(1997) 08 NCDRC CK 0053

In the National Consumer Disputes Redressal Commission

VANI AGENCIES APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 26-08-1997

Acts Referred:

Citation : 1998 1 CPJ 484 : 1998 1 CPR 226

Hon'ble Judges : A.Venkatarami Reddy , J.Ananda Lakshmi , K.Ranga Raos J.

Final Decision : Complaint partly allowed

Judgement

1. XTHE complainant in C.D. 253 /93 who is a dealer in electric and electronic goods took two policies from New India Assurance Company Ltd., i.e. first opposite party for a sum of Rs. 4 lakhs for the period from 2.3.1993 to 1.5.1993 and another for a sum of Rs. 12 lakhs covering the period from 12.4.1993 to 11.4.1994. The business premises wherein the stocks are kept including the entire stocks alongwith furniture and fittings were reduced to ashes in the fire accident that occurred on 22.4.1993 at about 11.30 night. The fire tenders attended and with great difficulty could put down the fire on the next day, and a report was given to the police also and on 23.4.1993 i.e. next day the opposite party Insurance Company was informed about the fire accident and the claim was submitted estimating the loss at Rs. 12,91,136/-. Although the opposite party Insurance Company appointed joint Surveyors and after lapse of six months an Investigator Sri M.V. Subba Reddy and although the complainant furnished all the necessary bills evidencing purchases and also commercial tax returns, etc., after a lapse of nearly one year and four months sent a letter repudiating their liability on the ground that as per the reinvestigation report of the police dated 16.3.1994, it was established that "your earlier statements to the police, our officials and Surveyors to the effect that you received a phone call at about 11.30 p.m. (on 22.4.1993) about the fire and then rushed to the shop, lifted the shutter are totally false. The reinvestigation revealed that you were very much present from 10.00 p.m. (on 22.4.1993) in the shop and that the independent investigation concluded that attributing the fire to short-circuit is incorrect and therefore, under Condition No. 6, the complainant is not entitled for

payment of any amount as a false declaration was given with regard to the presence at the time of fire accident".

2. ALLEGING that as there is a delay in settling the amount and the repudiation is illegal and arbitrary, the complainant claimed a sum of Rs. 15 lakhs in all i.e. Rs. 12 lakhs for stock in shop, Rs. 1 lakh towards furniture and fittings and Rs. 2 lakhs by way of compensation with interest at 24% p.a. from April, 1993 till payment. The opposite parties 1 and 2 in their version admitted the issuance of two policies, but pleaded that the certificate from the fire department does not disclose the real fact and the official report of the police also does not disclose the correct facts. They admitted the receipt of the claim and appointment of two joint Surveyors initially and thereafter an Investigator. But the official investigation report of the police clearly established that the fire is not due to an accident, but only created by the complainant to make a false claim. The Investigator''s report also supported the conclusion of the police. They denied the allegation that there was stocks worth Rs. 12 lakhs at the time of accident and the complainant was entitled to compensation of Rs. 15 lakhs. It was stated that the investigator has taken me statements of various persons and came to the conclusion that the insured did not receive any telephone call and concluded that the fire accident was not on account of electric short-circuit, but it is wantonly created. The Investigator also inspected the account books and other relevant documents and came to the conclusion that the claim is a bogus claim and hence the repudiation of the claim by the opposite party Insurance Company is justified and there is no deficiency on the part of the Insurance Company.

After the receipt of repudiation letter in August, 1994 the complainant filed an amendment to the complaint stating that the repudiation letter issued by the opposite party Insurance Company is not sustainable in law and is mala fide and to set aside the proceedings of repudiation dated 2.8.1994.

3. A counter was filed in reply to the affidavit filed by the complainant to receive additional/amendment complaint stating that the complainant wants to build up a new case which will change the cause of action. The complainant hastily approached the Commission when the claim is under investigation and the claim was rightly repudiated after investigation and there are no grounds to receive additional complaint, that the complainant is fully aware of the Surveyor''s report and Investigator''s report and there is no malicious act on the part of the opposite party Insurance Company in repudiating their liability. The complainant filed his affidavit evidence and was cross-examined as PW 1. The opposite parties filed the affidavit of Divisional Manager who was cross-examined as RW 2 and also filed affidavit of Sri M.V. Subba Reddy, Investigator, who was cross examined as RW 1.

