

**KARNATAKA STATE CONSUMER DISPUTES REDRESSAL COMMISSION
BASAVA BHAVAN, BANGALORE.**

**Complaint Case No. CC/169/2013
(Date of Filing : 09 Oct 2013)**

1. Kambalimath Ginning Factory,
Palabadami Road, Savanur, Haveri District - 581 118, By its Proprietor Girish Kumaraswamy KambalimathComplainant(s)
Versus

1. Oriental Insurance Co. Ltd.
Branch Office at. Vikas Complex, 2nd Floor, Station Road, Hubli, Dharwad District By its Branch ManagerOpp.Party(s)

BEFORE:

**HON'BLE MR. Ravishankar PRESIDING MEMBER
HON'BLE MRS. Smt.Sunita Channabasappa Bagewadi MEMBER**

PRESENT:

Dated : 11 Jan 2024

Final Order / Judgement

BEFORE THE KARNATAKA STATE CONSUMER DISPUTES REDRESSAL COMMISSION, BANGALORE. (ADD

DATED THIS THE 11th DAY OF JANUARY, 2024

CONSUMER COMPLAINT NO.169/2013

PRESENT

**SRI RAVI SHANKAR, JUDICIAL MEMBER
SMT. SUNITA C.BAGEWADI, LADY MEMBER**

Kambalimath Ginning Factory,
Palabadami Road,
Savanur, Haveri District-581 118
By its proprietor,
Girish Kumaraswamy Kambalimath,

He died his LRs

1a) Smt.Divya W/o late Girish
Kambalimath, age: 40 years.
Occ: Home Maker

1b) Kumari Dhanavi
D/o late Girish Kambalimath
Age: 12 years, Occ: Student
By its Natural Guardian her mother
Smt.Divya W/o late Girish Kambalimath,

1c) Gouthami D/o late Girish Kambalimath
Age: 9 years, Occ: Student

By its Natural Guardian her mother

Smt.Divya W/o late Girish Kambalimath,

All are residing at Savanur, Taluk: Savanur,

District: Haveri.

(By Sri.K.R.Anatha Murthy, Advocate)

-Versus-

1. Oriental Insurance Company Ltd,
Branch office at Vikas complex,
2nd Floor, Station Road, Hubli
Dharwad District by its
Branch Manager,

2. Oriental Insurance Company Ltd,
Regional office at Sumanagala
Complex, 2nd Floor, Opp. to HDMC,
Lamington Road, Hubli
Dharwad District
By its Chief Regional Manager,

(OPs-By Sri.H.C.Vrushabendraiah, Advocate)

ORDER

BY SRI.RAVISHANKAR, JUDICIAL MEMBER

The complainant filed this complaint against the Opposite Parties alleging deficiency of service in not settling the claim towards loss suffered due to payment of Rs.64.00 lakhs compensation for deficiency of service.

2. The brief facts of the complaint is that, the complainant is a proprietor who was dealing which cotton /kappas, cotton seeds, groundnuts and groundnut he had carryout selling the above seeds by cleaning and in turn bringing it to the grades, cotton into lints outside the godown, groundnut into cleanir hand pick select varieties are developed in the godown/factory itself and sold through the registered dealers inside the state of Karnataka and other p also exports certain articles through Bombay and Madras and he used to purchase the said materials from APMC market at Savanur and Shiggon an earning from the above activities for his livelihood.

The complainant further submits that he had obtained a standard fire and special peril policy covering each month stock holding regularly. For the n complainant had obtained standard fire and special peril policy bearing No.471101/11/2011/107 which is valid from 29-6-2010 to 28-7-2010 for Rs kept in the godown/factory. Such being the case on 2-7-2010 at about 4.30 a.m. there was a fire broke out in the above said factory premises which neighbours and immediately the complainant along with his men rushed to the spot. In the meantime some neighbours have informed the police to the spot at 5.20 a.m. and extinguished the fire till 12 noon, due to the said fire accident the entire stock kept in godown/factory which were insure machineries were totally damaged. The entire building was also burnt and damaged to the maximum extent.

The complainant further submitted that he lodged a complaint to the Savanur police Station, HESCOM, Electrical Inspector at Dharwad, APMC, Sa authorities including the opposite parties regarding the fire accident. The spot mahazar was drawn and the same was forwarded to the Deputy Comn and other authorities. The said facts was also informed to the OPs, inturn the OPs have also deputed a surveyor from Hubli by name Sri.Narayan He assess the loss, the surveyor has taken the photographs and prepared the report with respect to the fire accident and submitted the report to the OPs. report, the OPs have not settled the claim, inspite of receipt of all required documents from the complainant. Apart from the survey report, the comp through their auditor and estimated to the tune of Rs.53,50,786/- .

