Hasheed Khan Vs. the Divisional Manager, National Insurance Co. Ltd. and Others.

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Court : Bihar State Consumer Disputes Redressal Commission SCDRC Patna

Decided On : Apr-30-1993

Judge : B.N. Sinha, President, K.P. Sinha, Member &Amp; the Honourable Mrs. Justice Kalpana Ashok, Member.

Appeal No. : Complaint Case No. 20 of 1992

Appellant : Hasheed Khan

Respondent : The Divisional Manager, National Insurance Co. Ltd. and Others.

Judgement :

B.N. Sinha, President:

1. The complainant has filed this case against the O.Ps. claiming Rs. 1,82,900/- with interest at the rate payable by the Commercial Banks from the National Insurance Company Limited, the opposite party.

2. The complainant has filed his complaint petition with the averments and annexures hereinafter mentioned. The complainant has got his market complex known as Rajdhani Market situated on Bari Road, Patna which had double storied market complex fitted with all amenities. It had been insured to O.P. No. 3 against all risks inclusive of fire on 30.10.89 for a period of one year expiring on 29.10.90 for a sum of Rs. 11,00.,000/- per Policy No. 3102652 with the National Insurance

Company Limited, the opposite party. On the night of 19.10.90 at about 2.30 a.m., fire broke out in the market complex of the complainant which could be extinguished by the Fire Brigades, Patna after struggling for many hours. The fire brigade granted a certificate to that effect which is Annexure 1 to the complaint petition. There was extensive damage to the build ing and its electric system as a result thereof. Written information was lodged by the complainant regarding this incident to the Officer In charge, Kadamkuan Police Station, Patna on 20.10.90 (Annexure 2/1). Written information (Annexure 2/1) with regard thereto was also given to the Branch Manager, National Insurance Company, Patna City Branch (O.P. No.

2) on the same day, i.e., on 20.10.90. One M/s. AARKAY CONSULTANCY SERVICES intimated the complainant by its letter dated 31.10.90 (Annexure

3) that they have been appointed surveyors to look into the loss and damages caused to his building due to the fire and the complainant was asked to produce all papers mentioned in this letter to which the complainant complied forthwith. The complainant also submitted his claim of Rs. 1,82,900/- based on the estimated cost of damage and its repair as estimated by M/s. Attalika Maintenance and Repair. The complainant requested the opposite parties several times to settle his claim but the opposite parries did not pay any heed to his requests and always .gave evasive reply. Ultimately the complainant had to send lawyers notice (Annexure

4) to the O.P. No. 1 with copies thereof to the remaining O.Ps. The O.P. No. 2 by its letter dated 21.2.92 (Annexure

5) informed the complainant that his claim with the concerned papers has been sent to the Divisional Office for necessary action and after the file is received back from the Divisional Office, the complainant will be intimated with regard thereto. But the claim of the complainant was never settled in spite of survey being done long back and the building being a market complex the complainant had no option but to get the necessary repairs done with regard to the damages to the building with fresh electric wiring thereof at his own costs.

3. On being noticed the opposite parties appeared and filed counter version stating inter-alia that M/s. AARKAY CONSULTANCY SERVICES by its letter dated 31.10.90 had given notice to the complainant to submit all papers regarding his claim and to intimate them well in advance when the site will be clear for inspection; that on 14.6.91 the said consultancy services wrote to the complainant to meet them for their final settlements or the survey report will be submitted on line of the survey made by them on 2.7.91. The aforesaid AARKAY CONSULTANCY SERVICES submitted the report to the O.Ps. and estimated the liability of the Insurance Company only for Rs. 18,140.00. The photostat copies of these letters are annexed to the written version of the opposite party as Annexure B and C respectively. It is further averred by the opposite party in their written version that the opposite party has thereafter approached the complainant to take his payment but in vain; that there has been no deficiency in service on the part of the Insurance Company, and that the complainant was claiming more than the actual loss sustained and that the claim put forth by the complainant is false and baseless and hence the complaint is fit to be dismissed.

