

(2007) 11 NCDRC CK 0028

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

SRI VASAVI ENTERPRISES

APPELLANT

Vs

ROYAL SUNDARAM ALLIANCE
INSURANCE CO LTD

RESPONDENT

Date of Decision: Nov. 19, 2007

Citation: 2008 2 CPJ 302

Hon'ble Judges: Chandrashekhar , Rama Ananth , M.Shama Bhats J.

Final Decision: Appeal partly allowed

Judgement

1. -THIS appeal is by the appellant/complainant challenging the Order dated 17. 1. 2007 passed by the District Consumer Forum, Bangalore Urban III Additional, in Complaint No. 2350/2006, by which the District Forum has dismissed its complaint.

2. THE complainant had taken a "traders Shield Insurance Policy" issued by respondent No. 1/opposite party No. 1 (hereinafter called the "insurance Company") for a period of one year from 6. 1. 2005 to 5. 1. 2006. After getting the Insurance Policy from the Insurance Company the complainant shifted all his stock-in-trade to the new address, namely "nanjuneshwara Nilaya", 1212, 24/1, 10th Cross, II Main, II Block, I Stage, H. R. B. R. Layout, Bangalore, from No. 307, 3rd Main, 3rd Cross, H. R. B. Layout, 1st Stage, 2nd Block, Bangalore - 560 043. According to the complainant, it had intimated its Banker, namely O. P. 2 (hereinafter called the "bank") regarding the change of address with a request to communicate the same to the Insurance Company. In the instant case, according to the Bank, they have intimated regarding change of address to the Insurance Company on 17. 10. 2005 itself, whereas the case of the Insurance Company is that they have received the intimation of change

of address only on 28. 10. 2005.

The case of the complainant is that there is a loss of stock-in-trade in the changed premises due to floods on 25. 10. 2005. After the loss, the complainant made a claim for payment of compensation with the Insurance Company. The Insurance Company appointed a Surveyor to assess the loss. Accordingly, the surveyor inspected the spot and assessed the loss at Rs. 1,07,630. After receipt of the Report of the Surveyor, the Insurance Company repudiated the claim on the ground that the loss of stock due to floods occurred on 25. 10. 2005 at the changed premises prior to the date on which the intimation regarding the change of address was given, i. e. , 28. 10. 2005. Challenging this repudiation, the complainant filed the complaint before the District Forum. The District Forum considering the case of the parties has dismissed the complaint. This order is under challenge by the complainant in this appeal.

As per the practice, whenever a change of address is intimated to the Banker, the Banker is required to intimate the same in turn to the Insurance Company so as to cover the risk, if any, from the date on which the stock-in-trade is shifted to the new premises. In the instant case, if the Banker had intimated the said fact to the Insurance Company to the date of loss of stock-in-trade due to floods, necessarily the Insurance Company is liable to make good the loss. But, in the instant case, though the Bank received the intimation regarding the change of premises from the complainant on 17. 10. 2005 itself, the Bank in turn communicated the intimation to the Insurance Company on 28. 10. 2005, as per the defence taken by the Insurance Company. In order to show that the Bank has intimated the Insurance Company about the change of location on 17. 10. 2005, the Bank has not produced any acknowledgement to that effect. As per the acknowledgement produced by the Insurance Company before the District Forum, the Insurance Company received the intimation regarding change of location from the Bank only on 28. 10. 2005. Therefore, in the absence of any document produced by the Bank to show that it has intimated about the change of address to the Insurance Company on 17. 10. 2005, the Insurance Company is not liable to make good the loss, if any, since the loss occurred due to the floods was prior to the date of intimation regarding change of address.

3. BUT, at the same time, it cannot be said that the Bank is not liable to make good the loss, if there is any "deficiency in Service" on its part. The Banker of the complainant has obtained the policy on behalf of the complainant since it has advanced loan to the complainant for the purpose of carrying on business. It is also

the duty on the part of the Banker to intimate the change of address to the Insurance Company immediately after the receipt of intimation regarding change of location when it had obtained the policy in the name of the complainant in order to secure the loan advanced to the complainant. As already stated, the Bank has not produced any acceptable evidence before the District Forum to show that it had communicated the change of location to the Insurance Company prior to the loss caused in respect of the stock-in-trade due to floods. Therefore, the Bank is liable to make good the loss because "deficiency" on its part in not intimating the Insurance Company about the change of location prior to the date on which the loss was suffered due to the floods.

The next question that arises for consideration is what is the compensation payable in favour of the complainant by the Bank. No doubt, according to the complainant he has suffered loss to the extent of Rs. 10,46,582. But it has not produced any acceptable evidence before the District Forum to show that it has suffered loss to that extent. The Insurance Company before repudiating the claim of the complainant had appointed a Surveyor to assess the loss. The Surveyor thereafter inspected the premises and in the presence of the parties has assessed the loss at Rs. 1,07,630. In the absence of any acceptable evidence produced by the complainant towards the loss, it is safe to rely upon the Report submitted by the Surveyor, who has assessed the loss in the presence of the complainant. Therefore, we hold that the complainant is entitled for compensation of Rs. 1,07,630 from the Bank.

4. ACCORDINGLY, we pass the following Order:

(1) The appeal is allowed in part. (2) The complaint filed by the complainant before the District Forum is disposed of in the following terms: (a) O. P. 2 Bank is directed to pay Rs. 1,07,630 to the complainant with interest at 9% per annum from the date of the complaint filed before the District Forum till realization. (b) The complaint filed by the complainant in so far as it is filed against O. P. 1 Insurance Company concerned is dismissed. (c) Parties to bear their own costs.

Appeal partly allowed.