

New India Assurance Co. Ltd. Vs M.M.Krishan

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: May 10, 2011

Citation: 2011 0 NCDRC 256 : 2011 2 UC 1190 : 2011 87 ALLR 609

Hon'ble Judges: Ashok Bhan , Vineeta Rai J.

Final Decision: Revision petition is dismissed

Judgement

1. THE New India Assurance Co. Ltd., Petitioner in this case, has filed the present revision petition against the order of the State Consumer

Disputes Redressal Commission, Chandigarh (hereinafter referred to as the State Commission) which had decided the appeal in favour of

Dr.M.M. Krishan (hereinafter referred to as the Respondent).

2. THE Respondents case was that he had taken an insurance policy from the Petitioner under the heading Standard Fire and Special Perils Policy

for a sum of Rs.1,57,000/- which was effective from 03.03.2002 to 02.03.2003. THE policy covered the risk of loss due to earthquake, fire etc.

and covered various types of clinical lab/medical equipments as well as furnitures, fixtures, fittings and other goods of allied nature which were lying

inside or installed at the O.P.D. Clinic of the Respondent in Krishna Nagar, Dera Bassi. On 15.11.2002, Respondent was informed on telephone

that there was a major fire in his clinic and the fire brigade had been summoned. Respondent rushed to the spot and saw that the fire had destroyed

his O.P.D. THE same was extinguished by fire tenders after about 40 minutes and these facts were recorded in the Police Station, Dera Bassi on

17.11.2002 as well as in the report of the Fire Station. Respondent immediately lodged an insurance claim with the Petitioner and also furnished

the details of the entire loss incurred along with supporting documents. According to him, total loss was Rs.1,52,000/-. Petitioner appointed a

Surveyor & Assessor to assess the loss and he was also supplied with all the necessary documents such as cash memos, ledgers along with copies

of fire report, statements of witnesses who had seen the fire and copy of the report lodged in the Police Station etc. In this way, 17 documents

relevant to assess the loss were handed over to the Surveyor who also inspected the site on at least on three occasions. In the interim, the

Surveyor contacted the Respondent in connection with some medical tests for himself and his wife and the Respondent assisted him and also

conducted some of the tests. However, a dispute developed between the two since the Surveyor did not pay the necessary medical fees and on

being reminded to do so, he started harassing the Respondent and refused to finalise the assessment which was necessary to settle the insurance

claim. Respondent, therefore, sent a legal notice to Petitioner and requested for appointment of another Surveyor. Petitioner thereafter appointed

another Surveyor who should have assessed the claim de novo but instead he relied on the report of the earlier Surveyor and never contacted the

Respondent in connection with assessment of loss before finalizing the report. He also totally ignored the documentary and other evidence given by

the Respondent to substantiate the value of various items destroyed in the fire and gave a report that the total loss was Rs.19,000/- and

recommended that out of this loss, Rs.10,000/- be deducted as excess as per policy.

Aggrieved by the blatantly wrong assessment which was accepted by the Petitioner/Insurance Company, Respondent filed a complaint before the

District Forum requesting that the Petitioner be directed to pay a sum of Rs.1,52,287/- as insurance reimbursement for the loss on account of fire

along with interest @ 18% w.e.f. 15.11.2002 till date, Rs.10,000/- as reimbursement of the rent of the premises which Respondent had to pay on

account of delay in settlement of the claim, Rs.50,000/- as damages and a further sum of Rs.11,000/- as legal cost as well as any other relief which

the District Forum may consider appropriate.

