

Ajay Prakash

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Court : Bihar State Consumer Disputes Redressal Commission SCDRC Patna

Decided On : Apr-25-2011

Judge : Subhash Chandra Jha, President & the Honourable Mrs. Renu Sinha, Member

Appeal No. : First Appeal No. 595 of 2006

Judgement :

Subhash Chandra Jha, President:

1. This appeal has been filed by the appellant-Ajay Prakash, which is directed against the order dated 14.6.2006 passed by the learned District Consumer Disputes Redressal Forum, Nalanda (hereinafter to be referred to as District Forum) in Consumer Complaint No. 01/2005 whereby and whereunder the complaint has been returned to the complainant holding that Forum was not competent to decide complicated and complex matter of the fact emerging in the complaint petition and thus, directed the complainant to take recourse in the appropriate authority.

2. Heard the learned Counsel of both sides. The complainant-appellant as per facts in the complaint petition has filed the complaint against the O.P.-respondent seeking compensation and claim on account of the loss sustained by him due to setting of fire in the shop in the mid night of 28.2.2004.

3. As per contention of the complainant he was running his business of wholesale cloth for his livelihood in the name and style of Sun Tex in a shop situated in Maurya Market, Sohsarai, Nalanda. The complainant happens to be the proprietor of the said shop. The shop in question was insured under comprehensive scheme with the United India Insurance Company Ltd. for Rs. 7 lacs, which was valid from the midnight of 31.12.2003 to 30.12.2004.

4. On the mid night of 28.2.2004, the shop in question SunTex got burnt with the fire and as such, the complainant sustained loss/damage to the tune of Rs. five lacs on account of burning of the cloths. The information was lodged with the concerned Police Station, Sohsarai bearing Sanha No. 554/2004. Written information were also furnished to the O.P.-respondent. The O.P. respondent entrusted Sri Kaushal Kishore, a Chartered Accountant-cum-Surveyor, who made inventory of the burnt articles. As per the complainant, there was burning of cloths worth Rs. 5,18,519-50 along with some papers. When O.P. failed to consider the claim of the complainant, a legal notice were also sent. Reply was accordingly received from the respondent wherein respondent-O.P. accepted the claim of Rs. 98,546. This amount was not acceptable to the complainant and hence the complaint.

5. The O.P.-respondent repudiated the complaint by filing their show cause in the District Forum wherein it was clearly stated that there was no deficiency on the part of the service provided by them and accordingly, the Insurance Company disposed of the claim of the complainant at Rs. 98,546 as stated above.

6. The learned District Forum has also considered the written statement filed on behalf of the Bank, who was O.P. No. 2 there wherein it was clearly stated that they had no concern with the contention and repudiation of claim, which is mainly in between the complainant and O.P. No. 1, i.e., Insurance Company.

7. In Para-12 of the impugned judgment, reference of Sanha lodged by the complainant with the police, has been made wherein it has been stated by the complainant that there was loss worth more than Rs. one lac due to burning of cloths and papers. The complainant has not stated regarding the papers, which were burnt nor has given details of such papers but it was found that the

complainant did not maintain cash book, stock register, ledger, etc. The learned District Forum in Para-13 of the judgment has also made it clear that details in respect of time of fire and burning of cloths and existence of half burnt cloths were lacking.

8. So far helplessness expressed by the District Forum is concerned, we do not concur to such finding for the reason that the matter did not appear to be complex or complicated rather by applying their common sense and prudence, the loss sustained by the complainant could have been assessed and decided.

9. The learned Counsel for the respondent-United India Insurance Company Ltd. has submitted that the Insurance Company has deputed a Surveyor, Sri Kaushal Kishore for assessment of loss, who after assessment of loss has submitted his report mentioning therein that the loss was to the tune of Rs. 1,31,000 and odd and competent authority after receiving survey report has deducted 25% from the assessed amount and as such, the Insurance Company has approved the claim for Rs. 98,000 and odd. The respondent has also sought report and papers from the complainant but all went in vain. It was also submitted that the complainant did not produce any books of accounts before the Surveyor and respondent has also relied and referred to a decision of the Honble Apex Court reported in 2000 (10) SCC 19, United India Insurance Co. Ltd. v. Roshan Lal Oil Mills Ltd. and Others, wherein direction has been given for consideration of surveyors report, which is an important document and non-consideration of such report amounts to serious miscarriage of justice.

10. So, applying and relying on the aforesaid decision, we are of the view that the complainant-respondent could have been granted relief by payment of the loss sustained by him on the basis of Surveyors report coupled with compensation, cost of litigation and due interest.

11. So, in the fact and circumstances, we are of the view that this appeal should be disposed of with direction to the respondent-United India Insurance Company to pay compensation of Rs. 1,31,000 (Rs. one lac and thirty one thousand) and odd, which was the loss assessed by the Surveyor appointed by the Insurance Company along with interest @ 10% per annum from the date of filing of the

complaint besides cost of litigation of Rs. 5,000. With the aforesaid observation, the order of the learned District Forum is set-aside and the appeal is accordingly allowed. However, further cost of Rs. 5,000 by way of litigation in the appellate stage is also awarded to the appellant.

Appeal disposed of.

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