(2012) 08 NCDRC CK 0096

In the National Consumer Disputes Redressal Commission

Barbara Ammal APPELLANT

Vs

Branch Manager National Insurance Company Ltd RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Citation : 2012 0 NCDRC 429 : 2012 3 CPJ 724 : 2012 3 CPR 573

Hon'ble Judges : Anupam Dasgupta , Suresh Chandra J.

Advocate : Abhishek Krishna , Kishore Rawat

Judgement

1. THIS revision petition is directed against the order dated 30th June 2010 of the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai (in short, ''the State Commission'') in First Appeal no. 387 of 2006. By this order, the State Commission allowed the appeal of the insurance company (respondent in this petition) against the order dated 03.03.2006 of the District Consumer Disputes Redressal Forum, Tuticorin (in short, ''the District Forum'') in complaint case no. 21 of 2005.

2. BY its aforesaid order, the District Forum had allowed the complaint of the petitioner holding that the respondent insurance company was deficient in service in rejecting her insurance claim in respect of a cargo vessel owned by her and directed the insurance company to pay Rs. 5 lakh (sum assured) with interest @ 10% per annum from 29.05.2003 till realisation, Rs.5,000/- towards compensation for mental agony and suffering and Rs.2,000/- towards the cost of the proceedings, within two months from the date of the order.

3. THE admitted facts are that the petitioner/complainant was the owner of the sailing vessel "MSV Bennaya" which was insured with the respondent for Rs. 5 lakh for the period 25.02.2003 to 23.05.2004. The said vessel sailed from Tuticorin Port in Tamil Nadu on 08.05.2003 carrying a cargo of bricks and wooden poles. On account of cyclonic weather that developed from 12.05.2003, the vessel got severely damaged and it had to be ultimately abandoned on the high seas on 18.05.2003. A ship named MV Tiger Shark rescued the crew but the abandoned vessel sank with the cargo on board.

4. THE insurance company appointed a surveyor for assessing the loss. In his report dated 28.08.2004, the surveyor stated, inter alia, that by the time of the its sinking, the insured vessel had travelled to a location which was outside its permitted route under the Trading Warranty (A) specified in the insurance policy. No letter of repudiation of the claim appears to have been issued before the complaint was filed and hence, it was alleged in the complaint that the claim had not been settled for over two years.

5. ON considering the pleadings and evidence brought on record, the District Forum held that it was not possible to conclude that the complainant had violated the Trading Warranty (A) by allowing the vessel to be sailed to a place that was outside the region/route prescribed in the Trading Warranty. Accordingly, the District Forum partly allowed the complaint and directed the respondent/OP insurance company to pay, as mentioned in paragraph 2 above.

6. IN appeal before the State Commission, the latter referred to the Trading Warranty in the insurance policy which read, "(A). Warranted vessel employed for carriage of cargo and operations connected therewith on the east coast of Sri Lanka and east coast of India not north of Visakhapatnam and not South of Palk Strait." The State Commission further observed that as pleaded in the complaint, the vessel sailed with full cargo from Tuticorin to Port Blair, Andaman and Nicobar Islands. The State Commission also noticed that from the pleadings it was clear that the vessel ran into a cyclone in the Andaman Sea where ultimately it sank. On the basis of the admitted facts, the State Commission concluded that the insured vessel was damaged and sank at a location in the Andaman Sea, which was not within the permitted area of operation as per the Trading Warranty.

7. HOLDING that in view of this breach of the terms and conditions of the insurance policy the complainant was not entitled to claim any indemnification under the policy, the State Commission allowed the appeal, set aside the order of the District Forum and dismissed the complaint. It is this order that is under challenge before us.

8. WE have heard Mr. Abhishek Krishna, learned counsel for the petitioner and Mr. Kishore Rawat, learned counsel for the respondent/insurance company. During the course of the hearing, Mr. Rawat produced a copy of a map purportedly depicting the route that the insured vessel was permitted to take as per the Trading Warranty and that it actually adopted after sailing from Tuticorin Port on 08.05.203 in order to deliver the cargo at Port Blair. This map also showed the approximate location in the Andaman Sea where the vessel was abandoned and sank. As the insurance company had not produced this map before the District Forum, a copy was furnished to the learned counsel for the petitioner and he was given an opportunity to make his submissions on the depiction in the map. However, nothing was either produced or submitted by the learned counsel for the petitioner to controvert the statement of Mr. Rawat that the insured vessel sank at a location that was clearly outside the route it was permitted to take under the Trading Warranty of the policy.

9. FROM a reading of the Trading Warranty, it is clear that the phrase ".. .. not South of Palk Strait" is inconsistent with the route showed in the map produced by Mr. Rawat during the hearing of the revision petition. However, it was admitted in the complaint that the vessel had sailed from Tuticorin Port to deliver the cargo at Port Blair and the location where it sank due to cyclone was in the Andaman Sea. Hence, it is clear that the route adopted by the vessel was outside the permitted area under the Trading Warranty and the insurance company cannot be held guilty of deficiency in service in repudiating the insurance claim.

10. THE revision petition is accordingly dismissed and the order of the State Commission is affirmed. Parties are left to bear their own cost.