

RESERVED

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW
APPEAL NO. 52 OF 2010

(Against the judgment/order dated 19-11-2009 in Complaint Case
No. 206/2005 of the District Consumer Forum, Faizabad)

Oriental Insurance Company Limited
Through its Manager (Legal Deptt.)
Regional Office, Hazratganj
Lucknow

...Appellant

Vs.

01. Bhola Nath Singh
S/o Sri Udairaj Singh
R/o Rampur Bhagan
Pargana Pachhim Rath
Tehsil Bikapur, District Faizabad

02. Bank of Baroda
Branch Rampur Bhagan
District Faizabad
Through its Branch Managr

03. Smt. Sheela Singh
W/o Sri Bhola Singh
R/o Rampur Bhagan
Pargana Pachhim Rath
Tehsil Bikapur, District Faizabad.

... Respondents

BEFORE:

HON'BLE MR. JUSTICE AKHTER HUSAIN KHAN, PRESIDENT
HON'BLE MR. JITENDRA NATH SINHA, MEMBER
HON'BLE MRS. BAL KUMARI, MEMBER

For the Appellant : Sri Ashok Mehrotra, Advocate.

For the Respondent : Sri Satya Prakash Pandey, Advocate.

Dated : 23-06-2016

JUDGMENT

PER MR. JUSTICE A. H. KHAN, PRESIDENT

This is an appeal filed under Section-15 of the Consumer Protection Act 1986 hereinafter referred as Act, by opposite party The Oriental Insurance Company Limited against majority judgment and order dated 19-11-2009 passed by District Consumer Forum, Faizabad in Complaint Case No. 206/2005 Bhola Nath Singh V/s Oriental Insurance Company Limited and others whereby the District Consumer Forum has allowed the said complaint and has ordered appellant/opposite party to pay Rs.2,00,000/- with





interest @ 9% per annum. The District Consumer Forum has further awarded compensation of Rs.10,000/- and cost of Rs.1,500/-. The District Consumer Forum has ordered opposite party No.1 to pay above amounts to respondent/complainant within one month of the date of judgment.

Learned Counsel Sri Ashok Mehrotra appeared for appellant. Learned Counsel Sri Satya Prakash Pandey appeared for respondent.

We have heard learned Counsel for the parties and have gone through the impugned judgment and award as well as records of the case.

It has been contended by learned Counsel for the appellant that the impugned majority judgment and award has been passed by two members of District Consumer Forum, Faizabad whereas the Chairman of District Consumer Forum, Faizabad has given a dissenting judgment and has dismissed the complaint.

It has been further contended by learned Counsel for the appellant that the impugned majority judgment passed by District Consumer Forum is against law as well as against evidence.

It has been contended by learned Counsel for the appellant that Smt. Sheela Singh wife of respondent/complainant Bhola Nath Singh is proprietor of M/s. Rajpoot Bulb Agency which has been financed by Bank of Baroda. The respondent/complainant Bhola Nath Singh has taken insurance policy for this shop in his name fraudulently showing himself to be the proprietor of it. The insurance policy taken by respondent/complainant is not enforceable as respondent/complainant has no insurable interest in insured shop.

It has been further contended by learned Counsel for appellant that compensation awarded by District Consumer Forum is very high and excessive.

Learned Counsel for respondent/complainant Bhola Nath Singh has opposed the appeal.

It has been contended by learned Counsel for respondent Bhola Nath Singh that impugned majority judgment and order passed by District Consumer Forum is in accordance with law and evidence. The conclusion drawn by Chairman, District Consumer Forum in dissenting judgment is against law and evidence.

It has been contended by learned Counsel for the respondent/







complainant that respondent/complainant is proprietor of insured shop M/s. Rajpoot Bulb Agency and he is entitled to be reimbursed for the loss caused by fire. His wife Smt. Sheela Singh was proprietor of an other shop M/s. Rajpoot Bulb Agency which was financed by Bank of Baroda. She closed her said shop in August, 2003. Thereafter respondent/complainant has opened shop in year 2004 in the same name and style.

It has been contended by learned Counsel for the respondent/complainant that the surveyor's report is false and valuation of loss assessed by him is incorrect.

We have considered the submissions made by learned Counsel for the parties.

According to complaint, version of complainant/respondent is that his shop M/s. Rajpoot Bulb Agency was insured with appellant/opposite party for Rs.2,00,000/-. In the intervening night of 4/5 June, 2004 whole commodities of his shop were gutted to fire caused by short-circuit. Value of total loss occurred was Rs.3,23,000. On information given by respondent/complainant, the appellant/opposite party deputed surveyor who prepared false report and undervalued loss. Ultimately the appellant/Insurance Company repudiated whole claim of respondent/complainant on the alleged ground that Smt. Sheela Singh was the proprietor of M/s. Rajpoot Bulb Agency and the respondent/complainant has no insurable interest in the shop. Therefore, the complainant/respondent has moved complaint against the appellant/opposite party for payment of Rs.4,00,000/- as compensation.

