(2011) 09 NCDRC CK 0069

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd. APPELLANT

Vs

Syed Manzarul Hassan RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Citation : 2011 0 NCDRC 737

Hon'ble Judges : Anupam Dasgupta J.

Final Decision : appeals are disposed of

Judgement

1. THESE two appeals are directed against the order dated 26.07.2007 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore (in short, "the State Commission") in complaint case no. 547 of 2006. In this order, the State Commission observed/directed, inter alia, as under: "xxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx The main grievance of the complainant is that according to him he has kept the stocks worth Rs.12,11,523/- as on the date of the fire accident occurred on 26.03.1993 in both the shops. After the accident the complainant made a claim for payment of compensation with the Insurance Company. The said claim was repudiated by the Insurance Company on the ground that the claim of the complainant is not genuine. This was challenged by way of filing a complaint before this Commission in complaint nos. 61,62 and 63 of 1995."

"THESE complaints were disposed of by this Commission by its order dated 24.09.2004 with a direction to the Insurance Company to resurvey and assess the loss. Accordingly the surveyor has assessed the loss and submitted the report. On the basis of the surveyor?s report OPs 1 & 2 have sent the vouchers to the complainant suggesting certain amount as full and final satisfaction of the claim. This was not accepted by the complainant. Therefore, the complainant has filed the present complaint before this Commission."

"xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx "The second surveyor who was appointed to assess the loss by virtue of the order of this Commission has also observed that the fire accident is a genuine one and the complainant is entitled for compensation."

"xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx "Now the only question that has to be considered is that for how much amount the complainant is entitled for compensation in respect of the loss suffered due to the fire accident occurred on 26.03.1993."

"The surveyor in his report at page 43 has observed as on the date of the fire accident the stock in Janata Cut Piece Centre worth Rs.3,43,883/-. In respect of the Sanman Saree Centre is concerned at page 76 he observed that the stock available as on the date of the fire accident is worth Rs.6,63,686/- thus in a total sum of Rs.10,07,569/-."

"In order to deduct 50% from out of the total amount no acceptable reasons have been assigned by the surveyor in his report. The Insurance Company has also not produced any material before us to show that 50% of the total loss assessed by the surveyor is to be deducted for the purpose of payment of compensation. In the absence of such evidence, we are of the view that the complainant is entitled for compensation in a sum of Rs.3,43,886/- in respect of Janata Cut Piece Centre and Rs.6,63,686/- in respect of Salman Saree Centre. In all the complainant is entitled for compensation of Rs.10,07,572/-. Hence, relying upon the report of the surveyor, we are of the view that the complainant is entitled for compensation of Rs.10,07,572/- which is rounded of to Rs.10,08,000/- from the OP with interest."

2. IN view of the history of the case, it is also necessary to reproduce the relevant parts of the State Commission?s order dated 24.09.2004 referred to in the impugned order reproduced above: "xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx Now, the question that arises for consideration is that what is the actual loss suffered by the owners of the shops? The complainants have produced the stock statements said to have been submitted to the Bank. IN support of this, no employees of the Bank have been examined in these cases. The surveyor of the INsurance Company assessed the damages on the basis of the damage said to have been caused in respect of the stocks in Janata Cut-piece Cloth Centre. The said surveyor?s report also cannot be accepted, since there is no overall consideration of all the materials available before him. So far as the Sanman Saree Centre is concerned, there is no assessment of damages by the surveyor on the ground that the Sanman Saree Centre was not at all in existence, as on the date of the accident. Further, the complainants have also not produced any other independent material in support of the loss suffered by them, except relying upon the stock statements furnished by them to the Bank."

"Therefore, in the interest of justice keeping in view that there is some deficiency on the part of both the sides in establishing the actual damage caused, we are of the view that an independent surveyor is to be appointed by the insurance company, for the purpose of assessing loss in terms of money on the basis of the document or any other material produced by the insured."

