
(2003) 07 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

ASHOK COUNTRY RESORT

APPELLANT

Vs

Divisional Manager, New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 01-07-2003

Acts Referred:

Citation : 2003 3 CPJ 547 : 2003 3 CPR 531 : 2004 1 CLT 537

Hon'ble Judges : Lokeshwar Prasad , Rumnita Mittal J.

Final Decision : Complaint disposed of

Judgement

1. THE complainant, Ashok Country Resort, through its promoter, Shri R.N. Sahni, has filed the present complaint under Section 17 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act"), against the above said opposite parties (for short "OPs") averring (sic.) Kapashera, New Delhi, for Rs. 4.90 crores, vide Policy bearing No. 1131120108594, for the period from 28th July, 1993 to 27th July, 1994 which was issued by OP No. 2 (Branch Manager, New India Assurance Co. Ltd., 13/46, Scindia House, 2nd Floor, Kasturba Gandhi Marg, New Delhi). It is stated that on 1st June, 1994 there was a fire incident at the resort which was promptly reported by the complainant and the Surveyor appointed by the OPs, visited the site on 11th June, 1994. It is stated that for the settlement of the claim under the Policy, the complainant have been following up the matter with the OPs and a consolidated statement of claim, aggregating Rs. 7,25,954.18 was submitted by the complainant to the Surveyor, namely, Messrs. A.K. Govil & Associates, on 26th December, 1994. It is stated that further information asked by the Surveyor, vide letters dated 30th December, 1994 and 17th January, 1995 had already been furnished/provided on 6th January, 1995 and 19th January, 1995 respectively. THE grievance of the complainant, in the complaint filed before us, in nut shell, is that the legitimate claim of the complainant under the policy for Rs. 7,25,954.18 along with interest, has not been finalized by the OPs, despite repeated requests and reminders.

2. A notice of the complaint, filed by the complainant, was issued to the OPs. The claim of the complainant, in the present complaint, is being resisted by the OPs,

who have filed a joint reply/written version. In the reply/written version, filed on behalf of the OPs, the OPs have taken certain preliminary objections to the effect that the complaint has not been filed by the complainant on the prescribed proforma (sic.) misconceived as the claim is not tenable in law and under the terms and conditions of the Insurance Policy. On merits, while admitting the issuance of an Insurance Policy, it is stated on behalf of the OPs that on 1st June, 1994 a report was received by the OPs regarding an incident of fire in the Engineering/Electrical Section of the complainant and a request was made by the complainant to depute some one to survey the damage. It is stated that accordingly Messrs. A.K. Govil & Associates, Surveyors, were appointed by the OPs to carry out the survey and submit a report. It is stated that the matter with regard to the claim of the complainant was taken up by the complainant at the level of Assistant General Manager of the OPs and during the discussions the representative of the complainant was informed that apparently the claim was not tenable as the loss did not fall within the purview of the insurance policy. However, it was decided that the opposite party will obtain a second opinion from an expert/independent Surveyor and then, based on that expert's report convey the final decision to the complainant. It is stated that accordingly, Messrs. Mehta Padamsey Surveyors Pvt. Ltd. was deputed to examine and scrutinize the case and submit a report. It is further stated that the report from the said Surveyor was received on 9th September, 1995 and after considering that report of the said Surveyor, the claim of the complainant has been repudiated by the opposite parties and the decision has been conveyed to the complainant, vide letter dated 15th September, 1995. It is stated that as there was no damage due to fire and the damage in question was due to heat generated and high voltage due to supply of phase through neutral the claim falls within the ambit of condition (sic.), and as such is not covered by the Insurance Policy. It is stated that there was no "deficiency in service" on the part of the opposite parties and the complaint filed by the complainant, deserves to be dismissed with costs. A rejoinder to the reply/written version has been filed on behalf of the complainant, controverting the pleas taken by the opposite parties in the reply/written version and reiterating the averments made in the complaint.

Both the parties have adduced evidence by means of affidavits in support of their respective contentions. On behalf of the complainant, an affidavit of Shri R.N. Sahni, promotor of the complainant, has been filed whereas on behalf of the opposite parties an affidavit of Shri A.K. Jain, Deputy Manager (Legal) of the opposite parties, has been filed.

