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(1996) 05 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

ANTHONY REBELLO APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 06-05-1996

Acts Referred:

Citation : 1996 0 NCDRC 51 : 1996 2 CLT 390 : 1996 2 CPJ 92 : 1996 2 CPR 8

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA J.

Advocate : T.P.PEREIRA , P.K.SETH

Judgement

1. THIS is an appeal against the Order dated 17th May, 1993 passed by the State Consumer Disputes Redressal Commission, Goa by which it disÂ¬missed the complaint filed by the present appelÂ¬lant against the respondent herein-New India Assurance Company Ltd. (for short Insurance Company).

2. THE facts as gathered from the record are that the complainant purchased a vessel "F.T. ANNA" (hereinafter referred to as the said vesÂ¬sel) bearing registration No. MAR 404 D.F. by availing Bank loan from Corporation Bank, Vasco and accordingly the said vehicle was hypothÂ¬ecated to the said Bank. The said vessel was insured with the respondent and the last renewal was for the period from 6th November, 1990 to 5thNovember, 1991. According to the complainÂ¬ant the said vessel met with an accident on 1st September, 1991 wherein it sank into waters off Bogmolo, in Arabian sea. The complainant inÂ¬formed the casualty of the said vessel to the Insurance Company and also lodged FIR at Vasco Police Station. The Insurance Company asked the complainant to comply with certain requirements and the same were complied with by him on 5th September, 1991. However, on 7th September, 1991 the complainant received a latter dated 28th August, 1991 from the opposite party alleging that the said vessel had ran aground on 30th July, 1991 near Colva and that the front portion of the vessel developed crack and further alleged that the said vessel was docked at Betul and was undergoing repairs on account of the above casualty. Vide that letter the Insurance Company also cancelled the policy

covering the said vessel with effect from 15 days of the date of the said letter. The complainant vide his letter dated 9th September, 1991 informed the oppoÂ¬site party that the contents of the letter dated 28th August, 1991 were not correct and were baseless and nothing had happened to the said vessel on 30th July, 1991 nor the vessel was docked at Betul for repairs. It is the further case of the complainant that the opposite party appointed a Surveyor who interrogated the complainant and conÂ¬cerned witnesses and prepared the survey reÂ¬port. Vide letter dated 8th September, 1991 the opposite party i.e. the Insurance Company disÂ¬owned its liability under the insurance policy. Complainant''s contention is that the letter dated 8th September, 1992 is totally misconceived and only designed to further delay the settlement of his claim and thus the Insurance Company is negligent and deficient in rendering the service or settlement of the claim. The complainant alÂ¬leges that he has suffered damages to the extent of Rs. 4,85,500/- and the opposite party be diÂ¬rected to pay that amount to him with interest thereon at the rate of 20% per annum from the date of filing of claim till payment.

3. THE opposite party filed counter contestÂ¬ing the complaint and averred that the said vessel had got damaged in a casualty on 30th July, 1991 while the same was employed during adverse weather conditions and during the lay off period of foul season from 15th June, 1991 to 15th August, 1991 and therefore the opposite party was not responsible for the loss of the said vehicle due to breach of warranty on the part of the complainant. The opposite party also denied the fact that the said vessel had sunk on 1st September, 1991.

