

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-II,
U.T. CHANDIGARH

Consumer Complaint No : 234 of 2021
Date of Institution : 07.04.2021
Date of Decision : **01.04.2024**

1] MBR Trading Company, near Chandigarh Zirakpur Barrier Chandigarh Road, Zirakpur, District SAS Nagar, Mohali, Punjab, through its Proprietor Barinder Deep Singh

2] Barinder Deep Singh, Proprietor, MBR Trading Company, near Chandigarh Zirakpur Barrier Chandigarh Road, Zirakpur, District SAS Nagar, Mohali

.....Complainants

Versus

The New India Assurance Company Limited, having its Branch Office at SCO No.75, First Floor, Sector 30-C, Chandigarh through its Branch Head

..... Opposite Party

BEFORE: MR.AMRINDER SINGH SIDHU, PRESIDENT

MR.B.M.SHARMA

MEMBER

Argued by: Sh.Sunil Toni, Counsel for the complainant

Sh.J.P.Nahar, Counsel for the OPs

PER B. M. SHARMA, MEMBER

The case of the complainants precisely is that they deal in sale & purchase of electronic goods since August, 2018, file returns regularly and maintained accounts in regular course of business. It is averred that the complainants got their electronic goods insured from OP Company for Burglary (single location) and Standard Fire & special Perils Policy effective from 24.9.2019 to 23.09.2020 (An.C-2 & C-3). Unfortunately on 19.9.2020 at about 7.28 PM a fire broke out in the godown/office premises of the complainants while it was closed and the fire was extinguished by the Fire Brigade per Fire Accident Report dated 24.2.2021

(Ann.c-4). The said fire was also reported to the police whereupon DDR dated 23.9.2020 (Ann.C-5) was recorded by Police Station at Zirakpur. The matter was also reported to the OP Company, who appointed Surveyor and the surveyor was supplied all requisite documents including trading account mentioning the stock at the date of incident of Rs.42,40,949.56 duly attested by the Chartered Accountant, balance sheet, sale and purchase ledger till 19.9.2020 (Ann.C-6 to C-8). It is submitted that without considering the documents and physical stock inspection done by the surveyor against the total stock damaged in the fire amounting to Rs.42,40,949.56, the Surveyor of OP passed claim of Rs.10,92,274/- (Ann.C-9). It is also submitted that the survey report is not based on true appreciation of records and documents provided by the complainants. It is pleaded that the OP offered full & final settlement of claim to the tune of Rs.10,92,274/- against the total claim of Rs.42,40,949.56, which amounts to deficiency in service and unfair trade practice on the part of OP. Hence, this complaint has been preferred.

2] The OP has filed written version and while admitting the factual matrix of the case, stated that the complainant and surveyor jointly taken inventory of the damaged stock signed by both in which the name & number of items is given but despite reminders the complainant failed to provide the exact amount of loss item-wise. It is stated that the Surveyor has considered Ann.C-1 (colly) but from it, it cannot be ascertained as to what is the amount of loss and which are the items damaged in the said fire incident. It is submitted that the complainant submitted the claim bill of Rs.41,81,024/- towards the loss of damaged stock which is based upon closing stock appearing in the Trading Account but there is a huge variation in closing stock figure as per Trading Account and as per physical inventory of the damaged stock & safe stock carrier out by the surveyor and complainants jointly. It is also submitted that the claim bill and financial statements submitted by the insured firm have not been considered, rather, assessment of loss has been carried out on the basis of physical inventory of damaged stock and safe stock. It is pleaded that the surveyor has mentioned in its Survey Report dated 1.3.2021 (Ann.OP-3) that the insured is not maintaining proper books of accounts and stock records. It is denied that the actual loss is Rs.42,40,949.56, rather the actual loss was Rs.13,21,980/- and the Surveyor assessed the loss for Rs.13,47,338/- but there was calculation errors to the extent of Rs.25,358.17, so that much amount was deducted and net amount was arrived at Rs.13,21,980/-; from this amount of Rs.13,21,980/- a deduction of 10% (Rs.1,32,198/-) was made towards Dead Stock, further an amount of Rs.40,000/- for salvage was deducted and Rs.57,489/- was deducted towards policy excess clause (5% of the claim amount), the amount was approved for Rs.10,92,292/- and the net amount of Rs.10,92,274/- was paid after charging Rs.18/- towards the insurance premium for reinstating the sum insured under the policy. It is stated that the Surveyor has rightly assess the loss. It is further stated that the payment of Rs.10,92,274/- was made after thorough scrutiny of the survey report and the other documents by the OP Company. It is denied that the claim of the complainant is liable to be paid for Rs.42,40,949.56. Denying all other allegations, the OP has prayed for dismissal of the complaint.

