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(1995) 03 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

VALLABH OIL MILLS (P) LTD. APPELLANT

Vs

Oriental Insurance Company Ltd RESPONDENT

Date of Decision : 10-03-1995

Acts Referred:

Citation : 1995 1 CPC 489 : 1995 1 CPR 770 : 1995 2 CPJ 443

Hon'ble Judges : A.L.Bahri , R.L.Gupta , Gurkanwal Kaur J.

Advocate : Sunil Chadha , Deepak Arora

Judgement

1. -THE M/s. Shree Vallabh Oil Mills (Private) Limited Khanna in this complaint filed under Sections 11 and 12 of the Consumer Protection Act claims a sum of Rs. 5,94,202/- alongwith 18% interest thereon with effect from July 14, 1993. Another sum of Rs. 25,000/- is claimed as damages alongwith costs of Rs. 15,000/-. THE stocked goods at its Mill premises in Khanna. Its godown is separately situated. THE insured with the , the Oriental Insurance Company Limited, stocks worth Rs. 12 lacs and Rs. 25 lacs as per details given in the complaint vide Insurance Policy covering period commencing from December 26, 1992 to December 25,1993 on payment of Rs. 25,589/- on December 24, 1992. An extract of the Insurance Policy is attached as Annexure C1 with the complaint. Stocks of oil seeds worth Rs. 8.0 lacs were shifted from the Mill premises to the godown premises under intimation to the Opp. Party, respondent No. 2 who issued an endorsement Annexure C2 on July 1,1993 covering the risk of such stocks under the policy. In this manner, the stocks at the Mill premises stood reduced by 8.0 lacs.

2. ON July 12, 1993, the Complainant added more stocks valuing Rs. 25 lacs on payment of additional premium of Rs. 12,740/- at the Mill premises. The Insurance Company issued endorsement Annexure C-3 in this respect. In this manner, total stocks at the mill premises stood insured to the tune of Rs. 42 lacs. In this endorsement, it was mentioned that the risk would commence with respect to the stocks added vide endorsement Annexure C-3 after 15 days. On the night intervening 13th/14th july 1993, there came floods with the result that

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stocks lying at the godown premises situated at 40-C Focal Point Khanna came under the sweep of water and were damaged. Information regarding loss and damage to the stocks was given to the Insurance Company on July 16, 1993 vide Annexure C-4. It was on the basis of that report that the Insurance Company got the damage assessed from the Surveyor Shri Yogesh Kumar on July 16, 1993 and thereafter again on July 23, 1993. This survey was conducted under the supervision of Mr. Moudgil, Divisional Manager and Mr. Naresh Sehgal, Branch Manager of the Insurance Company. On being asked, the Complainant submitted quotations of different parties offering to purchase the damaged stock. These were submitted to the Insurance Company on July 27, 1993 (Annexure C5). Subsequently, another Surveyor was appointed by the Insurance Company namely Mr. Mukesh Kumar Gupta (Duggal Gupta & Associates). The documents asked for were supplied by the Complainant. Vide letter dated August 25, 1993, the Complainant agreed to retain salvage at an average rate of Rs. 2/- per kilogram (1958 bags). The offer was treated as just and reasonable by the Surveyor (Annexure C7). On August 14, 1993, the Complainant telegraphed to the Insurance Company and got a reply thereto that Surveyor Mukesh Kumar Gupta was being contacted. Copy of the reply is Annexure C8. On the asking of Duggal Gupta & Associates, the Complainant submitted his bill, on August 26,1993. The Complainant was asked in October 1993 to submit details of the bill. Annexure C9. A reply was submitted thereto claiming a sum of Rs. 5,94,202/- alongwith 47 enclosures, copies Annexures C10 and C11. As per allegation of the Complainant, Duggal Gupta & Associates recommended the claim of the Complainant, however, no intimation was given by the Insurance Company. In April, 1994 registered notice was also sent to the Insurance Company and reply was received on May 5, 1994 that the matter was under consideration (Annexures C12 and C13). For two months, there was no response from the Insurance Company and legal notice dated July 21, 1994, Annexure C14, was issued to the Insurance Company. It was on July 22, 1994, Annexure C15, that the Insurance Company repudiated the claim of the Complainant and disowned liability, inter alia, on the grounds, that the matter was got investigated by M/s. R.C. Chugh and Company whose report was not favourable as the insurance was to take effect after 15 days and secondly as per report of the Investigating Agency, no stocks were shifted from the factory premises to the godown on or about July 1, 1993. Reply was sent by the Complainant, Annexure CI 7 that 15 days clause was not attracted as no claim was being made on the basis of endorsement dated July 12, 1993. The amount was being claimed under endorsement dated July 1, 1993 which did not contain any such clause. Having received no response, the present complaint was filed.

