

(2015) 08 NCDRC CK 0046

In the National Consumer Disputes Redressal Commission

Case No : 20 of 2008

UNITED INDIA INSURANCE CO LTD & ORS

APPELLANT

Vs

DWARAKA RESORTS PRIVATE LTD

RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Citation : (2015) 08 NCDRC CK 0046

Hon'ble Judges : K S Chaudhari

Advocate : A K De, Rajesh P Dwivedi, Ashok Panigrahi

Final Decision : Appeal Allowed

Judgement

K.S. Chaudhari, Presiding Member

[1] This appeal has been filed by the appellant against the order dated 21.11.2007 passed by the learned Orissa State Consumer Disputes Redressal Commission, Cuttack (in short, "the State Commission") in CD Case No. 83/2000 Dwaraka Resorts Pvt. Ltd. Vs. United India Ins. Co. Ltd. & Ors. by which, complaint was allowed.

[2] Brief facts of the case are that complainant/respondent is a two-star hotel which was insured with OP/appellant from 1.10.1999 to 30.9.2000. Super-Cyclone devastated the coastal regions of Orissa on 29.10.1999 as a result of which, heavy damage was caused to insured hotel as per paragraph 3 of the complaint and claimed Rs.14,79,000/-. It was further submitted that OP settled claim for Rs.1,78,550/- and pressed for full and final settlement, otherwise, they would not pay any amount. Alleging deficiency on the part of OP, complainant filed complaint before learned State Commission and claimed Rs.14,79,000/- along with Rs.5,00,000/- compensation of mental agony. OP resisted complaint and submitted that complainant does not fall within purview of consumer, so, complaint is not maintainable. It was further submitted that surveyor assessed loss of Rs.1,78,898/- and claim of the complainant is inflated and prayed for dismissal of complaint. Learned State Commission after hearing both the parties

allowed complaint and directed OP to pay Rs.14,00,000/- excluding amount of Rs.1,78,550/- already paid with 9% p.a. interest against which, this appeal has been filed.

[3] Heard learned Counsel for the parties and perused record.

[4] Learned Counsel for the appellant submitted that learned State Commission has committed error in ignoring surveyors report without any cogent reasons and order passed by learned State commission is not speaking order; hence, appeal be allowed and impugned order be set aside. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law; hence, appeal be dismissed.

[5] Learned State Commission after recording contentions of both parties observed as under: "4. .

On perusal of the report, it appears that the SIDBI, Bhubaneswar in order to ameliorate the problems faced by the SSI units affected by the cyclone in the State decided to reduce rate of interest and advised the OSFC to render soft assistance. In order to consider grant of further loan, the OSFC conducted inspection of the complainant's premises. It has assessed the loss at rupees 20,79,000/- due to the damage suffered by the complainant in cyclone. The gist of the assessment is as follows;

(i)

Civil works Rs.5,80,000/-

(ii)

Plant and machinery Rs.9,40,000/-

(iii)

Installation and Electrification, furnitures Rs.2,04,000/-

(iv)

Others Rs.3,50,000/-

Total

Rs.20,74,000/-

There is no reason as to why the inspection report of the OSFC should not be accepted. The OSFC is a statutory body and it inspected the premises in order to grant loan to the complainant. We, therefore, reject the objection of the opposite party insurance company and hold that the report cannot be rejected at the threshold.

5. We may exclude the assessment of rupees 3,50,000/- mentioned in the item iv (miscellaneous). If it is excluded the amount comes to rupees 17,24,000/-.

Against this, the complainant has laid claim of rupees 14,79,000/-."

and allowed claim for Rs.14,00,000/- excluding the amount of Rs.1,78,500/- already paid. Perusal of aforesaid observations reveals that surveyors report has been discarded only because OSFC, who gave report, is a statutory body. This is no ground for discarding surveyor's report, who is also appointed as per provision of the act. This order is not a speaking order and no cogent reasons have been given for discarding surveyors report and in such circumstances, matter is to be remanded back to learned State Commission to pass speaking order.

[6] As far OSFC valuation report dated 14.9.2000 is concerned, it has not been referred in the complaint, though, complaint was filed on 19.10.2000. First time this report has been referred in affidavit dated 12.9.2007 filed by Sri Kartik Chandra Kanungo and again reaffirmed by another affidavit dated 19.11.2007. Perusal of order sheets does not reveal whether copy of these affidavits and report of OSFC has been given to OP or not. Perusal of order sheets of learned State Commission reveals that after taking written statement on record, matter has been put for hearing on each and every date and during hearing affidavit has been taken on record without granting opportunity to rebut these documents. After taking written statement, learned State Commission ought to have adjourned matter for filing oral as well documentary evidence and parties should have been given opportunity to cross-examine the witnesses if prayed.

[7] Learned State Commission has allowed complaint on the basis of OSFC report in which loss to plant and machinery has been assessed at Rs.9,40,000/- whereas in the complaint complainant has claimed only Rs.3,95,000/- towards plant & machinery. It is to my utter surprise that learned State Commission allowed Rs.,9,40,000/- against prayed Rs.3,95,000/- and in such circumstances, learned State Commission has committed error in allowing complaint on the basis of assessment made by OSFC.

[8] Perusal of complaint reveals that complainant claimed Rs.14,79,000/- as loss due to super cyclone against which OP agreed to pay Rs.1,78,550/-. During pendency of complaint as per directions of learned State Commission Rs.1,78,550/- were paid by OP to the complainant and learned State Commission further directed OP to pay Rs.15,78,550/- as compensation towards loss meaning thereby, learned State Commission allowed claim of Rs.14,79,000/- meaning thereby, about Rs.99,450/- have been awarded additionally without any prayer which could not have been allowed.

[9] Thus, it becomes clear that there were many discrepancies in the impugned order which is liable to set aside and in the interest of justice; matter is to be remanded back to learned State Commission to decide complaint by speaking order.

[10] Consequently, appeal filed by appellant is allowed and order dated 27.11.2007 passed by learned State Commission in CD Case No. 83/2000

Dwaraka Resorts Pvt. Ltd. Vs. United India Ins. Co. Ltd. & Ors. is set aside and matter is remanded back to learned State Commission to decide complaint afresh by a speaking order after giving an opportunity of being heard to both the parties.

[11] Parties are directed to appear before State Commission on 14.09.2015.