4] Replication has also been filed by the complainant controverting the assertion of the OPs made in their respective reply.

5] Parties led evidence in support of their contentions.

6] We have heard the Id.Counsel for the contesting parties and gone through the entire documents on record including written submissions.

7] The perusal of the record and pleading reveals that it is admitted case that the entire stock of the complainant company was duly insured with OP Insurance Company for sum assured of Rs.60 lacs vide Standard Fire & Special Perils Policy effective from 24.9.2019 to 23.09.2020 (An.C-2 & C-3) and the fire broke out in the godown/office premises of the complainant during the existence of the said insurance policy. The fire was reported to the Police Authorities, Fire Bridge as well as the OP Insurance Company timely.

8] The complainant's claim is that the Surveyor appointed by OP Company was supplied with all requisite documents including trading account mentioning the stock on the date of incident of Rs.42,40,949.56 duly attested by the Chartered Accountant as well as balance sheet, sale and purchase ledger till 19.9.2020 (Ann.C-6 to C-8), but still he assessed the loss only for Rs.10,92,274/- against the total stock loss of Rs.42,40,949.56, which is wrong and illegal.

9] We find that the Surveyor has rejected the major portion of the claim of the complainant without assigning any valid and justifiable reason. The surveyor failed to justify as to how the remaining claim of the damaged stock is not payable especially when the entire stock of Rs.42,40,949.56 duly attested by the Chartered Accountant has been damaged in the fire.

It is important to mention that the Surveyor has specifically observed in its report (Ann.OP-3) that a fire of devastating proportions had operated in the insured's premises and entire stock was completely gutted by the fire. In our opinion, once the entire stock has been damaged in fire, then the complainant is entitled to get the claim upto sum assured or the value of stock whichever is less and the value of the stock on the day of loss is to tune of Rs.42,40,949.57 against sum assured of Rs.60 lacs. The Surveyor has failed to give convincing justification in rejecting the complete claim of the complainant. Therefore, the complainant is held entitled to the full claim subject to sum assured under the policy.

10] In New India Assurance Company Ltd Vs Pradeep Kumar (Civil Appeal No 3253 of 2002, dated April 9, 2009), the Supreme Court observed that even though the assessment of loss by an approved surveyor is a pre-requisite for settlement of claim, yet the surveyor's report is not the last and the final word. Even though it is the basis for settlement of claim, it is not sacrosanct and it is not binding on the insurer or the insured.

11] Taking into consideration the above discussion and findings, we are of the opinion that there is clear deficiency in service on the part of OP in not paying the complete claim of the damaged stock to the complainant falling under sum assured. Therefore, the present complaint is partly allowed with directions to the OP Company to reimburse to the complainant an amount of Rs.42,40,949.56 i.e. the cost of the damaged stock, *minus the amount if any already paid*, along with interest @9% per annum from the date of loss i.e. 19.9.2020 till the date of its actual payment to the complainant and also to pay a lumpsum amount of Rs.20,000/- towards compensation and litigation expenses.

This order shall be complied with by the OP within a period of 60 days from the date of receipt of copy of this order.

12] Pending application(s) if any, stands disposed of accordingly.

Certified copy of this order be sent to the parties free of charge, after which the file be consigned.

Announced

01.04.2024

Sd/-

(AMRINDER SINGH SIDHU)

PRESIDENT

Sd/-
(B.M.SHARMA)
MEMBER