The complainant further alleged that, after submission of all documentary evidence along with the claim form, the OPs have forwarded to the same Sri.C.S.Balasubramaniyan to submit the report, the surveyor again visited the spot on 21-7-2010 and carried out the inspection on the fire accident's correspondences for supply of the certain documents. As per the correspondences, the complainant submitted all required documents sought by the : submission of survey report, the OPs have not settled the claim. The OPs without any reasons have not settled the claim which goes to show that the their part.

The complainant further alleges that even after the submission of the survey report the OPs have not settled the claim and also not shown any reason settlement. There is no reason to withhold the claim of the complainant, even after receiving the entire documents and survey report. Further the OP to the complainant till today, hence they are liable to settle the claim as per the assessment made by their auditor and also pay other compensation for interest of justice and equity.

3. Later the complainant died during the course of trial and the LRs of the complainant were brought on record and amended complaint also filed by in the complaint.

4. After service of the notice, the OP Nos.1 and 2 appeared through their counsel filed version and contended that, this complainant not approach hands. The complainant suppressed the material facts before this commission and also to claim a wrongful gain at the cost of public exchequer.

The OPs further contended that, they have issued a Fire and Special Perils Policy covering the risk of the stocks of ground nut seeds and other decorating belonging to the complainant located at the Kambalimath Industries, Palabadami Road, Savanur. The policies were issued for different periods from time to time. The OPs had issued the policy covering the risk of stock and trade of the complainant for the first time from 28-4-2009 to 28-5-2010 for an amount of Rs.15.00 lakhs.

the policies were renewed at the request of the complainant for different periods, the last policy issued was for the period from 29-6-2010 to 28-7-2011 amounting to Rs.60.00 lakhs.

The OPs further contended that the complainant lodged a claim with the OPs on 3-7-2010 towards the stocks burnt and destroyed in the fire accident about 4.30 a.m. on 2-7-2010 when fire broke out at the factory premises. On receipt of the claim the OPs in its usual course, immediately appointed a surveyor for a preliminary assessment of the cause of the accident and the extent of damages in the fire accident. One Sri.Narayan Hegde was appointed as a surveyor for a detailed inspection of the factory of the complainant at its premises situated at Palabadami Road at Savanur has submitted a report. Thereafter the OPs to furnish certain details regarding the cause of the accident fire accidents, details of the stocks stored at the premises of the complainant and details regarding the complainant i.e. the stocks and trade, number of persons employed at the premises, the details regarding the labour charges, electricity charges, details, bank statement, purchase and sales bills and a statement of the loss allegedly suffered by the complainant in the said accident. Though the OPs called by the company called upon the complainant to give details, the complainant never submitted but went on pleading for more than one year to submit that he has taken longer period. The statement of the details called for by the OP is very much essential and critical for the OP to assess the possible.

The OPs further contended that though the complainant was given a long rope for submission of the necessary information and documents for response from him for a long time. The complainant never furnished the required information and documents necessary for processing the claim. In the process the claim and left with no alternative. The OP issued a letter to the complainant on 30-9-2011 that in view of the non-cooperative attitude of the complainant constrained to close the claim as "no claim".

The OPs further contended that the complainant even after sending the letter closing the claim file, the complainant went on corresponding with the OP in submission of the sufficient and required information/ documents necessary for processing the claim and till today the complainant has never complied with the request of the OP for submission of the necessary information / documents for processing the claim.

The OPs further contended that the claim could not be processed in terms of the insurance policy solely due to the non-co-operative attitude of the complainant or its failure to give the sufficient details original documents to the OP without complying with the request of the OP, the complainant has approached the commission which is prima-facie is untenable in law.

The OPs further contended that the complainant has to blame himself in the present situation having failed to comply with the request of the OP to furnish details/documents the complainant has approached this commission making false and wild allegation against the OPs. The claim made by the complainant on any basis.

The OPs further contended that the OPs are not liable to pay any amount to the complainant much less Rs.53,50,786/- as claimed in the complaint to pay any interest on the said amount much less 18% p.a. as contended by the complainant. Likewise, the claim of Rs.10,00,000/- as compensation for the complainant in service in imaginary and fanciful and untenable in law. In fact, the complainant having failed to cooperate with the OP and failed to submit necessary documents, the claim any compensation towards negligence or deficiency in service as the complainant has to blame for the present situation.

The OPs further contended that, the complainant has admitted the genuineness of the claim. As per the report of the electrical inspectorate, the fire accident was due to the defective wiring at the premises of the complainant's premises. But it is pertinent to note that as per the report of the investigating officer power supply around 4.30 a.m. on 2-7-2010 and when the power supply resumed thereafter, it could be due to heavy surge of power and the defective loose electrical joints leading to the fire accident which shows that there is a gross negligence on the part of complainant and he has not taken any steps for rectification of defective wiring as if it is uninsured. The OPs further submits that under the terms of the Fire and Special Perils Policy, as per the general clause "A" (7) of the policy, the insurer would not be liable in such an event.

