

Heading1
Heading2

Complaint Case No. CC/351/2016
(Date of Filing : 27 Sep 2016)

1. SHRI VASU PRODUCT P. LTD.
4107, 1st FLOOR, NAYA BAZAR DELHI-06.Complainant(s)

Versus

1. THE NEW INDIA ASSURANCE CO. LTD.
NEW INDIA ASSURANCE BUILDING, 87, M.G. ROAD,
FORT MUMBAI, MAHARASTRA-40001.Opp.Party(s)

BEFORE:

HON'BLE MR. INDER JEET SINGH PRESIDENT
HON'BLE MS. RASHMI BANSAL MEMBER

PRESENT:

Dated : 04 Jun 2024

Final Order / Judgement

Before the District Consumer Dispute Redressal Commission [Central District] - VIII, 5th
Floor Maharana Pratap ISBT Building, Kashmere Gate, Delhi

Complaint Case No. 351/27.09.2016

Shri Vasu Products Private Limited

4107, Ist Floor, Naya Bazar, Delhi

through its Director Shri Pawan Chaudhary ...Complainant

Versus

OP- New India Assurance Co Ltd.

Regd- HO New India Assurance Co. Ltd.

87, MG Road, Fort, Mumbai, Maharastra

Also at – D.O. 311300 4th floor, Channana Complex

2213 Gurudwara Road Karol Bagh New Delhi-110005 ...Opposite Party

Date of filing: 27.09.2016

Coram:

Date of Order: 04.06.2024

Shri Inder Jeet Singh, President

Ms Rashmi Bansal, Member -Female

ORDER

Inder Jeet Singh , President

This case is scheduled today for Final Order (item no.16).

1. **(Introduction to case of parties)** –The complainant has grievances of deficiency of services. breath of trust, unfair trade practice against OP that despite having a Burglary single location Insurance Policy from OP to cover the risk, the valid claim was not settled. There was an episode of theft loss of Rs. 4,60,0440/- in respect of stocks in godown, the claim raised was not settled by the OP. That is why the complaint for risk covered amount of Rs. 4,60,440/-, compensation of Rs. 2 lakh and litigation cost of Rs. 50,000/-.
1. This complaint is opposed by the OP that there is no deficiency of services and unfair trade practice, since OP had appointed a surveyor, who had surveyed the matter, he furnished the report for claim of Rs.1,34,520/-, but it was not accepted by the complainant.

2.1. (Case of complainant) –The complainant is a company incorporated and it is engaged in the business of purchasing, processing and selling of pulses in the wholesale and retail market. The complainant is having processing unit/warehouse/godown at Khasra no. 206/3, Near Laxmi Nagar Dharam Kanta, Main Fhrini Road, Village Sanoth, Narela, Delhi [briefly unit or warehouse] and it was being used for processing the pulses and storage of pulses.

In May 2015 the complainant took two insurance policies from OP/insurer in its name viz. (i) policy no. 31130046150100000044 for Burglary single location insurance w.e.f. 18.05.2015 to 17.05.2016 and (ii) policy no. 31130031150100000094 being standard Fire and Special peril policy. which is also valid from 18.05.2015 to 17.05.2016 against paid premium.

2.2. In the midnight of 30/31.05.2015 a burglary took place in the processing unit/ware- house of complainant, huge quantity of processed and ready to sale item/pulses/goods were stolen; at the time of episode complainant's employee called the police and lodged the complaint in P.S. Narela. On 31.05.2015, being next day, the complainant called in the office of OP and informed about the incident. The OP's surveyor visited and inspected the spot; the complainant furnished all relevant documents and also explained it to the surveyor. There was superficial inspection of the stock in the godown and complainant submitted claim of Rs. 3,62,705/- but at that moment

minute detail and analysis of books and accounts was not ready/cleared vis-à-vis the amount calculated was for unprocessed pulses/material and average purchase price of pulses/material but in fact claim is to be based on price after processing of pulses and sale price of pulses. Thus, after proper valuation and calculation of stolen material, a revised claim of Rs.4,60,440/- was furnished, it is based on sale prices of pulses/item at the time of episode of burglary.

The complainant has furnished all the documents to the OP without any delay and also persuaded for settlement of valid claim but it has not been settled, which is negligence, lack of services, breach of trust, unfair trade practice of OP and the complainant has suffered physical and mental agony/harassment besides monetary losses. The OP always to dilly delaying the request of complainant on the one pretext or the other, for which OP is liable. The complainant also sent legal notice to OP for settlement of claim but no result. That is why this complaint.

2.3 The complaint is accompanied with Board Resolution in favour of Sh. Pawan Chaudhary to author the complaint, copies of- insurance policies, report to police and legal notice.

3.1 (Case of OP)-There is complicated question involved of facts and law, which needs oral and documentary evidence by examination and cross-examination of witnesses for proper disposal of the matter, thus the proper form for adjudication of the complaint is the civil court. Whereas, the Consumer Protection Act being the special Act deals with only summary proceedings.

3.2. There is no deficiency of services on the part of OP as the complaint is misconceived. The OP had issued policy no. 31130046150100000044 for burglary single location insurance w.e.f. 18.05.2015 to 17.05.2016 for sum insured of Rs. 25 lakhs in the name of complainant but the policy is granted strictly as per terms and conditions.

