

(1993) 04 NCDRC CK 0032

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

JAY KHODIYAR TRADING CO

APPELLANT

Vs

NEW INDIA ASSURANCE CO.LTD

RESPONDENT

Date of Decision: April 21, 1993

Citation: 1993 3 CPJ 1634

Hon'ble Judges: S.A.Shah , R.K.Shah J.

Final Decision: Complaint allowed with costs

Judgement

1. THE short facts of the case are that the complainant had taken fire policy for the goods lying in the open compound of the Ambica Cotton Ginning & Pressing Factory at Dholka. THERE was a fire on 25th April, 1991 and the goods of the complainant and other merchants have been destroyed.

2. THAT there is no dispute that the goods of the complainant were got insured with the opposite party. There is also no dispute that fire took place on 25.4.91. THAT the Surveyor had visited the local place. He has called for the records and books of accounts from the Cotton Merchant and verified the same and with the consent which was given on 25/28 Sept., 1991 given a survey report dated 31.12.91 fixing the damages at Rs. 1,97,120/-.

Curiously however, the payment has not been made till today even though the complaint has been filed by the complainant on 2.9.92. Unfortunately, though there is an agreed amount, the Insurance Company has fairly not accepted the complaint and resisted the claim by filing written statement and that is how the complainant has remained without getting any amount from the Insurance Company.

Mr. Chudgar, the learned Advocate appearing on behalf of the opposite party has faintly contended that the Insurance Company had a meeting with other parties (cotton merchants) who had not accepted the survey report and the matter being very uncertain and the Insurance Company wanted to settle all the claims together, the payment could not be made on bona fide reason. He had to admit the damages as surveyed by the qualified Surveyor who was sent by the Insurance Company itself. No other evidence has been produced by the Insurance Company to show that the report given by the Surveyor was not correct. On the contrary the survey report is an agreed survey report where for the sake of settlement the complainant himself has let go the higher claim and accepted the amount suggested by the Surveyor.

3. THE Insurance Company having taken the consent of the complainant and having the survey report on record, payment has not been made even after filing of the complaint. So far the action of the Insurance Company with regard to the persons who had not accepted the survey report, there may be some truth in the contention of Mr. Chudgar. But so far the present complainant is concerned, who has agreed the amount and the survey report has accordingly been made and the survey report having been received by the Insurance Company on 31.12.91 or thereafter, there is no reason why the payment should not be made to the complainant. THE complainant has lost the goods and he was suffering the damages. Though the next season has started he was kept out of money and the whole purpose of taking insurance will be frustrated if the Insurance Company is permitted to make a delay on the ground which are not tenable under the law. 6.Mr. Chudgar has drawn our attention to para 17 of the written statement where the Insurance Company has submitted that the Insurance Company has sent the voucher for Rs. 1,97,120/- to be signed by the complainant which was sent back because the complainant had already filed a complaint. We are unable to accept this submission because if the Insurance Company wanted to pay, they could have deposited the money before the Commission or could have sent the cheque directly to the party. THE voucher was again for full and final settlement. THE Insurance Company had not added interest for the intervening period which naturally the complainant may not be interested to accept. We are, therefore, of the opinion that the complainant is entitled for interest which we award @ 18% p.a. from 1.1.92 till the payment is made. 7.It may be noted that the fire took place in April 1991, the Surveyor has sent a report on 31.12.91 where 8 months have already been passed and the Insurance Company has utilised this amount for their own business. We are, therefore, not inclined to accept any of the submissions of Mr. Chudgar though he has vehemently argued not to give

interest atleast for two months after the survey report was received. 8. THE complainant has also asked for compensation for business loss and exemplary damages which we are not inclined to award since business loss is a remote damage. THE complainant has also asked for substantial amount for mental torture, harassment and agony. However, the Insurance Company has indirectly admitted the claim. We have already allowed interest. We are, therefore, inclined to grant Rs. 5,000/- only by way of mental torture and harassment. ORDER THE opposite party shall pay Rs. 1,97,120/- to the complainant with running interest @ 18% p.a. from 1.1.1992 till the payment is made and Rs. 5000/- by way of pain and suffering, mental torture and cost which we quantify at Rs. 500/ only. THE Insurance Company will pay the above amount within 4 weeks from the date of receipt of this order. Complaint allowed with costs.