On notice having been issued to the Opp. Parties, reply has been filed controverting the same, inter alia, asserting two grounds referred to above. In support, report of Mr. Chugh, Annexure R1, is relied upon. Reports of previous Surveyors have also been attached as Annexures R2 to R5.

3. IN the rejoinder filed by the Complainant, stand taken up in the complaint is

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reiterated. Alongwith the rejoinder, copies of stock registers of the Mill as well as godown Annexures C18 to C20 have been produced alongwith other documents indicating that stocks which were received in the mill premises were transferred to the godown. We have heard learned Counsel for the parties and after perusal of the pleadings and the documents supported by the evidence of the respective parties in the form of affidavits, we are of the view that the Complainant has succeeded in establishing that there was deficiency in rendering services to the Complainant by the Opp. Party, the Insurance Company in respect of Insurance Policy governing the rights of the parties and the Complainant is entitled to the compensation claimed.

4. ONE of the grounds for. contesting the claim of the Complainant is that there existed a clause in the endorsement attached to the policy Annexure C3 that the same would be operative after 15 days. On issuing such endorsement, the Complainant could not make a claim on account of any damage caused to the stocks in the godowns during the night intervening 13th/ 14th July, 1993. There is fallacy in this argument. Endorsement Annexure C3 was issued for the stocks which were added at the Mill premises for which additional premium was paid. Stocks which were already insured at the Mill premises and were shifted to the godown premises on July 1, 1993 much prior to the issuing of the endorsement, Annexure C3, continued to be insured. It was only change of premises which was accepted by the Insurance Company while issuing endorsement Annexure C3 on July 1,1993. There is no such clause in this endorsement which is part of the Insurance Policy that it would come into operation after 15 days of issuing the. same. Repudiating the claim of the Complainant by the Insurance Company on this Count is illegal and arbitrary and cannot be upheld. The other challenge to the claim of the Complainant by the Opp. Party, the Insurance Company, is that no such stocks were shifted from the Mill premises to the godown by July 1, 1993 and the endorsement Annexure C2 was obtained by fraud. Such a question, according to the learned Counsel for the Opp. Party, needed detailed evidence and cannot be gone into in these summary proceedings. The Insurance Company was well within its rights to repudiate the claim after the matter was investigated by Mr. Chugh who had found as a fact on the basis of some entries in the stock registers, of the Complainant that no such stocks were shifted to the godown as alleged. We find no merit in the contention of Counsel for the Opp. Party. The Commission under the Act gets jurisdiction to decide the claim if it is found that there was deficiency in services on the part of Opp. Party. On finding as such, the claim of the Complainant cannot be thrown out directing him to approach the Civil Court for the remedy. No doubt in a given case where the Insurance Company promptly on claim being made repudiates the same that it could be said that such a disputed question of fraud etc. could not be decided by the Commission and the party should be relegated to the Civil Court. When the Insurance Company takes unduly long time to repudiate and that too after obtaining survey reports of the damage/loss caused on the evidence produced by the parties, mere ipse dixit of any Investigator based on some minor discrepancy

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in the stock-register or the like material to opine Commission of fraud, the repudiation of claim cannot be considered to be bona fide to deny the relief to the Complainant. Such a matter has already been considered by the State Commission in some cases, wherein it has been ruled that normally a repudiation by the Insurance Company should be within a period of three months. In Smt. Surinder Kaur of Ambala Cantt.v. The Oriental Insurance Company Ltd., 1993 (3) C.P.C. Page 646, the Haryana State Commission held as under: "To conclude it must, therefore, be held that the reasonable time frame within the Nationalised Insurance Companies must either settle or repudiate the insured consumers claim would normally be a period of three months. Any delay beyond that would per-se attract the odium of deficiency in service, unless the same is cogently explained by the insurers and the burden thereof must necessarily rest on them."