Petitioner/Insurance Company denied the above contentions and stated that in order to properly assess the loss, the Surveyor appointed by

Petitioner had requested the Respondent to complete certain formalities and submit information and despite several letters, there was no response

and lack of cooperation from the Respondent. Further, inspection of the site indicated that the claims on account of a number of equipments was

found to be incorrect e.g. regarding loss claimed for Cardiac Monitor etc. Further, a number of documents supplied e.g. cash books and ledgers

were not signed and the balance sheet was also not certified by a Chartered Accountant. Instead of cooperating with the Surveyor, Respondent

started making allegations against him and therefore, on his request another Surveyor was appointed with whom also the Respondent did not

cooperate. Apart from this, the fire was of a minor nature and could not have caused the damage which has been projected by the Respondent. It

was also put out within 19 minutes. Petitioner further contended that as per the judgment of the National Commission in Roshan Lal Mills and

National Insurance Co. Ltd. Vs. Aleyamma Verghese II (2006) CPJ 193(NC), the Survey Report is an important document and cannot be

brushed aside and ignored without any cogent reasons. Under the circumstances, Petitioner was justified in settling the loss at Rs.19,000/- on the

basis of the Surveyors report. The amount sought by the Respondent was a highly inflated figure and not based on actual loss. Petitioner further

stated that in the insurance policy taken by the Respondent under the General Exclusions clause, short circuiting, arcing, self-heating or leakage of

electricity from whatever cause is not covered for claim. In the instance case, the cause of the fire was reported to be electrical short circuiting and

therefore, the claim was not covered under the Insurance Policy.

3. THE District Forum after hearing both parties and considering the evidence on record dismissed the complaint by relying on the Surveyors

Report in respect of the assessment of loss. THE relevant part of the order of the District Forum is reproduced: THE Honble National Consumer

Disputes Redressal Commission, New Delhi in National Insurance Co. Ltd. & Ors. Vs. Aleyamma Verghese and Ors., First Appeal o.252 of

1997, decided on 16.12.2005, reported as II(2006)CPJ 193 (NC) has held that: Be that as it may, as held severally by this Commission as also

by the Honble Supreme Court, the report of Surveyor is an important document which cannot be brushed aside. In these circumstances, we

cannot go beyond the loss assessed by the Surveyor. So, applying the ratio of law laid down in the foregoing judgment to the facts and

circumstances of the present case, we are inclined not to go beyond the loss assessed by both the Surveyors i.e. M/s B.V.Surveyors Pvt. Ltd.

(Annexure R-4) and M/s Duggal Gupta and Associates (Annexure R-6). So under the circumstances, as stated above and as per the conditions of

the policy, the total loss assessed of the damage to the items affected in the fire accident at the Clinic of the Complainant is Rs.19,000/- and

deducting therefrom Rs.10,000/- for the first loss, which is to be borne by the insured, the sum payable comes to Rs.9,000/- and for which

payment the Opposite parties are not disputing to make to the Complainant. Hence ordered accordingly..

Aggrieved by this order, Respondent filed an appeal before the State Commission. The State Commission accepted the appeal by inter alia stating

that the report of the Surveyor appointed by the Petitioner was arbitrary and biased and not based on facts and further that as per records of both

the Fire Department and witnesses, this was a major fire which took over 40 minutes and not 19 minutes to control. The relevant part of the order

of the State Commission is reproduced below: The respondent No.3 had given biased report as the appellant had made allegation against him that

respondent No.3 Sh.B.M.Gupta had not paid charges for his treatment as well as of his wife and the other surveyor appointed had only towed the

lie of earlier surveyor, may be, to save the skin of his colleague. Thus, it had to be believed that the partially burnt PCB was a remnant of cardiac

monitor. Therefore, the surveyor had wrongly reduced the value of cardiac monitor and it should be valued at Rs.1,06,997/-. On short wave

diathermy machine the surveyor had deducted 25% on account of depreciation which is not reasonable as the appellant had opened the clinic a

few months ago and at best he could have deducted 10% i.e. Rs.2057/- and should have allowed Rs.18,000/-. On furniture which is mentioned

item No.4 in annexure-1, he had deducted 10% on account of depreciation which is not liable to be deducted as these were only repair charges

and not charges for replacement of the furniture. For medicines and chest electrode he has not given any amount, which he should have allowed

because in a major fire it is difficult, that remnants of chest electrode remained. He should have allowed compensation for electrical goods because

the same were part and parcel of medical lab/equipments. Therefore, we hold that the report of surveyor is not believable.

