(2001) 02 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

Ajay Gupta APPELLANT

Vs

MANAGER, ALLAHABAD BANK RESPONDENT

Date of Decision : 28-02-2001

Acts Referred:

Citation : 2001 1 CPC 342 : 2001 1 CPR 94 : 2001 1 UC 476 : 2001 2 CPJ 13

Hon'ble Judges : S.C.Sen , C.L.Chaudhry , J.K.Mehra , Rajyalakshmi Rao J.

Final Decision : Ordered accordingly

Judgement

1. THIS is a complaint filed by the complainant in respect of various losses under various policies against different parties including different Insurance Companies. During the pendency of the case, the complainant dropped his case against the Insurance Company being opposite party No. 5 as the claim had become stale and barred by limitation. However, he pursued his claim against the opposite party No. 4, Insurance Company.

2. THE complainant had taken four fire policy "C" bearing No. (a) 111600/11/204/91, (b) 111600/11/205/91, (c) 111600/11/206/91 and (d) 111600/11/207/91. THE period of insurance is from 25.7.1991 to, 24.7.1992. THE total insurance cover under these four policies is Rs. 36.00 lakhs. THE policies under which the loss is claimed are mentioned at Sr. Nos. (a) and (b). In reply to the said claim the opposite party No. 4 had appeared and filed its written version on 6th June, 1994. The complainant had brought claims with regard to different causes of action which arose at different times and claiming different amounts wherein even the Banks were different.

During the pendency, this Commission had after hearing the parties, dismissed the complaint against opposite parties 1 to 3. Thus, only surviving claim was against opposite party No. 4, i.e. United India Insurance Co. Ltd. The complainant has claimed a fire loss of Rs. 19,61,559/- as set out in para 17 of the complaint and together with interest and other claims, the total amount in the claim against the opposite party No. is Rs. 75,47,451.00. The Insurance Company, opposite party No. 4 appointed Surveyors who went into the matter in great detail and demanded various details from the complainant vide their letters commencing from 27th January, 1992 to 9th June, 1993. Having failed to get full response, the Surveyors gave an interim report on 9.2.1996 giving details of pending requirements to finalize the report. This Commission directed the complainant to comply with those requirements and also directed the Surveyors to give their final report. As a consequence, the final report was submitted by the Surveyors. The Surveyors have assessed the losses to the stocks at a sum of Rs. 1,98,001/- and to the boiler at a sum of Rs. 65,944/-.

3. A perusal of the policy, in question, shows that the "property insured and terms of stock of finished, unfinished goods and goods in process or material used in the same trade, stocks stored and lying in the factory premises manufacturing the plywood board or the goods held in trust or the commission of job work, were stocks lying in building built up of first class construction subject to agreed Bank Clause". The words "buildings built up of first class construction" would, in our opinion, exclude all stocks lying in the open. A perusal of survey report reveals that the Surveyors were conscious of this fact. The Counsel has drawn our attention to the various rates of premier charged only to support his contention that even from the amount of premium charged, it would be apparent that what was intended to insure only the stocks stored inside the building premises of the factory and not those lying in the open. Counsel pointed out that the premium charged for goods stored inside is @ 5.53% per mille per annum while those lying in open are charged @ 7.13% per mille per annum. A perusal of the Surveyors'' reports shows that the Surveyors were duly conscious of the said clause in the policy and had not ignored it while assessing the loss of the stocks at the affected location at Rs. 1,98,001/-. They have also observed that due to the nature of stocks involved in the fire, accurate quantification of the affected stocks was not possible from the residues/ashes, left after the fire. We see no reason for the insurer to repudiate the claim of loss altogether. Such repudiation would imply that there was nothing inside the premises which is not at all acceptable.

4. THE Surveyors regarding damage to the boiler, had found in their report that the water of fire tender got exhausted and they drew water to fight the fire from the boiler which in turn resulted into damage to the boiler. So to say that the loss to the boiler is not connected with the fire at all also cannot be accepted and it will be an incident of. this very fire which affected the boiler, as has been found by the Surveyors because water inside the boiler was diverted for fire fighting which resulted in damage to the boiler. When the fire brigade had drawn and diverted the water inside the boiler, can the boiler attended be blamed for damage ? THE answer to this would be in the negative. There is no mention in the report of the Surveyor as to which stocks were inside the factory and which are outside the factory. The complainant has also challenged the salvage value of the loss of the goods. We must observe that the Surveyors are the best persons to assess that and they have done it after detailed scrutiny of the facts as they prevailed taking into account evidence made available by the insured and the

conditions of the policy. In these circumstances, the opposite party No. 4 was not justified in repudiating the claim altogether. We, therefore, held that we find that the complainant is entitled to a sum of Rs. 1,98,001/- on account of loss due to fire to the stocks inside the factory premises and they are also entitled to loss to the boiler to the extent of Rs. 65,944/-. We need not go into other facts as they are not necessary to determine the present controversy. In these circumstances, we find that the complainant is entitled to a sum of Rs. 2,63,945/-. They will also be entitled to interest on the said amount @ 9% per annum from two months after the date of the final report of the Surveyors, i.e. w.e.f. 23.1.1997 till the date of payment. In the facts and circumstances of the case, parties are left to bear their own costs. Ordered accordingly.