(2011) 10 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD — APPELLANT

Vs

Atibir Industries Co Ltd — RESPONDENT

Date of Decision : 17-10-2011

Acts Referred:

Citation : 2011 4 CPJ 503 : 2012 1 CPR 346

Hon'ble Judges : V.R.Kingaonkar , Vinay Kumar J.

Final Decision : Appeal dismissed.

Judgement

1. THIS appeal is directed against order rendered by the State Consumer Disputes Redressal Commission, Jharkhand (in short ''the State Commission''), in complaint case bearing No. 14/ 2004. By the impugned order, the State Commission partly allowed the complaint filed by the respondent and directed to pay him the assured sum to the extent of Rs. 36,00,220 along with costs of Rs. 5,000.

2. BRIEFLY stated, the complainant''s case, as unfolded before the State Commission, is that his industrial plant at Giridh was insured with the appellant. The machineries and the other articles stored in the plant were insured under Standard Fire and Special Perils Policy. The premium of Rs. 1,82,115 was duly paid by him. The policy was effective for the period between 20.2.2004 and 19.2.2005. The sum assured was of Rs. 7,10,00,000. The products and the machinery in the industrial unit had been damaged on 1.3.2004 due to heavy storm which had occurred at about 2.45 p.m. The intimation was given to the appellant on the same day. So also, information was given to the local Police Station at Mufassil, District Giridh. The agent of the appellant was telephonically informed about the loss caused during the heavy storm. The appellant appointed a Surveyor-cum-Loss Accessor. The surveyor carried out inspection of the industrial unit. The damaged stock was removed as per instructions of the surveyor. The appellant subsequently repudiated the claim by letter dated 19.5.2004 on the ground that the documents did not establish the damage caused to the product house due to storm. Hence, the respondent filed complaint-

seeking compensation for the loss caused to him and also compensation on account of harassment and mental agony.

3. THE appellant, inter alia, denied that the loss was caused to the production unit of the complainant (respondent) as a result of "Storm". The appellant alleged that the roof of the industrial unit had collapsed due to structural deficiency. The appellant categorically denied that there was storm at the relevant time in the proximity of the industrial unit.

4. THE parties adduced evidence in support of their rival contentions. The State Commission held that the appellant failed to prove any structural deficiency, which had caused the collapse of the roof of the plant, which had resulted into the loss. The State Commission held that the surveyor duly assessed the loss at Rs. 36,00,220. The State Commission held that the entire plant of the complainant (respondent) had collapsed and immediate intimation was given to the appellant about the cause of loss. The State Commission further held that the storm had occurred at Giridh and denial of the occurrence of storm by Patna Meteorological Centre was irrelevant. In this view of the matter, the complaint was partly allowed.

5. WE have heard learned Counsel for the parties. We have perused the impugned order and the relevant documents filed by the parties before the State Commission.

6. THERE is no dispute about the fact that the industrial unit of the complainant was duly insured with the appellant. There is also no dispute about the fact that the loss was caused to the industrial unit. The surveyor was immediately appointed by the appellant. The surveyor carried out inspection of the industrial unit. It appears that the surveyor called for certain information from the insured. There is no dispute about the fact that the final survey report dated 13.5.2004 was rendered by the authorized surveyor, namely, Inder Chadha and Associates. The report shows that the surveyor visited the industrial unit (factory) on 3.3.2004. The surveyor noticed that the entire product house''s structure of 15 m x 10 m was found to have been collapsed. The structure had bent forward and the supporting steel structural columns were found buckled and twisted in a sort of "S" formation. The surveyor assessed the loss after examining the industrial unit. The surveyor, however, gave finding that there was no sign of any storm and even if there was some storm at the local level, yet, there was absolutely no evidence whatsoever of storm/hurricanes of 180 k.m. ACC Sector, that might have caused such colossal loss. As stated earlier, there is no much dispute about the fact that the structure had collapsed and the complainant had sustained the loss due to collapse. There is no dispute about the fact that the iron pole at the place whereupon the structures were erected were found twisted like English alphabet "S". The insurance policy (Page 38) reveals that the industrial unit was insured against the Standard Fire and Special Perils Policy. Clause VI of the policy covers the damage caused due to storm/hurricanes/tornado, etc.

7. WHAT appears from the report is that the surveyor had approached Meteorological Centre at Patna. The learned Counsel for the appellant invited our attention to letter (Annexure ''C'') issued on 10.5.2004 by the Meteorological Centre, Patna. The Meteorological Observatory Report shows that on 1.3.2004, the sky was clear, there was no rainfall and the wind current was of 4 KMPH. This report pertains to PTO, Hazaribagh. It is important to notice that the industrial plant of the complainant was situated at Giridh, which is approx. 130 k.m. from Patna. The meteorological report given by the Centre at Patna is, therefore, hardly of much significance. The respondent has placed on record information obtained under provisions of the Right to Information Act. The information issued by the Public Information Officer, Regional Meteorological Centre, Alipur reveals that it was not feasible for Meteorological Observatory, Hazaribagh to inform the local impact of the storm that had occurred 100 K.M. away. What appears from the record is that the Hazaribagh Observatory used to record observations at 0830 hrs. and 1730 hrs. That Observatory was not supposed to record the weather phenomenon continuously round-the clock. Obviously, the report of the Meteorological Department could not have been of much importance to ascertain whether there was a storm at Giridh. The complainant filed a copy of local newspaper, which indicated that storm had occurred at the place of the industrial unit. The entire plant of the complainant had collapsed due to the calamity.

8. THE contention of the appellant that the industrial plant had collapsed due to structural deficiency is not duly established. The report of M/s. Popuri Engineering and Consultancy Services, Hyderabad justifies the claim of the complainant. The appellant did not adduce satisfactory evidence to establish the contention that the loss caused to the complainant was result of structural deficiency. The technical report was prepared by Dhiman K. Ghosh. The report of Dhiman K. Ghosh supports the contention of the appellant. Still, however, the report does not show that the buckling of supporting columns could never have been due to the occurrence of storm. As stated earlier, the report of M/s. Engineering and Consultancy Services, Hyderabad goes to lend support to the case of the complainant (respondent). It does not stand to reason that without proper verification about viability of the structure of the industrial unit it might have been insured by the appellant for huge amount of Rs. 7,10,00,000. Considering all the relevant material on record, the State Commission appears to have duly interfered that the loss was result of the sudden storm in the local area of Giridh. Consequently, the repudiation of the claim by the appellant was not just and proper.

9. WE find ourselves in general agreement with the findings of the State Commission. We are of the opinion that the appellant failed to establish the main allegation about the loss caused to the complainant being result of the so-called structural deficiency. Hence, there is hardly any merit in the appeal. The appeal is, therefore, dismissed with cost of Rs. 10,000. Appeal dismissed.