Appellant/opposite party has opposed the complaint filed by respondent/complainant by filing written statement. In written statement appellant/opposite party has accepted the incident of fire alleged by complainant/respondent. Appellant/opposite party has accepted that insurance policy was taken by respondent/complainant subject to averment that the shop M/s. Rajpoot Bulb Agency was owned by Smt. Sheela Singh wife of complainant/respondent and complainant/respondent had no insurable interest in said shop. He has taken insurance policy by concealment of facts. M/s. Rajpoot Bulb Agency has loan of Bank of Baroda (Opposite Party/respondent no.2) who has made prayer to make payment of claim

through him.

In written statement appellant/opposite party has further stated that the loss caused by fire has been assessed by surveyor to the extent of Rs.57,110/- only.

Perusal of impugned judgment and order shows that in complaint before District Consumer Forum, Bank of Baroda, Branch Rampur Bhagan and Smt. Sheela Singh wife of complainant were also impleaded as opposite parties no.2 and 3.

Bank of Baroda opposite party no.2 of complaint has stated in his written statement before District Consumer Forum that Smt. Sheela Singh is sole proprietor of M/s. Rajpoot Bulb Agency and this shop is financed by Bank of Baroda under OD Limit Credit Facility. Smt. Sheela Singh has informed bank that her shop M/s. Rajpoot Bulb Agency is insured with Oriental Insurance Company Limited. Bank of Baroda opposite party no.2 of complaint has further stated in his written statement that Smt. Sheela Singh has informed bank that her shop M/s. Rajpoot Bulb Agency which was financed by bank was not burnt. Her husband Bhola Nath Singh is proprietor of complainant shop M/s. Rajpoot Bulb Agency and it is a different shop. In his written statement bank opposite party no.2 has further stated that the bank has no concern with firm M/s. Rajpoot Bulb Agency in respect of which complainant/respondent Bhola Nath Singh has filed complaint.

In his written statement the bank opposite party no.2 has further stated that last inspection of shop of Smt. Sheela Singh was done on 02-01-2004 by bank.

Smt. Sheela Singh opposite party no.3 of complaint has stated in her written statement that she was proprietor of shop M/s. Rajpoot Bulb Agency and this shop was financed by Bank of Baroda. She has closed this shop in the year 2003. Thereafter her husband/complainant Bhola Nath Singh started a new shop in an other place in same market in the name and style of M/s. Rajpoot Bulb Agency. This shop of her husband was insured with Oriental Insurance Company Limited and this shop of her husband has faced incident of fire.

In majority judgment of District Consumer Forum after going through pleadings of parties and evidence on record a finding has been recorded that

the complainant Bhola Nath Singh is proprietor of shop burnt. Shop of Smt. Sheela Singh the wife of complainant which was financed by bank was an other shop. In view of this finding majority of members of District Consumer Forum has allowed the complaint and has passed order as mentioned above.

In minority judgment the President of District Consumer Forum has recorded a finding that Smt. Sheela Singh opposite party/respondent no.3 is proprietor of insured shop and complainant/respondent has no insurable interest in it. With above finding the President has dismissed complaint.

In view of averments made in complaint as well as in written statements of opposite parties it is an undisputed fact that Smt. Sheela Singh was the proprietor of shop M/s. Rajpoot Bulb Agency. Now the version of complainant is that Smt. Sheela Singh has closed her shop in the year 2003. Thereafter he started a new shop in the name and style of M/s. Rajpoot Bulb Agency on an other place in the same market and complainant/respondent Bhola Nath Singh is sole proprietor of this shop. He has obtained insurance policy of appellant/opposite party for this shop. Smt. Sheela Singh opposite party no.3 of complaint, who is wife of complainant/respondent Bhola Nath Singh, has supported the version of complainant Bhola Nath Singh. Bank of Baroda opposite party no.2 has also supported the version of complainant Bhola Nath Singh to the extent that the shop burnt in the incident is not the shop of Smt. Sheela Singh opposite party no.3 which was financed by the bank. The bank opposite party no.2 has clearly stated that bank has no concern with the shop burnt. Contrary to it the appellant/opposite party who is the insurer is alleging that Smt. Sheela Singh is proprietor of shop burnt and this shop was financed by the bank opposite party no.2. In this context, it has been submitted by learned Counsel for the appellant/opposite party that according to complainant and his wife Smt. Sheel Singh M/s. Rajpoot Bulb Agency, the shop of Smt. Sheela Singh which was financed by bank opposite party no.2 has been closed in the year 2003 whereas the bank has informed the surveyor that the shop of Smt. Sheela Singh was inspected on 02-01-2004 by bank for the last time and on this basis it has been submitted by learned Counsel for the appellant/opposite party that the version of complainant and his wife Smt. Sheela Singh to the effect that the shop of

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Smt. Sheela Singh was closed in the year 2003 is incorrect.

