

(2013) 10 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

Vikas Sanitary And Hardware Store

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD

RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Citation : 2013 0 NCDRC 745

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : D.P.SHARMA , R.B.SHAMI , Pardeep Walia

Judgement

1. THIS revision petition has been filed by the petitioner against the impugned order dated 24.09.2012 passed by the Haryana State Consumer Disputes Redressal Commission (for short "the State Commission ") in FA No. 420/2011, "The New India Assurance Co. Ltd. versus M/s. Vikas Sanitary & Hardware Store & Anr. " by which while allowing the appeal, order of District Forum allowing the complaint was modified and compensation was reduced.

2. BRIEF facts of the case are that complainant - petitioner got his shop insured from opposite party No. 1 / respondent no. 1 from 24.03.2006 to 23.03.2007 for coverage of risk of fire, theft etc. Complainant had obtained cc limit from opposite party no. 2 / respondent no. 2 for running his business. In the intervening night of 29/30.09.2006 fire broke -out in the shop. A report was lodged with the Police and intimation was given to opposite party no. 1. Opposite Party No. 1 was given legal notice, thereafter, opposite party No. 1 sent a cheque of Rs.1,36,547/- to opposite party No. 2 which was credited in the account of complainant. As amount sent was too less in comparison to loss of Rs.5,22,000/-, alleging deficiency in service on the part of the opposite parties, the complainant filed complaint before the District Forum. Opposite parties resisted claim and submitted that as per assessment made by surveyor, cheque was sent and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed the complaint and directed opposite party No. 1 to pay Rs.2,84,932.19ps. along with interest @12% p.a. and further ordered to pay Rs.5,000/- as litigation expenses. Appeal filed by opposite party no. 1 was partly

allowed by learned State Commission. It was held that complainant is not entitled to any relief except Rs.1,36,547/-, against which this revision petition has been filed. Heard learned counsel for the parties finally at admission stage and perused the record.

3. LEARNED counsel for petitioner submitted that impugned order is a non-speaking order, hence revision petition be allowed and matter may be remanded back to learned State Commission. Learned counsel for respondent also agreed to this extent that the impugned order is a non-speaking order.

4. LEARNED State Commission after narrating facts in detail in the impugned order observed as under: - "After gone through the case file, I feel that the grant of compensation is not justified. As per the facts and circumstances of the case and findings recoded by the District Forum as well as the order passed by District Consumer Forum needs to be modified to the extent that compensation of Rs.1,36,547/- instead of Rs.4,21,479.19 - Rs.1,36,547/- will be justified. The appellant / OP No. 1 is not entitled to any other benefit. "

Perusal of order carefully reveals that no reason has been given by learned State Commission while reducing compensation awarded by District Forum. Hon "ble Apex Court in (2001) 10 SCC 659 - HVPNL Vs. Mahavir observed as under: "2. We may point out that while dealing with a first appeal, this is not the way to dispose of the matter. The appellate forum is bound to refer to the pleadings of the case, the submissions of the counsel, necessary points for consideration, discuss the evidence and dispose of the matter by giving valid reasons. It is very easy to dispose of any appeal in this fashion and the higher courts would not know whether learned State Commission had applied its mind to the case. We hope that such orders will not be passed by the State Consumer Disputes Redressal Commission, Haryana at Chandigarh in future. A copy of this order may be communicated to the Commission ".

5. HON "ble Apex Court in (2005) 10 SCC 243 H.K.N. Swami versus Irshad Basith (Dead) by LR's. observed as under: - "The First appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title. The order of the High Court is cryptic and the same is without assigning any reason. "

6. IN the light of aforesaid judgements it becomes clear that it is obligatory on the part of the first appellate court to pass detailed, speaking order with reasons. In the present case, learned State Commission has not applied its mind at all and has modified the order of District Forum without any reason in such circumstances, matter deserves remand. Consequently, revision petition filed by

the petitioner is allowed and the impugned order dated 24.09.2012 passed by State Commission in FA No. 420/2011, "The New India Assurance Co. Ltd. versus M/s. Vikas Sanitary & Hardware Store & Anr. " is set aside and matter is remanded back to the State Commission to pass detailed speaking order after giving an opportunity of being heard to both the parties.

7. PARTIES are directed to appear before the State Commission on 17.02.2014.