5. THE aforesaid decision was relied again by the Haryana State Commission in "New India Assurance Co. Ltd. v. Gurdial Singh", 1995 (1) CON.LT 90. We fully agree and endorse the above view. In the present case, as already stated above, damage was caused in July 1993 when promptly intimation was given to the Insurance Company. It was more than a year thereafter that Mr. Chugh was appointed who submitted his report on the basis of which the claim was repudiated by the Insurance Company. In the meantime two Surveyors, one of whom had promptly, visited the spot and asessed the damage caused to the stocks in the godown. In such circumstances, without there being any cogent reason, the two Surveyor''s reports submitted in favour of the Complainant, could not be ignored and the repudiation made could not be considered as bona fide. In the facts of the present case, there was a clear deficiency in rendering services on the part of the Insurance Company. THE matter was considered by the National Commission in "Life Insurance Corporation of India, A.P. v. Shri Bhavanam Srinivas Reddy", II (1991) CPJ 189 (NC) holding as under:- "Any unilateral repudiation of the contract by the Insurance Company on the allegation that there had been a suppression of relevant material by the insurer at the time of taking the policy of insurance will not disentitle the policy holder from approaching the Redressal Forums constituted under the Act seeking an adjudication of the question whether the said repudiation was justified in law. In such a case the Consumer Disputes Redressal Forum has not only the jurisdiction but also a duty to investigate into the question whether the charge made by the Insurance Company on the basis of which the alleged repudiation was made is well founded in fact. In case it is found as a result of such investigation that the Insurance Company was justified in repudiating the contract, the complaint petition before the Forum will have to fail; if, on the other hand. the Forum comes to the conclusion that the charge levelled by the Insurance Company is not substantiated and hence there was no justification for its purported action repudiating the contract of insurance, the contract of insurance will be treated as subsisting and an enquiry will be conducted into the merits as to whether there was any /deficiency'' in service on the part of the Insurance Company so as to entitle the complainant to grant of relief under the Act. Thus, it is clear that the

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jurisdiction of the statutory Redressal Forums to conduct an adjudication into the complaint is in no way affected by the unilateral repudiation of the contract of insurance by the insurer."

6. SIMILAR view was taken by the National Commission in "The Divisional Manager, Life Insurance Corporation of India v. Uma Devi", II (1991) CPJ 516 (NC). The National Commission in "Sri Venkata Padmavathi Ram & Boiled Rice Mill v. The New India Assurance Co. Ltd. and Another", I (1993) CPJ 104 (NC) observed that it would be unfair means on the part of Insurance Company to delay the settlement and ultimately to defeat the claim which had been established by the surveys got conducted by the Insurance Company. In M/s. Super Teak Wood Industries v. Oriental Insurance Company Ltd. and Others", 1994 (1) CON.LT 280, the National Commission further observed that while repudiating the claim, the Insurance Company is required to apply mind and arrive at a conclusion in good faith regarding the truth and maintainability of the claim put forth by the insured. It was further observed that a duty was cast upon the Redressal Forum to investigate into the dispute and come to its own conclusion. It is in view of the settled rule of law as laid down by the National Commission in different judicial decisions, referred to above, that the case in hand has been looked into. When stocks were shifted from the Mill premises to the godown on July 1,1993, it could not be said that any of the parties was expecting or anticipating the coming of floods. Rather, the position of shifting of goods stood admitted when endorsement Annexure C2 was issued. Thereafter, more stocks were added to the mill premises and the Insurance Company issued another endorsement Annexure C3. Even at that stage, it was not anticipated that floods would come and cause damage to the goods which had already been shifted to the godown. Immediately after causing to the damage, the matter was reported to the Insurance Company which appointed Surveyors successfully whose reports were in favour of the Complainant. There was nothing cogent before the Insurance Company or before Mr. Chugh who after a year investigated the claim to rebut the two reports of Surveyors. The survey reports have been made on the basis of material produced by the Complainant. In the present proceedings, the Complainant relies upon the stock register maintained at the Mill premises, extracts (Photo copies), Annexures C18 and C19 indicating the receipt of goods and further transfer thereof to the godown on the relevant dates giving particulars of the trucks. The registers have been regularly maintained and could be relied upon. We find no ground to discard the same. The repudiation of claim after more than a year is not at all bona fide or based on any cogent material. Finding some discrepancy in the stock register for subsequent date can hardly be a ground to give finding of fraud. It is a clear case of deficiency in the service on the part of the Insurance Company. The Complainant is entitled to the compensation for the stocks which were damaged during the floods which occurred during the night intervening 13th/14th of July, 1993. The total damage as assessed was to the tune of Rs. 7,40,002/- which was reduced by the Complainant, as already stated above, taking into consideration the value of the

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damaged stocks (Salvage). The Complainant had offered to purchase the same at the rate of Rs. 2/- per kilogram, thus, reducing his claim to Rs. 5,94,202/- (Five lacs, ninty-four thousands, two hundred and two rupees) to which the Complainant is entitled to and we hold accordingly.

The Complainant is also entitled to 18% interest on the amount found due as above from the date of causing of the damage i.e., July 13,1993 till payment. Since the Complainant has been unduly harassed by the Opp. Party, it is entitled to special damages on that count which are assessed at Rs. 15,000/- (Rupees fifteen thousands). The Complainant would also get costs which are assessed at Rs. 5,000/- (Rupees five thousands). We direct the Opp. Party, the Insurance Company, to make payment as ordered above to the Complainant within a period of two months. Ordered accordingly.

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