"4. The Counsel for both the parties submit that they are agreeable for the decision that may be taken by the surveyor, regarding quantum of compensation, provided the surveyor is directed to complete the survey and determine the quantum of compensation, as observed above within five months from today. IN view of the statement, made by the counsel for the parties, we pass the order in the following terms:

"The complaints are disposed of. INsurance Company is directed to appoint an independent surveyor, for the purpose of determining compensation, as observed in the body of the order within 5 months from today."

"The INsurance Company on the basis of the report of thesurveyor determining quantum of compensation, as directed above, is directed to settle the claim of the complainants." [Emphasis supplied]

We have heard the learned counsel for the parties in both the appeals and considered the documents on record as well as the written submissions of Mr. Kishore Rawat and Mr. Yogesh Malhotra.

Fa no. 547 of 2007 has been filed with a delay of 18 days, whereas the delay in filing Fa no. 11 of 2008 is 128 days. Considering the grounds of the respective appeals as well as the reasons for the delays in the applications for condonation, the delays in filing both the appeals are condoned, subject to the United India Insurance Company Ltd. paying a sum of Rs.2,500/- and the National Insurance Company Ltd. paying a sum of Rs.7,500/- to respondent no.1/complainant and depositing equal amounts with the Consumer Legal Aid Account of this Commission, within six weeks of the date of this order.

3. IN each appeal, the issue involved is limited to whether the State Commission was justified in rejecting the assessment of payable loss on the ground that the second surveyor did not give any acceptable reasons for reducing the payable loss to 50% of the derived loss worked out by him in each case. In this context, both Mr. Rawat and Mr. Malhotra have emphasised that the insurance companies and the complainant agreed to a second independent second surveyor being appointed and accepting the assessment of loss by the said surveyor. This was formally incorporated in paragraph 4 of the State Commission?s order dated 24.09.2004. In such a situation, the complainant was not within his rights to file the second complaint before the State Commission nor was the State Commission within its authority to consider the second complaint and review its own order dated 24.09.2004 and pass an entirely different order on the second complaint. On the other hand, Ms Girish on behalf of respondent no.1/ complainant argued that even the second surveyor was duty bound to give acceptable reasons for assessment of the loss in his report. Therefore, the State Commission was justified in reviewing the report of the second surveyor and allowing the entire derived loss, because the second surveyor had failed to give any reasons for the 50% reduction adopted by him.

4. DURING the course of the hearing, it was also brought to notice by the learned counsel for the respondent no.1/complainant that the dispute relating to the amount of loss payable by respondent no. 1 to the State Bank of Hyderabad had been resolved and the settlement was confirmed by the latter by its memorandum dated 30.12.2010. In view of the clear observations in paragraph 4 of the State Commission?s order dated 26.07.2007 (reproduced in paragraph 2 above), I am of the view that it was not open for the parties to deviate from the agreement and challenge the assessment of payable loss made by the second surveyor. I am also inclined to agree with the learned counsel for the appellants that having recorded the said agreement in paragraph 4 of its order dated 24.09.2004, the State Commission was not within its jurisdiction to pass the second order dated 26.04.2007 on a new complaint based on the same cause of action as the earlier one, because this would amount to review by the State Commission of its own previous order which is not permissible under section 17 of the Consumer Protection Act, 1986. In view of the foregoing discussion, the impugned order of the State Commission is set aside. The appellant/insurance companies are directed to make payment to respondent no.1/complainant in accordance with the payable loss assessed by the second surveyor in his report along with interest @ 9% per annum from the date falling 90 days after the date of the respective insurance claims, within six weeks from the date of this order. On making this payment (including that of the cost of Rs. 10,000/- awarded above) less any payment already made to and obtaining discharge vouchers from respondent no.1/complainant, the appellant insurance companies will be at liberty to withdraw the amounts that they have so far deposited with the Consumer Fora, including this Commission. The appeals are disposed of in the foregoing terms.