4. AFTER hearing the parties and going through the record the State Commission held that accident to the said vessel had not taken place on 1st September, 1991 as alleged by the complainant but it had met with an accident on 30th July, 1991 at about 18.00 hours off shore Colva Betalbatim and the complainant has maliÂ¬ciously shifted the accident to 1st September, 1991 to claim the insurance amount fraudulently since he knew very well that as per the insurance policy he was not allowed to venture into seas on 30th July, 1991. As per the insurance policy covering the said vessel there was a trading warranty by which warranted vessel is laid up from 15th June to 15th August (b.d.e.) with leave to operate on the coast of the Saurashtra and Kutch during that period. According to the State Commission as the said vessel had ventured into the seas on 30th July, 1991 on which date it was later on grounded, the sailing of the vessel on that date falls within the prohibited period, and the said act of sailing of the vessel amounts to breach of warranty by the complainant. AccordÂ¬ingly the State Commission dismissed the comÂ¬plaint. Feeling aggrieved against that decision the complainant has filed this appeal before this Commission. We have heared the learned Counsel for the parties and have gone through the record. We are of opinion that the finding of the State Commission has to be upheld. The Insurance Company had appointed M/s. J. Basheer and Associates, Offshore Surveyors and Adjusters, Marine and Engineering Surveyors and Consultants from Bombay who vide report dated 22nd OctoÂ¬ber, 1991 after interrogation of various persons

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gave opinion to the affect that the fishing trawler-F.T. ANNA could not have sunk as narrated by the insured on 1st September, 1991 at 17.00 hours off Bogmole. It was further observed by them that even if at all the the said vessel had sunk as narrated by the insured then the vessel would not have been in a sea-worthy condition prior to the commencement of the voyage due to the alleged grounding/ stranding on 30th July, 1991 off Betul Bethim.

5. THERE is an important document on record which has also been taken into consideration by the State Commission. It is the report of Dhaimode Consultancy dated 26th August, 1991. Their point-wise findings in respect of loss of F.T. ANNA were as follows: (i) The AFT Vessel did really meet with an accident when it got drifted away to the seashore near Colva with the strong winds and waves. The front portion got damaged with some cracks having been developed but otherwise the rear portion including the engine and cabin was intact when seen by our Investigator at 1400 hrs. on 9.8.91. (ii) The accident occurred off-shore Colva-Betalbattim 150 to 200 mts. away from the shore on 30.7.91 at about 1800 hours. (iii) The matter was not reported to the Police Authorities."

On the basis of that report the Insurance ComÂ¬pany wrote letter dated 28th August, 1991 to the insured stating: "Your above Vessel "ANNA" is reported to have ran aground on 30.7.91 near Colva. Further the front portion of the Vessel had developed a crack. We now understand that the vessel is docked at Betul where it is undergoing repairs as a result of the above accident. In view of the above, please note that we are canceling our policy covering your above Vessel "ANNA" with effect from 15 days of date of this letter".

6. IT cannot be said that the said letter was ante-dated by the Insurance Company and preÂ¬pared it after coming to know of the alleged accident of the said vessel on 1st September, 1991. The complainant himself produced photo copy of the envelope which contained the said letter of the Insurance Company. That photoÂ¬copy of the envelope is at page 125 of the paper book and it has been referred to as annexure ''K'' in the affidavit filed on behalf of the complainant before the State Commission (Photostat copy of that affidavit is at pages 103 to 112 of the paper book). The postal remark on that envelope bears the date 29th August, 1991. Thus long before the complainant reÂ¬ported the alleged loss of the vessel on 1st SepÂ¬tember, 1991 the Insurance Company had catÂ¬egorically stated in its letter that the said vessel had met with an accident on 30th July, 1991 and therefore, they cancelled the policy. It is not the case of the complainant that some minor acciÂ¬dent had occurred to the vessel on 30th July, 1991 and it was got repaired and it was sea-worthy on 1st September, 1991. The complainant''s catÂ¬egorical case is that no accident had occurred to the said vessel on 30th July, 1991. In view of the evidence discussed above, the plea of the comÂ¬plainant cannot be accepted.

7. WE have considered the facts of the case carefully and have come to the opinion that there is no ground to differ with the findings arrived at by the State Commission. Accordingly we dismiss the appeal and confirm the order of the

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State Commission. It is however made clear that the complainant, if so advised, will be at liberty to seek his remedy, if any, from the Civil Court. The respondent will be entitled to the cost of the present appeal which we assess at Rs. 2,000/-.

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