3. ON behalf of the opposite parties written submissions/written arguments have also been filed. We have heard the learned Counsel for the parties at length and have also carefully gone through the documents/material on record, including the written submissions/written arguments filed on behalf of the opposite parties. On the basis of documents/material on record, it is not in dispute that the complainant, Ashok Country Resort, had insured its assets at Rajokri Road, Kapashera, New Delhi-97 for Rs. 4.90 crores, vide Policy No. 11311202108594

for the period from 28th July, 1993 to 27th July, 1994 issued by OP No. 2. It is also not in dispute that the complainant reported to the OPs about a fire incident at its Resort, which took place on 1st June, 1994. It is also not in dispute that the OPs, soon after receipt of information from the end of the complainant, had appointed M/s. A.K. Govil & Associates, Surveyors and Loss Assessors, to assess the damage and submit a report. Said Messrs. A.K. Govil and Associates, the Surveyors, submitted their report dated 14th February, 1995 to the OPs. Not feeling satisfied with the report of Surveyors, Messrs. A.K. Govil & Associates, the OPs have referred the matter to another Surveyor, namely Messrs. Mehta and Padamsey Surveyors Pvt. Ltd., who have submitted their report dated 9th September, 1995.

4. THE claim preferred by the complainant under the insurance policy has been repudiated by the OPs. vide letter dated 15th September, 1995. THE operative portion of the above said communication, reads as under : "Kindly refer to the discussions you had with the undersigned in respect of your above claim and we had conveyed to you that apparently the claim was not tenable since the circumstances under which the loss has occurred does not fall in within the purview of the policy. However, it was decided that we take a second opinion from the expert independent Surveyor and the based on the same convey to you our decision. Accordingly, Mehta and Padamsey Surveyors Pvt. Ltd. were deputed to examine and scrutinize the case and give their report. We have now received the report and he has opined that the damage to the various items was caused due to short circuit following sudden surge of high voltage, a peril excluded under condition No. 6 of standard Fire Policy "A". In view of the above we regret our inability to entertain your claim." On a bare perusal of the above said communication, it is apparent that the claim of the complainant has been repudiated by the OPs on the ground that the same fell within the ambit of Condition No. 6 (Exclusions) of the insurance policy. A copy of the insurance policy is on record, annexed with the complaint, filed by the complainant. Condition No. 6 of the exclusion clause under the head "Exclusions" of the insurance policy, which is relevant for deciding the present dispute, runs as under : "Exclusions : This insurance does not cover 1. xxxxxxxxxx 2. xxxxxxxxxx 3. xxxxxxxxxx 4. xxxxxxxxxx 5. xxxxxxxxxx 6. Loss or damage to any electrical machine, apparatus, fixture or fitting (including electric fans, electric house-hold or domestic appliances, wireless sets, television sets and radios) or to any portion of the electrical installation, arising from or occasioned by over running, excessive pressure, short circuiting arcing self heating or leakage of electricity, from whatever cause (lighting included) provided that this exemption shall apply only to the particular electrical machine, apparatus, fixture, fitting or portion of the electrical installation, so effected and not to other machines, apparatus, fixtures, fittings or portion of the electrical installation which may be destroyed or damaged by fire so set up."

During the course of arguments, the learned Counsel for the complainant contended that the repudiation of the claim of the complainant by the OPs was

not justified as the loss/damage was caused to the assets of the complainant at Rajkori Road, Kapashera, New Delhi, as a result of the fire incident which took place on 1st June, 1994. It has further been contended by him that in view of the above fact the OPs cannot escape the liability. On the other hand, the learned Counsel for the OPs contended that the damage to various electrical equipments, fittings, etc. has been caused due to short circuit following sudden surge of high voltage (440 v.) in the neutral phase of single phase 220 Voltage system. It is stated that the surge in voltage was due to contact of exhaust pipe of Diesel Generating Set with 440 Voltage line, that snapped and fell over it. It is stated by him that as the damage was caused due to short circuit following sudden surge in voltage, (a peril specifically excluded under condition No. 6 of the insurance policy), the claim of the complainant has been rightly repudiated by the OPs and that there was no deficiency in service on the part of the OPs.

5. THE only question requiring consideration in the present complaint is as to whether the damage in question to the assets of the complainant has been caused as a result of fire or otherwise. In case the same is as a result of fire, the same is covered under the insurance policy issued by the OPs. If the same falls within the exclusions, in that event the OPs would not be liable to entertain the claim under the policy.