We have considered this submission made by learned Counsel for the appellant/opposite party. It is true that it has been reported by surveyor that the bank informed him that bank had made last inspection of shop M/s. Rajpoot Bulb Agency owned by Smt. Sheela Singh and financed by opposite party no.2 bank on 02-01-2004 but there is nothing on record to show that the last inspected shop of Smt. Sheela Singh was the shop in question which is now burnt. The bank has stated in his written statement that he has no concern with the shop burnt. The bank has also stated that the shop financed by him has not been burnt.

Learned Counsel for appellant/opposite party has shown a letter of Bank opposite party no.2 dated 06-08-2004 in which details of financed shop M/s. Rajpoot Bulb Agency has been given and Insurance Company has been requested to keep in mind Bank's interest clause while taking any action at his end. But as mentioned above the Bank opposite party no.2 of complaint has stated in its written statement before District Consumer Forum that the shop M/s. Rajpoot Bulb Agency financed by it is not burnt. It has no concern with shop burnt. The surveyor of Insurance Company has not dared to get identified the shop lastly inspected by the bank employee with the aid of said Bank employee. Appellant Insurance Company has accepted premium of insurance policy from complainant/respondent and has insured shop accepting complainant/respondent to be owner of the shop. Now Insurance Company cannot deny ownership of complainant/respondent without sufficient reason. It was Bank opposite party/respondent who might have claimed that insured shop now burnt shop is the shop owned by Smt. Sheela Singh and financed by the bank but bank has expressed his no concern with shop burnt. In view of clear stand of Bank opposite party no.2 in his written statement the whole defence of appellant/opposite party (Insurance Company) is demolished.

After having gone through whole materials on record as well as discussion made above we are of the view that appellant Insurance Company has failed to show that complainant/respondent is not proprietor of shop insured and he has no insurable interest in it. We are of the view that finding recorded by President, District Consumer Forum is not sustainable whereas finding recorded in impugned majority judgment cannot be said to be against

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law and evidence.

Respondent/complainant has claimed loss of Rs.3,23,000/- whereas surveyor of Insurance Company has assessed damage to the tune of Rs.57,110/- only. Perusal of surveyor's report shows that surveyor has not prepared report honestly and impartially. He has tried his best to minimise assessment of damage. He did not taken into consideration the list of destroyed articles furnished by complainant. His assessment is arbitrary and based on his own imagination.

In the case of New India Assurance Company Limited V/s Pradeep Kumar IV (2009) CPJ 46 SC Hon'ble Apex Court has held that surveyor's word is not the last and final word. It is not that sacrosanct that cannot be departed from.

Surveyor's report shows that items covered under insurance were bulb and other electrical items for Rs.1,60,000/- and furniture, fixture and fitting for Rs.40,000/-. Thus, insurance policy covers risk upto Rs.2,00,000/-. Damage claimed by complainant/respondent is higher than limit of policy. Complainant/respondent has given list of articles destroyed. Considering all materials on record we are of the view that Rs.2,00,000/- awarded by District Consumer Forum as damages is appropriate and proper.

Perusal of judgment passed by President shows that complaint was heard by Bench of President and two members. Judgment was reserved but President could not write judgment and expressed his view as he was on leave. Two members of the Bench writing majority judgment neither submitted their judgment to President for perusal nor they waited for President and delivered the judgment in absence of President without his signature whereas Section 14(2A) of the Consumer Protection act 1986 makes it mandatory that order passed under sub section (1) of Section 14 of the Consumer Protection Act shall be signed by its President and the member or members who conducted the proceeding. It means that final and operative order shall be passed by bench in accordance with majority judgment and this final and operative order shall be signed by President and all members of Bench. President has placed his judgment on record on 07-12-2009 after 18 days of delivery of majority judgment by members.

In view of above we are constrained to observe that the District Consumer Forum has not acted properly in delivery of judgment. Procedure

adopted by members for delivery of judgment without waiting for President is against judicial discipline. However, keeping in view the provisions of Section 29A of the Consumer Protection Act 1986 as well as conclusion drawn above we are of the view that no interference is justified in impugned majority judgment.

Appeal is dismissed with cost of Rs.2,000/- .

Let amount deposited under Section-15 of the Act before this Commission be remitted to the District Consumer Forum for disposal in accordance with law.

Let copy of this judgment be circulated to Chairman and Members of all District Consumer Forums of U.P. for future guidance.

Let copy of this judgment be given to parties free of cost positively within 15 days.

A.H. Khan 23/6/16
(JUSTICE A H KHAN)
PRESIDENT

J. N. Sinha
(J N SINHA)
MEMBER

Bal Kumari
(SMT. BAL KUMARI)
MEMBER