(2001) 06 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

AMIT CASTINGS PVT. LTD. APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 04-06-2001

Acts Referred:

Citation : 2002 1 CPJ 285

Hon'ble Judges : P.Ramakrishnam Raju , Mamata Lakshmanna J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant, a private limited Company running a Small Scale Industry manufacturing capacitors having its factory situated at C-16, Co-operative Industrial Estate, Balanagar, Hyderabad took out a policy of insurance from the opposite party Insurance Company bearing No. 051401/011/1/51771/89 dated 27.7.1989 for a sum of Rs. 32,00,000/-. While so the case of the complainant is that on 4.9.1989 at about 8.30 p.m. there was heavy flood due to lashing of rain and swelling of water in the adjacent nala which entered the factory premises damaging the raw material, semi-finished goods and finished capacitors. THE complainant submitted a claim on 13.9.1989 to the opposite parties showing the particulars of damage suffered by it along with relevant documents like Panchanama, F.I.R., Certificate from the Co-operative Industrial Estate, weather report, stock statement issued by the Bank along with others as well as photographs. On receipt of the claim statement on 18.9.1989 the opposite parties sent a Surveyor to estimate the loss suffered by the complainant. THE Valuer Mr. N.V.P. Sharma on inspection called upon the complainant to furnish police complaint, inspection report from the bankers etc., through his letter dated 21.9.1989. THE complainant by its reply dated 4.10.1989 informed that the police have not registered any case and that F.I.R. was not issued. So also the bankers though inspected on 6.9.1989 have not taken any physical inventory and as such they are not in a position to issue any certificate to the complainant. However after a lapse of 20 months without making any enquiry and without giving any opportunity to the complainant the opposite parties came to the conclusion that the factory premises did not suffer any loss due to the floods

occurred during the period of risk under the policy in question. THE said rejection is unjust and improper. THE complainant suffered a loss of Rs. 4,76,045/- and the opposite parties are answerable for the same. Hence the complaint.

2. IN the counter filed by the Divisional Manager on behalf of opposite parties it is stated that the complainant was issued a policy through their Charminar Branch valid from 26.7.1989 to 25.7.1990 covering the risk of building, furniture, fixtures, fittings, office equipments, plant and machinery with accessories, electrical equipments, testing and measuring equipments, stocks of raw material including stocks in process, semi-finished and finished goods including packing material and consumable stocks. As the complainant lodged an insurance claim by his claim form dated -nil- stating that due to flood at 8.30 p.m. on 4.9.1989 caused by heavy rain and swelling of water in the adjacent nala raw materials, semi-finished and finished capacitors were damaged. Immediately a Surveyor Mr. N.V.P. Sharma was appointed to assess the loss who after conducting detailed investigation submitted his report wherein he concluded that the damage to the complainant had not occurred because of any flood as alleged. Before arriving at the said conclusion he caused extensive investigation and found that probability of entering water into the factory does not arise. IN fact the complainant had taken another policy in the previous year from M/s. Oriental INsurance Company Ltd., covering the risk of the premises, however excluding the flood risk. There was a heavy torrential downpour on 23.7.1989 but the complainant could not make any claim since the earliar policy did not cover any flood risk. There were no other claims in the entire vicinity of the factory not only on this INsurance Company but also on other Companies. It is also stated that under Condition No. 6(2) of the policy if no proceedings are initiated against the Company of the opposite parties within a period of 12 months from the date of repudiation of the claim the matter cannot be re-opened, as such the complaint is barred by time. The allegation that the complainant was not given any opportunity or notice before the Surveyor conducted the investigation is not correct as the complainant was present in the factory when the Surveyor visited the premises and conducted survey. The complainant was, therefore, rightly intimated by their letter dated 3.6.1991 that the claim was repudiated but still not satisfied with this, the complainant went on making representations to the opposite parties with the sole idea of keeping the issue alive which was otherwise closed two years back. No oral evidence was adduced by any of the parties, except filing their respective affidavits in lieu of chief-examination consistent with their pleadings. Though the C.D. was specifically adjourned to 27.1.2000 for cross-examination of witnesses on both sides, on 27.1.2000, either the Counsel for the opposite parties or the opposite parties were not present and, therefore, they were set ex-parte and the matter was posted to 4.4.2000 for arguments. Arguments were heard on 27.4.2001. The net result is that none of the parties were cross-examined. It is clear that opposite parties or their Counsel were not present on 4.4.2000 and, therefore, not only they missed to cross-examine the complainant but also failed to produce the Divisional Manager of the Insurance

Company for cross-examination by the complainant. Hence the affidavit evidence of the complainant goes unchallenged while the affidavit evidence filed by the Divisional Manager on behalf of the opposite parties cannot be acted upon since the same was not tested in cross-examination. Exs. A-1 to A-22 and Exs. B-1 to B-10 are marked respectively on the side of the complainant and the opposite parties by consent.

