Supreme Court; that the State Commission erred in not appreciating the report of the Surveyor who had given a well considered assessment of the payable loss after examining the records including the Bank Statement; that the State Commission has wrongly concluded that the entire stock was destroyed in the fire incident. As against this, learned Counsel for the Respondent supports the order passed by the State Commission. It is not disputed before us that a fire policy was obtained by the Respondent from the Appellant covering the risk of fire to its stock. On 25.9.1990, an extensive fire took place in the Madipur premises of the Respondent and the entire stocks lying therein reduced to ashes. Respondent lodged a claim of Rs. 9,98,010.25 with the Appellant. After reaching to the conclusion that the entire stock was damaged, Surveyor appointed by the Appellant, assessed the total loss at Rs. 7,71,497.00. However, while recommending the claim, Surveyor assessed the net loss at Rs. 4,61,493.00 after deducting the Rs. 2,15,004.00 towards the value of unaffected goods in the fire incident and Rs. 95,000 as salvage value. Appellant offered a sum of Rs. 4,56,831 which was accepted by the Respondent. The dispute centers around the balance amount of claim.

5. WE agree with the view taken by the State Commission that the entire stock lying at the insured premises was destroyed due to extensive fire. The major portion of the main work hall was severally damaged and overhead wooden shelves were collapsed due to intensity of the fire. The observations made by the Surveyor that a stock having the sound value of Rs. 1,60,000 was found out of debris water cannot be believed. Surveyors have wrongly reduced the assessed amount by Rs. 2,15,004 towards the unaffected stock. There is no evidence on record to show that the unaffected stock worth Rs. 2,15,004 was found in the premises. Surveyors also deducted Rs. 95,000 towards salvage of the stock which had been partially damaged. The partially damaged stock was of no use to

the Respondent. Surveyors should not have deducted Rs. 95,000 towards salvage from the assessed amount.

6. WE do not find any substance in the submission of the learned Counsel for the Appellants that the Respondent had accepted the sum of Rs. 4,56,831 towards full and final settlement of the claim and, therefore, complaint filed by it was not maintainable. Respondent had not given any discharge voucher. This was a payment voucher sent by the Appellants in which a line was inserted that the payment made was towards full and final settlement of the claim. This cannot be deemed to be a voluntary discharge. Had the Respondent not signed the payment voucher, the sum of Rs. 4,56,831 would not have been paid to it by the Appellants. The amount was accepted by the Respondent under the apprehension of denial of the entire claim. We do not find any infirmity in the order passed by the State Commission. For the reasons stated above, we do not find any merit in this appeal and dismiss the same leaving the parties to bear their own costs.

7. PURSUANT to the order dated 1.3.2007 of this Commission, Appellant Insurance Company had deposited a sum of Rs. 1,50,000 with the District Forum and liberty was granted to the Respondent to withdraw the same on furnishing personal bond. In case the amount is withdrawn by the Respondent, the Personal Bond stands discharged. We direct the Registry to release Rs. 35,000 deposited by the Appellant towards statutory deposit to the Respondent along with accrued interest, if any, in part satisfaction of the decree. Balance amount shall be paid by the Appellant to the Respondent within six weeks failing which the Respondent will be at liberty to execute the degree.

