

(2004) 05 NCDRC CK 0087

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

National Insurance Co. Ltd.

APPELLANT

Vs

DEV SPINNERS LTD.

RESPONDENT

Date of Decision: May 24, 2004

Citation: 2004 2 CPC 185 : 2004 3 CPJ 250

Hon'ble Judges: K.K.Srivastava , MajGenS.P.Kapoor J.

Final Decision: Appeal dismissed

Judgement

1. THIS is an appeal against the order of District Consumer Disputes Redressal Forum-II, U.T., Chandigarh [hereinafter for short, referred to as District Forum-II] dated 9.12.2003 in Complaint Case No. 432 of 2001, M/s. Dev Spinners Ltd. v. National Insurance Company Limited and Others.

2. THE complaint in brief is that the complainant which is a Limited Company, purchased new machinery for starting its new unit from M/s. LMW Limited Company, Coimbatore and this new plant was to be commissioned in July, 1998. THE machinery was transported from Coimbatore to Dera Bassi, District Patiala through O.P. No. 3. THE machines were duly insured for transit by the O.P. Insurance Company i.e., O.P. Nos. 1 and 2. Copy of the Insurance Cover Note is Annexure C-4. On 14.6.1998 O.P. No. 3 informed the complainant that the truck carrying the machinery had met with an accident. On 16.6.1998 the complainant informed O.P. Nos. 1 and 2 of this accident. Copy of the F.I.R. along with photographs of the accidental truck were also handed over to O.P. Nos. 1 and 2. THE complainant had paid to O.P. No. 2 Rs. 16,025/- as freight charges, Annexure C-7 refers. THE complainant received the damaged material from O.P. No. 3 on 19.6.1998 and asked

them to pay the damage to the tune of Rs. 5,25,000/- THE complainant also requested O.P. Nos. 1 and 2 to inspect the material to assess the loss. THE complainant got the loss assessed from M/s. Voltas Limited who is the sole erection engineers agents of M/s. LMW Ltd. M/s. Voltas Limited prepared their report of loss and ICRs of the damaged goods. It was stated by them that some of the material had been completely damaged and declared these as scrap. It also opined that the main component i.e., Blower Room Machine was completely damaged. THE report of M/s. Voltas Limited was handed over by the complainant to the O.P. Insurance Company for payment of the claim for damaged goods but the O.P. Insurance Company gave no reply. A copy of the certificate of damaged material is annexed as Annexure C-9. Value of the damaged material declared as scrap was assessed by M/s. Singla Hardware Store as Rs. 4,550/- Annexure C-10 refers. To commissioning the new unit the complainant had to purchase new machinery worth Rs. 3,91,492/- in lieu of the damaged machinery. Invoices for the same have been annexed as Annexures C-11/1 to C-11/24. Also new Electric Control Panel (WCS) had to be purchased for Rs. 1,27,098.40 to replace the WCS completely damaged in the accident. In all, the complainant avers, that an additional sum of Rs. 5,34,615/- had to be spent by the complainant for purchasing new machinery to commission the new unit. Even then the commissioning of the plant got delayed and the complainant had to suffer financial loss. On there part the O.P. Insurance Company appointed a Surveyor who inspected the damaged material but did not submit a copy of his report to the complainant. THE O.P. Insurance Company without disclosing any basis, delivered the complainant a cheque for Rs. 2,37,615/- in June, 1999. THE complainant on receiving this cheque requested the O.P. Insurance Company to review the case, as his actual loss was Rs. 5,34,615/- at the same time he accepted the amount of Rs. 2,37,615/- under protest as part payment/partial settlement. Since, no further action was taken by the O.P. Insurance Company, hence this complaint praying for following relief:

(a) Payment of balance amount of Rs. 2,97,000/- along with interest @ 24% per annum w.e.f. June, 1998 till realization. (b) Payment of cost of litigation as well as loss of interest as deemed fit because the complainant had to spend by raising of loan from financial institutions. (c) Payment of heavy cost for harassment as deemed appropriate.