6. THE learned Counsel for the OPs, during the course of arguments vehemently contended that as there was no spark or flame it cannot be stated that the cause of damage was due to fire, fire need not necessarily be accompanied by flame. As a matter of fact "fire" is a form of heat energy, which causes smouldering, burning, heating, melting etc. In our above views, we stand fortified by a decision of the Hon'ble National Commission, in case M/s. Saraya Sugar Mills Ltd., Sardar Nagar, Distt. Gorakhpur (UP) v. United India Insurance Co. Ltd., reported as II (1996) CPJ 6 (NC)=1996 (1) Current Consumer Cases 260 (NS). In the case of fire, flame or spark can occur only when the temperature reaches at ignition point. High temperature below ignition point can also cause oxidation and can bring chemical changes in the goods affected by such high temperature. In the case of M/s. Saraya Sugar Mills (supra) the molasses stored in tank No. 1 was damaged as the temperature in the tank has reached 85 degrees centigrade, which was far below the ignition point. In that case too there was no spark and the molasses stored in tank No. 1 was oxidised due to auto-heating and spontaneous combustion. In the present case also, the damage to the assets of the complainant has occurred due to heat developed and high voltage which is evident from the report of M/s. A.K. Govil and Associates, Surveyors and Loss Assessors. THE relevant portion of the said report, relating to cause of damage, reads as under : "Cause of damage- "All the equipments were affected due to high voltage that had leaked into the system when the overhead line wire fell from the pole of DESU power supply on the exhaust of the Diesel Generating Set. THE evidence of 440 Volts passing through the system was observed by the flashover marks in the neutrol (earthing) in the panel. THE electrical fittings, fixtures, appliances and Diesel Generating Set panel were all damaged due to

high voltage to which these were subjected from the overhead supply. THERE was no damage due to fire, the damage has been due to heat generated and high voltage due to supply of phase through neutrol."

(underlined by us.) On a bare perusal of the above report of the Surveyor, it is apparent that the equipments were affected due to high voltage which had leaked into the system when the overhead line wire fell from the pole of DESU power supply on the exhaust of the Disesel Generating Set. Not only this, the Surveyor noticed flashover marks in the neutral (earthing) panel. It is matter of common knowledge that if any object comes into contact with high voltage wire, the same get charred. In the presence of the above facts, the contention advanced by the learned Counsel for the OPs cannot be accepted, more particularly in view of the fact that the definition of the word "fire" as given in the insurance policy is not to be narrowly interpreted in the literal sense, as has been contended by the learned Counsel for the OPs.

In the light of the above discussion, we are of the opinion that the repudiation of complainant's claim by the OPs was not justified in the given facts.

7. AFTER having arrived at the conclusion that the repudiation of the claim of the complainant was not justified by the OPs, the next question requiring consideration is as to the relief to which the complainant is entitled to in the given facts. As already stated, the complainant has preferred a claim of Rs. 7,25,954.18. The OPs soon after receipt of information from the end of the complainant, appointed a Surveyor (M/s. A.K. Govil and Associates) to enquire into the matter and assess the loss. The Surveyors, vide their report, dated 14th February, 1995 (photocopy annexed with the affidavit of Shri A.K. Jain, filed by way of evidence on behalf of OPs.) has assessed the loss after taking into consideration the value of the salvage at Rs. 2,72,511/-. There is nothing on record to doubt the above findings of the Surveyor, appointed by the OPs and, therefore, we are of the opinion that the complainant is entitled to receive Rs. 2,72,511/- as assessed by the Surveyor from the OPs. In our opinion, the time of four months should have been sufficient for the OPs to settle the claim of the complainant. But the claim of the complainant could not be settled by the OPs within the above said period and therefore, we direct the OPs to pay to the complainant a sum of Rs. 2,72,511/- with interest at the rate of 9% per annum from 1st October, 1994 till actual payment. Since we have awarded interest to the complainant, we are not awarding any damages. The above amount, as awarded by us, be paid to the complainant by the OPs within sixty days from the date of receipt of the order, failing which the complainant would be at liberty to file an application under Sections 25/27 of the Act as the complainant may be advised for the implementation of this order. The above complaint, filed by the complainant, stands disposed of in above terms. Complaint disposed of.