4. FURTHER, regarding the contention of the Petitioner that the fire was caused because of electrical short circuiting which is excluded in the

policy, State Commission concluded that this is not an acceptable contention since the cause of damage was fire and not the electrical short

circuiting. The State Commission directed the Petitioner to pay the Respondent Rs.1,45,443/- (Rs.1,50,000/- minus Rs.2057/- being depreciation

@ 10% on short wave Diathermy and Rs.2500/- salvage value), Rs.10,000/- on account of harassment and mental agony along with interest @

9% per annum after the expiry of two months from the report of Surveyor dated 07.07.2003 till payment.

Hence, the present revision petition.

Learned counsel for both parties were present and essentially reiterated the submissions made earlier by the respective parties before the fora

below and which have been extensively discussed in the earlier paragraphs. Thus, counsel for Petitioner challenged the intensity of the fire and

consequent loss suffered. He also stated that the fire being caused because of an electrical short circuiting, is excluded under the General

Exclusions clause in the Insurance Policy. The State Commission erred in not accepting the credible report of not one but two Surveyors. Counsel

for Respondent stated that the State Commission on the basis of independent documentary evidence as well as evidence of witnesses had

concluded that this was a major fire causing heavy loss to the Respondent which was discussed in detail in the order of the State Commission.

Further, since the damage to the goods was caused due to the fire and not due to the electrical short circuiting per se, the claim is undoubtedly

covered under the present Insurance Policy.

5. WE have heard learned counsel for both parties and have carefully considered the evidence on record. From the reports of the Fire Service

Department as well as witnesses, it is clear that the fire which occurred in the Respondents premises was a major one and which took a number of

fire tenders over 40 minutes to control. WE also agree that since the medical equipments and other items were destroyed by the fire and not by the

electrical short circuiting, the claim was covered under the Insurance Policy. Regarding the value of the loss on account of fire, we have carefully

gone through the list of equipments and goods reportedly affected by the fire on the basis of which the Surveyor has assessed the loss as also the

conclusions of the State Commission on this issue. In this connection, we find it difficult to accept the conclusions of the Surveyor in the report

assessing the loss. For example, the Surveyor has not assessed any value on the loss of Cardiac Monitor costing Rs.1,69,000/- on the grounds

that there is no evidence that the Cardiac Monitor was destroyed in the fire. On the other hand, the State Commission which is a court of fact

based on evidence produced before it, has clearly ruled that the remnants of the partially burnt PCB found on the spot were obviously those of the

Cardiac Monitor. Similarly, the Surveyor has also wrongly stated that the electrical goods which were destroyed were not valued because they

were not covered under the insurance coverage. A perusal of the Policy taken by the Respondent shows that these were covered under the

insurance policy. The State Commission has recorded reasons for disagreeing with some of the other assessments of loss, for example, loss

pertaining to medicines and ECG chest electrodes which has been reproduced earlier in this order and which is a viable and acceptable

assessment. While we agree that generally the Surveyors report is an important document and is to be relied upon unless it is arbitrary and biased,

in the instant case, there appears to be adequate evidence for us to conclude that the Surveyors report was biased and the loss suffered by the

Respondent was not correctly assessed. On the other hand, the order of the State Commission is well reasoned and convincing and we see no

reason to disagree with the findings therein.

6. WE, therefore, uphold the order of the State Commission in toto and direct the Petitioner to pay the Respondent Rs.1,45,443/- (Rs.1,50,000/-

minus Rs.2057/- being depreciation @ 10% on short wave Diathermy and Rs.2500/- salvage value), Rs.10,000/- on account of harassment and

mental agony along with interest @ 9% per annum after the expiry of two months from the report of Surveyor dated 07.07.2003 till payment. The

revision petition is dismissed.