
(1999) 07 NCDRC CK 0084

In the National Consumer Disputes Redressal Commission

United India Insurance Co.Ltd.

APPELLANT

Vs

WAMAN MAHADEV SAWANT

RESPONDENT

Date of Decision : 01-07-1999

Acts Referred:

Citation : 2000 2 CPJ 585 : 2000 3 CPR 137

Hon'ble Judges : E.S.Da Silva , Y.V.Rao , Mangala Sanes J.

Final Decision : Appeal No. 104/98 allowed with costs? Appeal No. 2/99 dismissed

Judgement

1. BY this common order, we propose to dispose of both the appeals which are co-related and are challenging the order, dated 2.11.1998, of the District Forum, North Goa. This order has adjudicated the complaint which the respondent, in Appeal No. 104/8, has filed against the appellant on account of their repudiation of the claim for compensation due to the burning of his vessel "Jai Parvati" insured with the appellant, consequent upon on accidental fire, on 28.12.1992, at Corjuem. The appellant's case in this appeal is that the claim was rejected because it was fraudulent, as the fire which destroyed the vessel was not accidental but deliberately put up by the respondent. However, the learned Forum on the basis of the evidence came to a different conclusion that there was sufficient proof regarding the accidental nature of fire and, therefore, the refusal of appellant to entertain the respondent's claim was amounting to deficiency in service. The learned Forum accordingly directed the appellant to pay to the respondent that insured sum of Rs. 4,58,000/- considering that there was delay of 2 years in repudiating the claim of the respondent when such delay should not have been more than one year. A further direction was made to the appellant to pay to the respondent compensation by way of interest on the same amount at the rate of 18% per annum from 1.1.1994 till realisation of the said amount.

2. IN Appeal No. 2/1999, the appellant's/complainant's grievance is that the interest granted towards compensation should have been ordered to be paid not from the period beyond one year as directed by the learned Forum, but from the

date of the accident till the date of realisation of the due amount. On the day of the hearing both the learned Counsel for the parties, namely, Mr. Netravalkar for the appellant and Mr. Nerulkar for the respondent, argued at length. We have gone through the records and considered the submissions of learned Counsel and we are satisfied that the grievances of appellant in Appeal No. 104/98 are sound and well conceived. Admittedly, the respondent approached the Forum with a complaint against the appellant on account of their repudiation of his claim for the damages caused to his vessel "Jai Parvati", due to accidental fire occurred on 28.12.1992, consequent upon explosion of a kerosene stove which was being used by one of his Khalassis when he was cooking food in the vessel. In support of his claim, the respondent relied upon a number of documents which, in our estimation, in no way are able to substantiate a case of accidental fire attempted to be established by him. Among these documents only the Panchanama of the scene of offence, dated 29.12.1992, seems to be relevant for that purpose. However, from a perusal of this document also, we find that the Panchanama appears to be inconclusive to point out that the fire which destroyed the vessel was actually accidental or due to the explosion of a cooking kerosene stove. The respondent, apart from these documents produced alongwith the complaint, which is otherwise duly verified, totally neglected to make available any other relevant material on record to corroborate the specific pleadings contained in his complaint. Not even an affidavit of the Khalassi who, according to him, was the only eye-witness of the incident, was produced as well as affidavits of the other persons who must have rushed immediately to the spot in order to help to extinguish the fire. Being so, it is obvious that the only conclusion which the learned Forum might have arrived at, on the basis of such a poor evidence before it, was that the complainant has not been able to prove what was the real cause of the fire, bearing in mind that this was exactly the only material point which could justify the claim for damages put up by him before the appellant. Indeed, the learned Forum initially and on the strength of the same evidence in the file had dismissed the complaint but in appeal this dismissal was reversed by this Commission on the ground that the learned Forum had not discussed at all the evidence on record and failed to assess the same on merits. Therefore, the matter was remanded to the Forum with a specific direction that the available evidence should be re-assessed to find out whether the vessel had caught fire accidentally. In the circumstances, we find that, again, the approach of the learned Forum, while simply delivering the impugned order on the same material without giving to the parties a fresh opportunity to be heard, is certainly not proper so much so, throughout its order, the learned Forum seems to have been more anxious in scrutinizing the evidence relied upon by the appellant rather than judiciously weighing the evidence produced by the respondent in support of his complaint. In this regard, we are satisfied that, irrespective of the controversy raised by the learned Counsel for the appellant that respondent did not rely on any affidavit in evidence to substantiate his pleadings inspite of a specific direction given by this Commission, the fact remains that the total failure on the part of the respondent to place before the learned Forum any cogent

evidence to show that the fire which destroyed the vessel was accidental, burden (sic.) was heavily weighing towards him in view of the stand taken by the appellant that the fire was intentional and deliberate, has materially damaged, ab initio, the real issue which was required to be adjudicated. The deficiency of service on the part of appellant could have existed only if the respondent had succeeded to establish, before the learned Forum, that he had placed before the appellant/Insurance Company sufficient evidence to prove that the fire which has destroyed his vessel was due to the explosion of the cooking kerosene stove. In that case alone the responsibility of the Insurance Company to compensate the respondent would arise. The appellant was perfectly right in carrying on its own inquiries to disprove the claim made by the respondent with regard to the nature of fire. It is in the light of this position that we should look at the evidence made available by the appellant on this point. All the efforts of the learned Forum in the impugned order and the submissions made by the respondent's Counsel before us to negative the findings of the Investigating Agencies of the appellant are to be discarded since the question of fire having been or not deliberate, as pleaded by the appellant, seems to us irrelevant. Indeed, in the absence of any substantantive proof of the facts pleaded by the respondent with regard to the nature of fire which destroyed the vessel, no burden of proof would lie on the appellant. However, we are inclined to share the view that the Reports of the Surveyor and of the Investigating Agencies engaged by the appellant are likely to cast a serious doubt on the very genuineness of the complaint. To that extent, the refusal by appellant to entertain the claim of the respondent appears to be justified. This being the position, we see no deficiency in service supposed to be rendered by the appellant. The respondent is free to approach the Civil Court for redressal, if he is so advised, in case he is in a position to establish that it was an accidental fire which destroyed his vessel, based on reliable evidence in its support.

In this view of the matter, we hold that the impugned order of the Forum cannot be sustained and is bound to be quashed and set aside and the respondent is free to approach the Civil Court for redressal if he so desires. As far as Appeal No. 2/99 is concerned, the same cannot be entertained, as a logic corollary of the fate of the Appeal No. 104/98 and is, therefore, to be rejected. In the result, Appeal No. 104/98 is allowed with costs, which we quantify at Rs. 1,000/-, and Appeal No. 2/99 stands dismissed. Order accordingly. Appeal No. 104/98 allowed with costs. Appeal No. 2/99 dismissed.