4. A rejoinder to the written version was filed on behalf of the complainant stating inter-alia that no communication either from the surveyor or the Insurance Company was ever received by the complainant except letters dated 21.5.91 and 14.6.91 sent by the surveyor which were duly attended by him and all allegations and statement to the contrary are denied and that the complainant several times with the representative of M /s. Gupta and Associates went to the opposite party but no conclusive discussion was made. It is further averred in that rejoinder filed on behalf of the complainant that he had written to the Insurance Company on 26.2.91 (Annexure 2 of the rejoinder) for the change of the surveyor because the surveyor is a Marine Engineer and he has no knowledge of Civil Engineering and Electrical Engineering and hence he was incompetent to assess the loss in the building with the structural damage or damages in the electric connection of the building. Thereafter on 26.2.92 the complainant met the Regional Manager for the change of that surveyor and the complainant was categorically told by the Divisional Manager that he had already written in the file for the change and sent a letter to the Regional Office for the appointment of a Civil Engineer for that purpose. The complainant in his rejoinder has further averred that the survey

report prepared by the said Marine Engineer is unscientific and vague and as such it should not be accepted and the Proforma bill of the complete work done by the Contractor M/s. Attalika Nav Nirman Pvt. Limited to the building of the complainant is attached with the rejoinder as Annexure-4 to the rejoinder be accepted.

5. The complainant examined on his behalf Shri Ashok Kumar Sinlia a Civil Engineer and also filed his affidavit The O.P. has examined Shri Rajendra Kumar who has submitted and prepared survey report in respect of the fire in the market complex in question on behalf of M/s. AARKAY CONSULTANCY SERVICES.

6. The complainant in his affidavit has specifically alleged that he had made a request for change of Shri Rajendra Kumar the said surveyor appointed by the O.Ps. on the ground that he happens to be a Marine Engineer and therefore is not competent to do the survey which is the work of a Civil Engineer and he Was informed by the Divisional Manager that he has already written for the change of surveyor on the file which has been sent for approval to the Regional Office. Shri Rajendra Kumar, the witness on behalf of the opposite party claims to have submitted his final report on 2.7.91 assessing the loss to the complainant to the extent of Rs. 18,140.53. The fact is that the complainant had filed a petition for the change of this surveyor on 26th February, 1991 before the Divisional Manager, i.e., before the filing of this final report by the surveyor. Moreover, the fact that he was not a Civil Engineer is sufficient to indicate that he was not competent for the work entrusted to him. Shri Rajendra Kumar has admitted in the evidence that he is a Marine Engineer. Moreover, the complainant was never informed about this report of the surveyor till written version was filed on behalf of the opposite parties in this case. For these reasons we are not inclined to place reliance on the report of the said surveyor assessing the loss of the damages caused to the complainant at Rs. 18,140.53/-.

7. Further, though this report is said to have been submitted to the insurance Company on 2.7.91 there is nothing on the record to indicate that the Insurance Company ever applied its mind to this report in the light of the facts and papers submitted by the complainant to the Insurance Company to settle the actual loss sustained by the complainant due to the fire which clearly indicates deficiency on

the part of the Insurance Company.

8. The complainant on the other hand has said in the complaint petition as well as on oath that he got the building repaired and the engineer concerned Shri Ashok Kumar Sinha had submitted the Proforma bill in respect thereof which is of Rs. 1,10,215.00. The witness has proved his Proforma bill. In view of the facts and circumstances discussed above and after perusal of the evidence on oath of Shri Ashok Kumar Sinha, a Civil Engineer/we see no reason to disbelieve him and therefore the loss sustained by the complainant due to the fire is held to be of Rs. 1,10,215.00 and the opposite party is directed to pay the same to the complainant. There has been inordinate delay in the settlement of the claim of the complainant which must have caused unnecessary harassment, annexiety and finan- cial strain to the complainant and as such the opposite party is directed to pay interest at the rate of 18% per annum on that amount as compensation in respect thereof from 1.4.91 till the payment is made to the complainant. The opposite party is also directed to pay Rs. 1,000/- (Rupees one thousand) only as cost to the complainant.

Complaint allowed with costs.