The point that arises for consideration is, whether the complainant is able to establish any deficiency in service on the part of the opposite parties and whether the repudiation of the claim by the opposite parties is unjust and illegal ?

3. THE affidavit evidence on behalf of the complainant was filed by Manager (Accounts) wherein it is stated that due to heavy rain on 4.9.1989 water from the adjoining nala entered into the workshop and flooded the entire workshop by about 2 feet from the ground level. He noticed the same on 5.9.1989 and intimated the same to the opposite party Insurance Company by telephone and a Surveyor was accordingly deputed on 6.9.1989. He also states that the complainant brought to the notice of the Surveyor that the damaged stocks were kept separately and the same will be made available for survey and inspection, but the Surveyor did not visit the complainant''s factory in spite of their letter dated 4.10.1989. But it is admitted that the Surveyor visited the premises on 6.9.1989, took photographs and also called upon the complainant to submit certain documents and the complainant by its letter dated 13.9.1989 submitted some documents. It is further stated that it could not produce F.I.R. as no crime was registered by the concerned S.H.O. as well as the bank statement called for by the Surveyor since it is not the practice of the Bank to issue such a certificate or statement. In many respects this affidavit corroborates the claim putforth in the complaint. It is not in dispute that the policy covering the flood, and peril was in force from 26.7.1989 to 25.7.1990 covering the stocks of raw material including semi-finished and finished material. Ex. A-2 is the claim letter dated 13.9.1989 which merely states that claim form duly filled is enclosed. Ex. A-3 is the claim form. Though it is not dated we can safely take it that it is sent along with Ex. A-2 dated 13.9.1989. This is the first letter containing details of the claim under different heads like for raw material Rs. 1,36,821.98; for finished goods Rs. 1,05,998.50; for process material, semi-finished goods and finished goods in workshop Rs. 2,13,224.60; and machinery (including testing equipment) repairing charges Rs. 20,000/-. Even though panchanama was conducted on 5.9.1989 under Ex. A-7 no details of the damage caused could be culled out from the said panchanama. So also under Ex. A-9 another panchanama conducted at the instance of DSI, Balanagar P.S. these details do not find place therein. Therefore, we have to examine the correctness of the details furnished for the first time on 13.9.1989.

4. IT is seen from Ex. B-1 report of the Surveyor dated 15.9.1989 he visited the premises of the complainant on 6.9.1989 and 7.9.1989 as well as the surrounding area, nala, boundaries, direction of flow of water, etc., as well as the

stock of material which were stated to have been damaged on 4.9.1989. This report will be examined a little later. Under Ex. A-11 the Surveyor asked for F.I.R. as well as the bankers notes who have conducted the inspection on the stocks on 2.9.1989 as well as on 6.9.1989. But the complainant for whatever is the reason failed to produce the same. Be that as it may. Exs. A-14 and A-15 are the letters written by the complainant seeking early settlement of the claim. Ex. A-17 is another letter addressed to the opposite party Insurance Company for reconsideration of their decision. Ex. A-16 is the repudiation letter wherein it is clearly stated that the alleged loss has not occurred due to floods. Hence the claim is repudiated. Exs. A-1 to A-20 are the replies from the opposite parties on the request of the complainant for reconsideration of its claim. Under Ex. A-21 telex message was given by the opposite party that review of their decision was not possible. Under Ex. A-22 letter dated 22.10.1992 issued by the opposite party Insurance Company it was categorically stated that though there was rain-fall on 4.9.1989 still the rain was much less when compared to the previous occasion on 23.7.1989 and the water blocking and swelling in the nala cleared away very quickly giving no room for stagnation of water on 4.9.1999 and as such they are of the view that the alleged loss which occurred on 23.7.1989 was sought to be brought under the policy which was taken subsequently. Therefore, the question is, which version of the contesting parties is true ?

5. BEFORE we answer this question the objection raised by the opposite parties that no claim by the complainant could be raised beyond 12 months from the date of repudiation of the claim as per Condition 6(ii) of the policy has to be answered. This question was the subject-matter of a decision reported in 1993 (1) CPR page 713 and the National Commission observed that the said clause is not void either under the law of limitation or under the law of contract and the complainant having abandoned his right by not filing a suit or taking any action within 12 months from the date of repudiation of the claim by the insured, the Company is not under any liability to pay the claim to the insurer under the policy. Following this decision we must hold that the complaint filed on 3.9.1992 when the repudiation was made on 3.6.1991 is clearly hit by Clause 6(ii) of the policy and as such the complaint cannot be entertained nor we could interfere with the decision to repudiate the claim. However we propose to examine the merits of the case.