The OPs further contended that there is no deficiency in service of any kind of service whatsoever on the part of these OPs, these have been verified by the complainant. The surveyor was immediately appointed on receipt of the claim and on the receipt of the said report, the surveyor/investigators called upon the complainant to submit the necessary documents for processing the claim. But the complainant failed to do so, in spite of repeated reminders and ultimatums to close the file as "no claim". Hence they are not liable to pay any amount claimed by the complainant and pray for dismissal of the complaint.

5. The complainant filed his affidavit evidence during his life time and marked documents as Exs.C1 to C24. The OP Nos.1 and 2 also filed their affidavits as Exs.R1 to R4.

6. Heard the arguments

7. On perusal, the following points will arise for our consideration;

- (1) Whether the complainant proved deficiency in service on the part of Opposite Parties?

(2) Whether the complainant is entitled to the reliefs as sought?

(3) What Order?

8. The findings to the above points are;

(1) In the affirmative

(2) In the affirmative

(3) As per final order

REASONS

Point Nos.1 and 2:-

9. On perusal of the pleadings, version of the OPs, affidavit evidence and documents produced by both parties, it is an admitted fact that, the complainant manufacturing edible groundnut seeds cleaning, decorticating and grading, had obtained a Standard Fire and Special Peril Policy from the OPs vide No.471101/11/2011/107 in order to safeguard the stock kept in the godown/factory, the said policy is admittedly renewed from 2009 till 2010. It is also admitted that the complainant had obtained the different policies by paying different amount from time to time. The recent policy is No.471101/11/2011/107 which was renewed from 2010 the risk covered for the value of Rs.60.00 lakhs. It is also admitted fact that on 2-7-2010 the fire accident was occurred at 4.00 a.m. and was extinguished by the Fire Brigade after information. The spot mahazar was also conducted and report was also submitted to the Divisional Commissioner. The complainant on behalf of respondent and submitted the report. After the receipt of the surveyor report, these OPs have appointed the investigator to investigate cause of fire accident. The investigator has submitted his report and suggested that the cause of fire accident was not due to any mistake on the side of electric supplied by HESCOM, it is a loose electrical wire situated at the elevator of the processing unit and submitted the report. Basing on the said report and also non production of proper documents by the complainant, they have arrived for "No claim" and intimated the same to the complainant. Being aggrieved by the said the complainant approached the OPs for deficiency in service and sought for compensation as prayed in the complaint.

10. On perusal of the survey report, the surveyor has, so far not assessed the loss, inspite of visiting the spot as soon as the information was received. The surveyor also not suggested the value of the stock which were destroyed during the fire accident, they have only given investigation report stating that root cause of fire accident at 4.30 a.m., we are of the opinion that, it is an admitted fact that, the fire accident took place, the root cause of the fire accident was may be a loose electrical wire. Merely basing on the root cause for fire accident, the claim cannot be repudiated; the root cause to the fire accident cannot be attributable to the OPs. When the policy covers, the fire accident the OPs ought not to consider "No claim" towards the genuine claim made by the complainant. The complainant is entitled towards the loss of the goods due to fire accident basing on the policy terms and conditions. The OPs have repudiated the claim merely basing on the fact that when the fire accident was covered the OPs cannot quote the root cause for fire accident and repudiate the same. It is clear case of deficiency in service.

11. Further the complainant had produced the assessment made by the auditor to the tune of Rs.53,50,786/- . We are of the opinion that, when there was a surveyor who appointed to assess the loss, we have to consider the assessment made by the auditor of the complainant himself. As such the OPs are liable to pay Rs.53,50,786/- as per the report submitted by the auditor of the LR of the complainant. Further the OPs are liable to pay compensation to tune of Rs.10,00,000/- service in not settling the genuine claim of the complainant well within the time along with litigation expenses of Rs.10,000/-. Accordingly, the complainant is entitled to the compensation.

12. **Point No.3:** In view of above discussion, we proceed to pass the following:-

ORDER

The complaint is allowed with litigation cost of Rs.25,000/- to the LR of the complainant.

The OPs are directed to pay an amount of Rs.53,50,786/- to the LR of the complainant along with 6% interest per annum on the said amount from the date of realization.

Further the OPs are directed to pay an amount of Rs.5.00 lakhs to the LR of complainant as compensation for deficiency in service.

Further the OPs are directed to comply the above order within 30 days from the date of receipt of this order. Failing which, the payable amount shall be payable from the date of default till realization.

Send a copy of this order to both parties.

Member

Judicial Member