4. ON behalf of the complainant Exs. A-I to A-18 were marked and on behalf of the opposite parties Exs. B-I to B-5 were marked. On the basis of the pleadings and arguments and documents the questions that arise for consideration are whether there is any delay on the part of the opposite parties in enquiring into

the claim and whether the repudiation of the liability by the opposite party Insurance Company is justified. Ex. A-l is a policy for Rs. 12 lakhs and Ex. A-2 is the claim form. Ex. A-3 is a letter dated 23.4.1993 by the complainant to the insurer informing about the fire accident and loss of property. Ex. A-4 is a letter from the complainant to the Circle Inspector of Police dated 23.4.1993 informing about the fire accident and loss caused to the property. Ex. A-5 is the report from the Head Constable and Ex. A-6 is the FIR. Ex. A-7 is the report given by the Inspector of Police. Ex. A-8 is the Case Diary part-I of Inspector of Police, Proddatur Urban dated 26.6.1993, stating that as there is no mischief found in the fire accident occurred in Vani Agencies, Mydukur Road, Proddatur on 22.4.1993 night, further action was dropped and case diary is closed. Ex. A-9 is the certificate of fire issued by the Fire Department stating that fire occurred due to electric short- circuit and the property worth Rs. 12 lakhs was burnt. Ex. A-11 is the letter dated 26.8.1993 and Ex. A-10 is the letter dated 16.11.1993 written by the complainant to the Insurance Company requesting for settlement of the claim at an early date as nearly 6 to 8 months have elapsed. Exs. A-12 to A-15 are the assessments made by the Commercial Tax Department dated 7.11.1990, 12.6.1991, 12.6.1992 and 23.6.1993 showing the turnover as Rs. 38,45,077/-/ for the year 1992-93. Ex. A-16 is the paper cutting published about the fire accident.

5. EX. B-l is the letter of repudiation. EX. B-2 is the report of joint Surveyors wherein i t was stated that basing on the information available, they confirmed that the loss in question was insured under the relevant policies of insurance and they assessed the loss at Rs. 9,25,000/-. EX. B-3 is the final investigation dated 16.3.1994 wherein on the instructions given by the Superintendent of Police, Cuddapah the fire accident was investigated. It was stated in the conclusion part of the report "after sustained investigation and considering the totality of the circumstances there are no reasons to differ with the earlier findings that the fire is a result of electrical short-circuit. There is absolutely no evidence either direct or circumstantial to give any other cause for the fire and to say that the partner N. Raghuram or any one or on his behalf has deliberately set fire and stimulated the circumstances/features to make it appear as accidental and there are no reasons to say that it is a case of orson. The earlier disposal treating the case as accidental fire is correct, in the drcumstances confirmed that the fire is a result of short circuit". EX. B-4 is the investigation report submitted by Sri M.V. Subba Reddy which is dated 16.10.1993 prior to the reinvestigation report i.e. EX. B-3 submitted by the Inspector of Police to the Superintendent of Police. In EX. B-4 the Investigator concluded that the claim for Rs. 11,91,136/- for loss of articles and Rs. 1,25,000/- for loss of furniture, fixtures etc., is highly exaggerated, and the fire incident in the premises of Vani Agencies on the night of 22.4.1993 appears to be probable and is a case of or son and not fire accident.

6. RELYING on the report of Ex. B-4 the Insurance Company came to the conclusion in the letter of repudiation that Mr. Raghuram partner of the Company although was present at that time in the premises, earnestly reported on

receiving the telephone call from the hotel owner opposite to the shop, he went to his shop. But in view of the subsequent reinvestigation made by the Circle Inspector of Police as directed by the Superintendent of Police, it was clearly stated that there is a cause of fire accident due to short circuit of electricity. The Surveyor stated that it is a fire accident and assessed the loss at Rs. 9,25,000/-. Sri M.V. Subba Reddy who investigated the case in his report said that at number of places although the witnesses stated that it is not a case of accident, but he frankly confessed that nobody gave a statement to that effect. Thus his report is based not on statements recorded during his investigation, but his own inference drawn after he enquired from the neighbours of the shop. In these circumstances, we are inclined to place reliance on the investigation report and also reinvestigation done by the police after the submission of the report by Sri M.V. Subba Reddy showing that it is a case of orson. In the reinvestigation it was clearly mentioned that it is a case of fire accident due to electric short-circuit. Hence we hold that the opposite parties are not justified in repudiating the claim.

So far as the quantum of compensation is concerned, we are inclined to place reliance on the Surveyor''s report. We, therefore, allow the complaint in part and direct the opposite parties to pay to the complainant a sum of Rs. 9,25,000/- with interest at 15% p.a. from July, 1993 i.e. giving three months margin from the date of accident till payment. There shall be no order as to costs in this complaint. Complaint partly allowed.