6. THE complainant has not given the details of alleged loss sustained by it. In other words, except stating that it has suffered a loss of Rs. 4,70,045/- and that the opposite parties should be directed to pay the said amount towards the damages sustained by it no details are given. Of course earlier under claim form enclosed along with Ex. A-2 dated 13.9.1989 it is stated that breakup of the claim under different heads is shown. Still we are unable to know how the complainant has arrived at the figures of Rs. 1,36,821.98 towards raw material, Rs. 1,05,998.50 towards finished goods, Rs. 2,13,224.60 towards process material, semi-finished goods and finished goods, and Rs. 20,000/- towards machinery repairing charges. THE complainant should have given details as to

how much raw material, what is the nature of raw material and the cost of the said raw material, the date of purchase, the place from which it was purchased or from whom and for how much it was purchased etc., in support of the claim of Rs. 1,36,821.98 under the head loss of raw material, nor did he produce the stock register or any other evidence in support of his claim. So also in respect of other sums claimed in the claim form. It is not difficult for the complainant to give such details. Even when the Surveyor has sought for certain information under Ex. A-11 letter dated 21.11.1989 the complainant failed to secure a copy of the inspection notes or the report prepared by the Bank after conducting the inspection of stocks on 2.9.1989 and 6.9.1989 as this report would throw much light on the dispute in question, since the alleged damage occurred on the night of 4.9.1989 which falls between these two dates and is also very close and proximate with the inspection. Non-filing of the report in our view is certainly a pointer which would weaken the claim of the complainant. Some of the documents filed on behalf of the opposite parties also support the view taken by the opposite parties in repudiating the claim. Of course Ex. B-1, a reference about which was already made is the Surveyor report dated 15.9.1989. Ex. B-2 is the earlier policy taken from Oriental Insurance Company about which a reference was also made earlier. Under Ex. B-3 it is relevant to notice that the complainant has requested the banker to consider its claim for reimbursement of the loss sustained by the complainant due to heavy rain and floods on 23.7.1989. Exs. B-4 to B-6 are weather reports issued by Mateorological Centre, Hyderabad about the weather condition on 22.7.1989, 24.7.1989 and 4.9.1989. Ex. B-7 is the complaint given by the complainant to the police on 5.9.1989. Ex. B-8 is the copy of Ex. A-9. Exs. B-9 and Ex. B-10 are certificates issued by complainant and Administrative Officer, Co-operative Industrial Estate Ltd., to show that there was water in the premises and the material was sub-merged in water due to rain on 4.9.1989. It is pertinent to mention either in the certificate under Ex. B-10 and Ex. A-9 panchanama it is not mentioned as to what was the extent of damage caused to the complainant except stating that the articles of the complainant became wet. Ex. A-7 is purely a private panchanama not conducted by any public officer but by the complainant himself without reference to the opposite parties and as such it is not binding on the opposite parties. We shall now deal with Ex. B-1 survey report wherein the Surveyor has conducted extensive survey on the possibility or otherwise of the water getting into the complainant''s premises. He has also narrated that the complainant has suffered extensive losses during the heavy torrential downpour on 23.7.1989 which is also corroborated by the complainant in its letter Ex. B-3. When these two documents read together, one cannot get away from the impression that the complainant is trying to recoup the losses suffered by him due to heavy downpour on 23.7.1989, from the opposite parties as he was not having insurance coverage for the flood, peril under the earlier insurance. Though the Oriental Insurance Company had issued a fire policy under Ex. B-2 but the same does not cover rain and flood. But it is very clear from the letter written by the complainant under Ex. B-3 wherein it is stated that it had suffered the damage to an extent of Rs. 6 lakhs. It is also stated that the policy does not cover the natural calamity like flood risk and as such it requested the Branch Manager to consider their request and help them to mitigate their losses. In Ex. B-1 the Surveyor after narrating the losses suffered by the complainant on the earlier occasion took into consideration the factors namely, that on the earlier occasion the water level came upto 8 to 9 feet into the premises while the present alleged water level is 1 feet and as such the flood water would not be stagnated but it would have receded in a short time. In the rain that occurred earlier losses were reported throughout the industrial units in Balanager whereas on 4.9.1989 a single isolated claim is made. When he called for photographs, the complainant failed to produce any such photographs of the event in question whereas the complainant submitted a bunch of photographs along with its earlier claim under Ex. B-3. As already seen the complainant also failed to produce the material called for by him under Ex. A-11 namely, the report or notes of inspection of the bankers conducted on the stocks in the premises in question on 2.9.1989 and 6.9.1989. These factors coupled with the failure on the part of the complainant to come out with the details about the loss suffered by him and substantiate them instead of merely making a bald statement that it suffered a loss of Rs. 4,76,045/- about which we have already discussed above cannot be branded as insufficient in our view for repudiating the claim by the opposite parties. We do not, therefore, find any material to take a different view from the one taken by the opposite parties.

The complaint, therefore, fails and is accordingly dismissed with costs of Rs. 5,000/-. Six weeks'' time is granted for payment. Complaint dismissed.