O.P. Nos. 1 and 2 have stated that the loss as assessed by the Surveyor is Rs. 2,37,615/- It is asserted that the claim put forward by the complainant is highly exaggerated. Surveyor report has been annexed as Annexure R-1. It is also stated that an amount of Rs. 1,11,258/- have been allowed in the loss assessment of their Surveyor for damage to the control panel. Further, it has been stated that the payment of claim was made without any delay because letter of subrogation (R-4) and Special Power of Attorney (R-5) were executed by the complainant only on 7.5.1999 and thereafter the payment for the claim was made in June.

In their analysis of the case, learned District Forum-II has observed that Annexure R-2/1 indicates that office nothings have only been done by office clerical and junior staff and the documents and material supplied by the complainant has neither been mentioned nor discussed. There is just a cryptic recommendation that the Surveyor has assessed the loss for Rs. 2,37,615/- and the same may be approved. It was, therefore, held that O.P. Nos. 1 and 2 have not applied their full mind to the evidence, material and circumstances before taking a decision in the matter. It has also been observed that the claim of the complainant is well founded as it is supported by affidavit of the complainant, assessment of loss made by M/s. Voltas Ltd., which in turn is supported by ICRs (item wise), certificate by M/s. Voltas Limited that invoices for fresh purchase were issued only on basis of the ICRs. In addition, it was observed, that C-12 and C-13 lend support to the case of the complainant whereas learned Counsel for the O.Ps. has not pointed out any valid objection to these documents relied upon by the complainant. The learned District Forum thus accepted these documents on their face value and held that the O.P. Nos. 1 and 2 have committed deficiency in service. The claim of the complainant for Rs. 5,34,615/- was considered to be justified and well founded. Consequently, the learned District Forum directed O.P. Nos. 1 and 2 to pay balance of Rs. 2,97,000/- to the complainant with interest @ 6% per annum from 1.7.1999 till payment. The O.Ps. were also directed to pay Rs. 5,000/- as costs of litigation.

3. AGGRIEVED by this order, O.P. Insurance Company has filed this appeal. The appeal having been taken on board, record of the complaint case was summoned from District Forum-II and notices were sent to the respondents. Mr. Pradeep Bedi, Advocate, represented respondent No. 1/complainant and Mr. Kapil Kumar, Advocate appeared on behalf of respondent No. 2-M/s. Goyal Roadways.

Mr. Pradeep Bedi, Advocate submitted only two points. Firstly, he submitted that Annexure R-1 is the Surveyor report in which the loss has been assessed as Rs. 2,37,615/- and the same amount stands paid to the respondent/complainant. He submitted that the learned District Forum-II has granted compensation more than the Surveyor's report based on the assessment of the complainant and this is against the settled law. To substantiate this pleading he cited United India Insurance Co. Ltd. and Others v. Roshan Lal Oil Mills Ltd. and Others, 2001 (2) CPC 340 (SC), and Ajay Gupta, Proprietor, M/s. Punjab Plywoods v. The Manager, Allahabad Bank and Others, II (2001) CPJ 13 (NC)=2001(1) CPC 342 (NC). Secondly, he submitted that the amount paid was received without any protest as the respondent/complainant had executed the Special Power of Attorney (R-4) and letter of subrogation (R-5) in favour of the appellant/O.P., he is thus estopped from seeking any further relief and

to support this he cited New India Assurance Co. Ltd. v. Achhar Kumar Garg, 1996 (1) CPR 4 (NC); United India Insurance Company v. Ajmer Singh Cotton and General Mills and Others, II (1999) CPJ 10 (SC)=VI (1999) SLT 590=1999(2) CPC 601 (S.C.); and 2003 (III) CON.LT 6 Gujarat SCDRC).

