(2014) 12 NCDRC CK 0095

In the National Consumer Disputes Redressal Commission

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD — APPELLANT

Vs

Police Patil — RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Citation : (2014) 12 NCDRC CK 0095

Hon'ble Judges : AJIT BHARIHOKE , Rekha Gupta J.

Advocate : SUMAN BAGGA , H Chandra Sekhar

Judgement

1. THIS revision is directed against the order of the State Commission Karnataka, Bangalore dated 29.08.2012 whereby the State Commission dismissed the appeal of the petitioner/opposite party against the order of District Forum Dharwad whereby the District Forum allowed the complaint preferred by the respondent/complainant.

2. BRIEFLY stated facts relevant for the disposal of the revision petition are that respondent/complainant took a standard fire and special peril policy providing insurance cover to the tune of Rs.29.00 lacs for his Hot Mixture Plant. The policy was valid for the period 03.12.2008 to 02.12.2009. On 17.10.2009 at about 3.00 p.m. due to heavy rains, the tipper which was unloading the material slipped and hit against the wall causing damage to the building and the hot mixed plant. The incident was reported to the petitioner/insurance company. A surveyor was appointed who assessed the loss caused due to the accident to the tune of Rs.2,42,250/ -. According to the respondent/complainant, the petitioner neither settled the claim nor gave any reason for rejection of claim. Claiming this to be deficiency in service, the respondent/complainant filed consumer complaint in the District Forum.

3. THE petitioner resisted the complaint. In the written version, the petitioner took the plea that the claim of the respondent was repudiated because the loss caused was not covered under the insurance policy. The District Forum on consideration of the pleadings and the evidence found the petitioner guilty of deficiency in service and allowed the complaint directing the respondent to pay

to the complainant a sum of Rs.2,42,450/ - alongwith interest @ 6% p.a. from the date of complaint as also to pay litigation cost of Rs.1000/ -

4. BEING aggrieved of the order of the District Forum, the petitioner preferred an appeal. The State Commission concurred with the finding of the District Forum and dismissed the appeal.

5. MS . Suman Bagga, Advocate for the petitioner has contended that the impugned orders of the foras below are not sustainable for the reason that the orders have been passed ignoring the terms and conditions of the insurance policy. Expanding on the argument, learned counsel for the petitioner has drawn our attention to Clause VII under the heading ''Impact Damage'' of the terms and conditions of the insurance policy and submitted that as per this clause, the insurance company is liable to pay the claim for the loss of or visible physical damage or destruction to the property insured due to impact by any rail/road vehicle or animal by direct contact not belonging to or owned by the insured or any occupier of the premises or their employees while acting the course of their employment. Learned counsel has contended that admittedly in the instant case, the damage to the insured property was caused due to impact of the tipper which was unloading material on the site. Therefore, in view of the aforesaid clause, the insurance company was justified in repudiating the insurance claim.

6. MR . H. Chandra Sekhar, Advocate for the respondent has argued in support of the impugned orders. He has contended that revisional jurisdiction of this Commission under section 21 (b) of the Consumer Protection Act, 1986 is limited to the extent of jurisdictional error or some material irregularity. It is contended that this Commission while sitting in revisional jurisdiction has no authority to re - appreciate the facts when both the foras below have arrived at concurrent finding of fact. Thus, he has urged that there is no ground or reason for interfering with the impugned order in exercise of the revisional jurisdiction.

7. ADMITTEDLY , the damage to the insured property was caused because the tipper which was unloading the material slipped and struck against the wall of the insured premises. It is not the case of the complainant that the tipper belonged to a third party. According to the petitioner/opposite party, since the tipper did not belong to the third party, as per the terms and conditions of the insurance contract the insurance company is not liable to make good the loss caused under the insurance cover particularly in view of the Impact Damage clause of the terms and conditions of the insurance contract. In order to appreciate this contention, it is necessary to have a look on the aforesaid clause relied upon by the petitioner which is reproduced thus: "IN CONSIDERATION OF the insured named in the Schedule hereto having paid to the BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LIMITED (hereinafter called the Company) the full premium mentioned in the said schedule, THE COMPANY AGREES (Subject to the Conditions and Exclusions contained herein or endorsed or otherwise expressed hereon) that if after payment of the premium the Property insured described in the said Schedule or any part of such Property be destroyed or

damaged by any of the perils specified hereunder during the period of insurance named in the said schedule or of any subsequent period in respect of which the Insured shall have paid and the Company shall have accepted the premium required for the renewal of the policy, the Company shall pay to the Insured the value of the Property at the time of happening of its destruction or the amount of such damage or at its option reinstate or replace such property or any part thereof."

XXXXXXXXX XXXXXXXXX XXXXXXXXX XXXXXXXXX XXXXXXXXX XXXXXXXXX VII IMPACT DAMAGE Loss of or visible physical damage or destruction caused to the property insured due to impact by any Rail/Road vehicle or animal by direct contact not belonging to or owned by: a. The Insured or any occupier of the premises or b. Their employees while acting in the course of their employment."

8. ON reading of the above, it is clear that in case of impact caused to the insured property due to impact by any rail/road or any animal by direct contact, the insurance company would be liable to make good the loss under the insurance policy only if the rail/road vehicle or animal which impacted the property was not belonging or owned by the insured or any occupier of the premises or their employees while acting in the course of their employment. Admittedly, at the time of accident, tipper which collided against the wall was unloading the material to be used in the business of the insured. In order to get insurance claim under ''Impact Damage'' clause, the complainant was required to establish that the said tipper did not belong to him or any occupier of the premises or was not being used by their employees while acting in course of their employment. The complaint is silent on the above aspect. In absence of any pleading or evidence to this effect, we are of the view that the insurance company was justified in repudiating the claim under the above noted term of the insurance contract. Both the foras below have allowed the complaint ignoring the terms and conditions of the contract. Therefore, the order of the foras below suffers from material irregularity.

9. IN view of the discussion above, we allow the revision petition, set aside the orders of the foras below and dismiss the complaint.