The theft was allegedly occurred on 30.05.2015, the complainant was offered total claim of Rs.1,34,520/- as per surveyor report. This amount was approved and the complainant was asked to furnish appropriate letter of subrogation and power of attorney on prescribed non-judicial stamp paper, even reminder was also sent on 05.09.2016 instead the complaint was filed. There is no merit in the complaint and complainant is not entitled for any compensation or litigation cost.

3.3 The written statement is accompanied with copies of - report of surveyor, reminder and terms and conditions of policy.

4. (Replication of complainant) –The complainant filed detailed replication to the reply of OP, the complainant reaffirms the contents of complaint as correct. Further, the present Consumer Forum has jurisdiction to adjudicate the matter. The surveyor has not shown proper value of loss happened to the complainant, which was revised as claim of Rs. 4,60,440/-.

5.1 (Evidence)- The complainant led its evidence by detailed affidavit of its Director/ AR Shri Pawan Chaudary, who also authored the complainant; affidavit of evidence is on the line of complaint with documents.

5.2. The OP also led its evidence by filing affidavit of Ms Satya Manjula, Sr. Divisional Manager and it is on the pattern of written statement of OP.

6. (Final hearing)- The complainant and the OP filed their respective written arguments. The parties were also given opportunities for making oral submissions, then it was submitted on behalf of OP that the written arguments filed may also be considered as oral submission. There was no oral submission on behalf of complainant. Therefore, the material available in the form of pleadings, evidence and written arguments on behalf of parties will be considered, the same has already been detailed.

7.1 (Findings)- Subject to above, the rival contentions are considered keeping in view the case as set up by the parties, their evidence especially the documentary record and statutory provisions of law. There is a dispute on legal objection and also on other facts and features of the case. All of them are being considered and rival contention of the parties will be dealt appropriately.

7.2. The OP has reservation that there are complicated question of facts and law involved which cannot be decided in summary procedure by the Consumer Fora, but by the civil court.

As per record as well as in the final hearing, the OP could not show as to which material are complicated in nature or mixed question of fact and law to be determined by the Civil Court exclusively or as to how the dispute cannot be determined by the present DCDRC Central District. Therefore, this objection is decided against the OP that on the basis of material on record in respect of consumer dispute involved of insurance claim, it can be determined by the present DCDRC on the basis of sufficient material on record. This contention is disposed off.

7.3.1 By taking into account the other material on the record, especially documentary evidence, the following conclusions are drawn:-

(i) There is no dispute of episode of theft during the currency of burglary policy as well as lodging of the claim by the complainant besides matter was reported to the police. The dispute pertains to quantum of claim amount.

(ii) The complainant has not proved the documentary record of quantity and rates of the pulses/goods etc. vis-à-vis the OP has proved surveyor report, which are showing not only the items/pulses/goods but also its respective bags/quantity, weight in kilograms, rates in rupees and then calculation of final amount of Rs. 1,34,520/-.

(iii) There is no evidence by the complainant to rebut the facts and figures mentioned in the surveyor report regarding quantity/weight, rates and to establish its own fact and record contrary to the record proved by the OP.

(iv) There is balance sheet/director's report by the complainant. The complainant had narrated that initially claim was lodged for Rs.3,62,705/- which was revised to Rs. 4,60,440/- being selling price of the product, however, these facts could not be proved with documentary record. It is case of complainant that it deal in wholesale and retails, both, however it has not been proved which rate is being claimed for the claim. The facts and figures proved by the OP through its surveyor report has also not been rebutted by the complainant.

(v) The complainant could not proved claim of Rs. 4,60,440/- but the OP has established that the claim was settled for Rs. 1,34,520/-, based on detailed and analytical report of surveyor.

7.3.2 In view of the above, the complainant is held entitled for Rs. 1,34,520/- regarding the claim lodged with OP in respect of episode of theft took place in the midnight of 30/31.05.2015 at the processing unit/warehouse of the complainant being under the insurance policy no. 31130046150100000044. This amount was offered by the OP to the complainant but it was not inclined to accept it.

7.3.3 Since there is no deficiency of services and unfair trade practice, consequently, request of complainant for compensation and cost are declined.

8. So, the OP is directed to pay the settled claim amount of Rs.1,34,520/- to complainant. This amount will be payable within 45 days from the date of this order, failing to pay the amount within this time, then interest will be payable, it will be at the rate of 6% pa from the date of complaint till realization of the amount will be payable by OP to the complainant. The OP may also deposit the amount in the form of valid instrument in the name of complainant in the Registry of this Commission. No order as to costs.

9. Announced on this 04th day of June 2024 [ज्येष्ठ 14, साका 1946]. Copy of this Order be sent/provided forthwith to the parties free of cost as per rules for compliances, besides to upload on the website of this Commission.

[Rashmi Bansal]

Member (Female)

[Inder Jeet Singh]

President

[ijs66]

**[HON'BLE MR. INDER JEET SINGH]
PRESIDENT**

**[HON'BLE MS. RASHMI BANSAL]
MEMBER**