4. IN response, Mr. Mukand Gupta, Advocate submitted that the learned District Forum-II has not granted the relief based on self-assessment by the complainant but has done so on the assessment of loss given by Mr. V. Arora, Engineer of M/s. Voltas Limited, the sole selling erection engineer agent of M/s. LMW Ltd. from whom the machinery had been bought. He referred to Annexures C-9 and C-14. IN this context, which indicates the loss suffered and cost of new machinery purchased. He further added that though the survey report had admitted the damage to box No. 11, however, no assessment of loss for the contents of the same i.e., the Electronic Control Panel has been done in the survey report. He referred to Annexure C-13 in this context. He then read out para 14 of the impugned order and emphasized that the appellant/O.P. had not taken into consideration documents/evidence produced by the respondent/complainant before finalizing the claim and hence it was a deficiency in service as held by the learned District Forum. He also added that Annexures R-4 and R-5 were executed so that the appellant/O.P. could claim any amount from the transporter. He elaborated that both these documents did not indicate any amount and hence cannot be taken as acceptance of the Surveyor's assessment of the claim. He emphasized that the complainant protested immediately after the payment was made. IN this context, he referred to Annexure C-16.

We have gone through the evidence on record and listened to the learned Counsels for the parties. The dispute lies in a very narrow compass. There are only two issues i.e., the Surveyor's report comprehensive and inclusive of all evidence of damage to the machinery? and had the complainant/respondent received the amount of Rs. 2,37,615/- paid by the appellant/Insurance Company voluntarily without any protest?

Firstly coming to the survey report, we find that the Surveyor has not mentioned his qualifications to assess loss/damage to such specialized machinery as was being transported nor is there any affidavit of the Surveyor on record. Moreover, at page 3 of the report under observation, it has been mentioned that the damage has been discussed with erection engineer of the erectors i.e., M/s. Voltas Limited Textile Division and the damaged machines are "total loss". Further at page 4 under heading "computation of loss", it has been stated that the machinery had been

replaced and repaired. The bills for replacement of M/s. Laxmi Machine Works Ltd. i.e., the manufacturer and that of International Switch Gears for repair have been verified and the loss of the damaged components of various machines has been computed. Having said so, in so many words in the survey report whereas the Surveyor has fully allowed the repair/replacement of Electronic Panel carried in Box No. 11 to the tune of Rs. 1,10,000/- along with CST of Rs. 1,258/-, the loss assessed for damage to the machinery in Box Nos. 13, 14, 15 and 16 is only Rs. 1,14,904/- along with Rs. 4,596/- as CST @ 4%. No explanation has been recorded as to why there is such a wide variation in the assessment of this loss by Mr. V. Arora of M/s. Voltas Ltd. and the Surveyor. Also no reason has been stated for the disallowance of Rs. 15,840/- charged as excise duty @ 14.4% by International Switch Gears for repair/replacement of the Capital Electronic Control Panel (WCS) (Annexure C-12 refers). Submission of Mr. Mukand Gupta, Advocate that no amount has been allowed by the Surveyor in his report for damage to Box No. 11 containing Electronic Control Panel (WCS) is contrary to the facts mentioned in the survey report (R-1).

5. IN view of the foregoing, we are of the considered view that computation of loss by the Surveyor has not been correctly done after taking into account the evidence of damage caused to the machinery and evidence of payment of repair/replacement charges by the respondent/complainant. Under these circumstances, we find that the learned District Forum has rightly allowed compensation based on the damage assessment done by Sh. V. Arora, Engineer of M/s. Voltas Limited and keeping in view the payments made by the respondent/complainant for repair/replacement of damaged machinery. The O.P./appellant have committed deficiency in service by not taking into consideration these documents/evidence while finalising the claim.

6. COMING to the next issue of acceptance of claim money paid without any protest, we find that the cheque for Rs. 2,36,615/- was paid in June, 1999 and on 24.6.1999 itself the respondent/complainant registered his protest and requested for a review of the case. Giving Annexures R-4 and R-5 by the complainant to the O.Ps. does not amount to voluntarily acceptance of the claim money without protest. Hence, in view of the settled law in this regard, we find that the respondent/complainant is not estopped from filing the complaint.

In view of the foregoing, we find that the impugned order is just, fair and legal and it requires no interference and is hence upheld. Consequently, the appeal is dismissed as it lacks merit. The parties are left to bear their own costs of appeal. Copies of this judgment be sent to the parties free of charge. Appeal dismissed.