(2014) 05 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

V.K. Kariyana Store Through Its Proprietor Sh. Virender Kumar — APPELLANT

Vs

ORIENTAL INSURANCE CO. LTD — RESPONDENT

Date of Decision : 21-05-2014

Acts Referred:

Citation : 2014 0 NCDRC 274 : 2014 3 CPJ 182

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

Advocate : GIRIJESH PANDEY , MOHAN BABU AGARWAL , BHARAT SWAROOP SHARMA

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 31.01.2011 passed by the Haryana State Consumer Disputes Redressal Commission, Panchkula (in short, ''the State Commission '') in Appeal No. 1318 of 2008 - The Oriental Ins. Co. Ltd. Vs. M/s. V.K. Kariyana Store & Anr. by which, while allowing appeal, order of District Forum allowing complaint was set aside.

2. BRIEF facts of the case are that complainant/petitioner got his shop insured with stocks from OP No.1/Respondent No. 1 for a period of one year from 23.2.2005 to 22.2.2006. In the intervening night of 14/15.2.2006, fire broke out in the shop and caused loss of Rs.5,00,000/ - to the complainant. Surveyor appointed by OP assessed loss to the tune of Rs.2,55,647/ -. Complainant submitted claim, but OP No. 1 repudiated the claim on the ground that loss was occurred by fire in Shop No. 29/1, Main Bazar, Ram Nagar, Karnal, whereas premises insured was 31/9, Ram Nagar, Karnal. Complainant obtained loan from OP No. 2/Respondent No. 2 and hypothecated goods. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP No. 1 contested complaint and submitted that as insured ''s place was 31/9, Ram Nagar, Karnal and fire incident occurred on 29/1, Main Bazar, Ram Nagar, Karnal which was not insured with the OP, claim was rightly repudiated and prayed for dismissal of complaint. OP No. 2 submitted reply and alleged that complainant was running business at 29/1, Main Bazar, Ram Nagar, Karnal and complainant mentioned his

residential address at 31/9, Ram Nagar, Karnal in application for loan and prayed for dismissal of complaint against him. Learned District Forum after hearing both the parties allowed complaint and directed OP No. 1 to pay Rs.2,55,647/ - to the complainant with 8% p.a. interest and further allowed compensation of Rs.5,000/ - and dismissed complaint against OP No. 2. Appeal filed by the OP was allowed by learned State Commission vide impugned order against which, this revision petition has been filed. Heard learned Counsel for the parties finally at admission stage and perused record.

3. LEARNED Counsel for the petitioner submitted that actually shop no. 29/1, Main Bazar, Ram Nagar, Karnal was insured and by mistake shop no. 31/9, Ram Nagar, Karnal which was the residential address of the complainant, was mentioned in the policy and learned District Forum rightly allowed complaint, but learned State Commission committed error in allowing appeal; hence, revision petition be allowed and impugned order be set aside. On the other hand, learned Counsel for the Respondent No. 1 submitted that order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed. Learned Counsel for the Respondent No. 2 submitted that he has unnecessarily been dragged in the litigation.

4. PERUSAL of record clearly reveals that in the cover note issued by Insurance Company address of complainant business has been given as 31/9, Ram Nagar, Karnal and OP NO. 2 as proposer has also shown name of complainant ''s business at 31/9, Ram Nagar in which it has clearly been written that goods have been hypothecated to The Karan Co -op. Bank Ltd. In the proposal form as well as cover note of the policy, we do not find complainant ''s premises address at 29/1, Main Bazar, Ram Nagar, Karnal. No doubt, petitioner has placed on record credit report prepared by OP No. 2 in which address of business has been shown at shop no. 29/1, Main Bazar, Ram Nagar, Karnal and address of Varinder Kumar has been shown at 31/9, Ram Nagar, Karnal,but merely on the basis of this report dated 28.5.2004, which was between the complainant and OP No. 2, no liability can be fastened on OP No. 1 treating insured ''s place as shop no. 29/1 instead of 31/9, Ram Nagar, Karnal against as shown in the proposal form and cover note issued by Insurance Co. Learned State Commission while allowing appeal has rightly observed as under: ''''It is well settled principle of law that the parties are bound by the terms and conditions of the Insurance Policy, and none of the parties can seek any relief beyond those terms and conditions. In this regard reference may be made to the recent observation made by the Hon ''ble Supreme Court of India in case cited as Suraj Mal Ram Niwas Oil Mills (P) Ltd. Vs. United India Insurance Co. Ltd. and Anr., - 2011 CTJ 11 (SC)(CP) wherein the Division Bench of the Hon ''ble Apex Court consisting of Hon ''ble Mr. Justice D.K. Jain and Hon ''ble Mr. Justice T.S. Thakur, held that: ''''22. Before embarking on an examination of the correctness of the grounds of repudiation of the policy, it would be apposite to examine the nature of a contract of insurance. It is trite that in a contract of insurance, the rights and obligations are governed by the terms of the said contract. Therefore, the terms of a contract of insurance have

to be strictly construed, and no exception can be made on the grund of equity ..... ''''

24. Thus, it needs little emphasis that in construing the terms of a contract of insurance, the words used therein must be given paramount importance, and it is not open for the Court to add, delete or substitute any words. It is also well settled that since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the policy, its terms have to be strictly construed to determine the extent of liability of the insurer. Therefore, the endeavour of the court should always be to interpret the words in which the contract is expressed by the parties. The facts and circumstances of the instant case are fully attracted to Suraj Mal Ram Niwas Oil Mills (P) Ltd. case (Supra) Admittedly, the complainant had insured his shop with address M/s. V.K. Kariyana Store, #31/9, Ram Nagar, Karnal whereas the incident of fire had occurred at Shop No. 29/1, Main Bazar, Ram Nagar, Karnal which shop/premises was not insured with the appellant -insurance company. The complainant has failed to prove that he has insured the shop No. 29/1. More so there is nothing on the record to show that the complainant had ever written any letter to the insurance company to get the address changed on the policy and neither have ever informed the insured company with regard to shifting of his insured business premises ''''.

As insured ''s premises was 31/9, Ram Nagar, Karnal and fire incident occurred at Shop No. 29/1, Main BVazar, Ram Nagar, Karnal, OP has not committed any deficiency in repudiating claim and we do not find any infirmity, illegality or jurisdictional effort in the impugned order. Revision Petition is liable to be dismissed.

5. CONSEQUENTLY , Revision Petition filed by the petitioner is dismissed at admission stage with no order as to costs.

