BEFORE THE CONSUMER DISPUTES REDRESSAL COMMISSION,RAJASTHAN,JAIPUR BENCH NO.1

COMPLAINT CASE NO :41 /2017

M/s.Vivek Traders proprietorship firm, College Road, Beawar Distt. Ajmer through Vivek Kumawat Prop.

Vs.

National Insurance Co. Ltd. Br.office Jhalwal Sadan, College Road, Beawar through Sr.Manager & ors.

Date of Order 30.1.2018

Before:

Hon'ble Mrs. Justice Nisha Gupta- President

Mr. D.D.Bansal counsel for the complainant

REPORTABLE

Mr.Ravindra Sharma counsel for the non-applicant

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BY THE STATE COMMISSION (PER HON'BLE MRS. JUSTICE NISHA GUPTA,PRESIDENT):

This complaint has been filed on 11.4.2017 with the contention that he purchased an insurance policy for showroom alongwith furniture, fixtures etc. On 14.12.2015 at about 5.00 p.m. fire broke out in the showroom. Surveyor was appointed. Insurance company has delayed the payment and only partly allowed the claim. Hence, for rest of the loss the present complaint has been filed.

In reply to the complaint the contention of the insurance company is that amount of Rs. 64,28,670/- was received by the complainant as full and final settlement. Hence, complaint is not maintainable and further more in then same building M/s. Vinayak Handloom is also running its business hence 50% deduction of the amount for the assessed loss of building was rightly been made and complaint should have been dismissed.

Both the parties entered into evidence. Heard the counsel for the parties and perused the record of the case.

The first contention of the complainant is that 50% deduction for the loss of building is not justified. There is no dispute about the fact that the surveyor has assessed the loss only for 50% of the building loss and reason has also been

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rightly assigned that as other firm Vinayak Handloom is also running in the same premises hence, only 50% is allowed.

Policy Ex. 1 clearly shows that insurance has only been made for Vivek Traders and when other firm is also running in the same building the surveyor was justified in deducting 50% of the loss. Affidavit of surveyor Rajeev Kishore Agarwal also speaks so.

The complainant has relied upon the judgment passed by Jammu & Kashmir High Court in CIMA no. 85-A of 2001 M/s.Oriental Insurance Co. Vs. Sham Lal Matoo where the dispute was as regard to rival claimants which is not the case here.

Further reliance has been placed on the judgment passed by the apex court in Civil Appeal No. 3253 of 2002 New India Assurance Co. Vs. Pradeep Kumar where it has been held that surveyor report is not a final word. There is no dispute about this preposition but here in the present case the surveyor has assigned the plausible reason for 50% deduction.

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Further reliance has been placed on the judgment passed by the National Commission in the case of M/s.Arfat Petro Chemical Pvt.Ltd. Vs. New India Assurance Co. decided on 17.1.2018 where dispute was as regard to payment of interest which is not the case here. Hence, in view of the above the loss has rightly been assessed by the insurance company and it is not in dispute that claim to the tune of Rs. 64,28,670/- is paid to the complainant.

The other contention of the complainant is that policy conditions were never furnished to him and reference has been made to the Insurance Regulatory and Development Authority (Protection of Policyholders Interests) Regulation 2002. There is no dispute about the fact that the policy terms and conditions should have been furnished to the complainant. Here in the present case the complainant has never pleaded that policy conditions were not furnished to him. Hence, this contention has no ground and seems to be after thaught.

The contention of the non-applicant is that once the claim is accepted without any objection as full and final settlement, no further claim is maintainable.

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Ex. R 3 shows that vide impugned letter dated 7.11.2016 a satisfaction voucher was sent to the complainant. Anx. R 4 satisfaction voucher was executed by the complainant even bank name, branch code and other codes were also furnished and vide Anx. R 5 payment was made to the complainant and no protest was made at that time.

The contention of the complainant is that he made protest vide Anx. 9 through e-mail but Ex. 9 clearly speaks that it was objected on 1.12.2016 whereas payment was made on 24.11.2016.

The other contention of the complainant is that satisfaction voucher was executed under pressure but nothing has been pleaded to this effect in the complaint.

Further contention of the complainant is that claim was delayed hence he was under pressure but it is settled preposition of law that undue influence, fraud and coercion has to be pleaded and proved but here in the present complaint no such pleadings are being set up as regard to undue influence or coercion.

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The non-applicant has rightly placed reliance on II (2014) CPJ 280 (NC) Jess Ram Khusi Ram Vs. National Insurance Co., II (2013) CPJ 366 (NC) Shri Balaji Woolen Vs. Oriental Insurance Co., I (2013) CPJ 418 (NC) Jiwan Spiners Vs. New India Assurance Co., IV (2017) CPJ 14 (NC) Vinod Bhardwaj Vs. Tata AIG, III (2017) CPJ 585 (NC) Swastik Petrochem Vs. Oriental Insurance Co. , I (2008) CPJ 415 (NC) V.Kalyanam Vs. Navin Housing, I (2013) CPJ 440 (NC) Ankur Surana Vs. United India Insurance, I (2013) CPJ 26 B (NC) Torent Cables Vs. New India Assurance Co., II (2013) CPJ 559 (NC) K.K.Jewells Impex Vs. Oriental Insurance Co., II (2013) CPJ 539 (NC) Ravindra Spiners Vs. National Insurance Co. and I (2015) CPJ 151 (NC) Kanta Mathur Vs. National Insurance Co. where it has been specifically held that once the insured has received the amount in full and final settlement of his claim and signed the discharge voucher he cannot be permitted to agitate his claim unless he could establish the discharge voucher was obtained by undue influence, fraud, misrepresentation or coercion. Here in the present case the satisfaction voucher was signed without any objection and no evidence and pleading is submitted to show that it was signed with any compulsion.

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The complainant has submitted the judgment of the apex court passed in Civil Appeal No. 5733 of 2008 National Insurance Co. Vs. M/s.Boghara Polyfab Pvt.Ltd. where on the facts of the case the matter was decided.

Hence, in view of the fact that the complainant has received the amount as full and final satisfaction of the claim further complaint is not maintainable and the present complaint stands dismissed.

(Nisha Gupta)

President

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