(1997) 06 NCDRC CK 0057

In the National Consumer Disputes Redressal Commission

BISHAMBHAR LAL BHATIA — APPELLANT

Vs

NEW INDIA ASSURANCE CO.LTD — RESPONDENT

Date of Decision : 10-06-1997

Acts Referred:

Citation : 1998 1 CPJ 410

Hon'ble Judges : V.K.Mehrotra , Banarsi Das J.

Final Decision : Complaint partly allowed

Judgement

1. COMPLAINANT Sri Bishambhar Lal Bhatia approached the State Commission for redress through the present complaint with the allegation that he was the owner of truck No. AMK-5354 and transported goods of various customers from one place to another in India under National Permit No. 188/81 which was valid under certificate dated 25 March, 1988 issued by the State Transport Authority, Assam from 1 st April, 1988 to 31st March, 1989. The truck was comprehensively insured with the New India Assurance Co. Ltd. (opposite party) for various years from 1986-1997 to 1988-1989. The last policy for the year 1988-1989 was valid from 20th December, 1988 to 19th December, 1989.

2. THE complainant says that the truck was carrying potatoes from Kanpur and was proceedings towards Jorhat (Assam) on 23rd March, 1989 with one Sri Ram Pal as its driver. THE complainant was also accompanying the truck when on the aforesaid date a mob attacked it near Panchugaon, Police Station Gosaingaon, District Kokrajhar and was set on fire due to which the truck as well as the potatoes were completely gutted. THE complainant also received injuries by gun-shot which was fired by some person, amongst the mob. The complainant says that the truck was insured comprehensively for Rs. 1,40,000/- and the total which occurred on 23rd March, 1989 was covered by the comprehensive insurance policy, which was given to the opposite party on payment of premium. The complainant, therefore, lodged a claim with it. But the claim was repudiated with undue delay by the Insurance Company through its letter dated 28th May, 1992 on the ground that a loss occurring due to terrorists activities was not

covered by the policy. The complainant, therefore, seeks relief asking for a total compensation of Rs. 2,52,000/- which included interest money to the tune of Rs. 1.12.000/- on the insured value of Rs.1,40,000/- at the rate of 24% per annum. Apart from verifying the contents of the complainant some documents have been filed by the complainant in support of the assertions made in it. Paper number ''1'' is the copy of the repudiation letter dated 28th May, 1992 while paper number ''2'' is a copy of the insurance policy relating to the (sic.) question. Paper No. 3 is a certificate issued by the Officer in-charge of Gosaingaon Police Station, showing that the complainant''s truck was attacked by a mob and set on fire as a result whereof the truck alongwith goods was gutted in fire and that as a result of gun-shot fired by the miscreants the owner of the truck Sri Bishambhar Lal Bhatia sustained injuries.

In the complaint a reference has been made by the complainant to a similar instance in the case of one Sri Gurdayal Singh whose truck was likewise gutted in a similar incident and in settlement of whose claim the New India Assurance Company had issued a cheque dated 16th March, 1989 for Rs. 1,27,227/-.

3. IN the written statement filed by the INsurance Company alongwith an affidavit of its Assistant Manager it has been accepted that the complainant''s truck No. AMK 5354 was insured with it for the period from 20th December, 1988 to 19th December, 1989 and that the loss as alleged by the complainant took plce on 23rd March, 1989 and further that the claim of the complainant was repudiated through the letter dated 28th May, 1992. The INsurance Company has, however, justified the repudiation by stating in paragraph 5 of the written statement that after examining the claim in every aspect and after proper application of mind with due contention and care the claim in respect of the loss which had occurred on 23rd March, 1989 on the National High-way at a place about 25 kms. inside the State of Assam because the loss had occurred due to terrorist activities which was not one of the covered perils under the policy which had been obtained by the complainant. The complaint was argued at some length by the complainant who appeared in person and Mr. V.P. Dubey learned Counsel for the Insurance Company on 24th September, 1996 and 17th October, 1996. The Commission had directed the Counsel for the Insurance Company to produce the original record of the complaint in which the claim made by the complainant as well as the one made by Sri Gurdayal Singh whose case was cited as an exemplar by the complainant for the perusal of the Commission. The learned Counsel produced the relevant record at the time of hearing.

4. FROM the assertions made by the parties, the undisputed facts are that the complainant''s truck had been insured by the New India Assurance Company through a comprehensive policy and that during the currency of the policy the truck alongwith goods loaded on it was completely lost by being gutted in fire on 23rd March, 1989 inside the State of Assam as a result of an attack by a mob and that the complainant sustained gun-shot injuries in the incident. It is also established that the repudiation of the claim of the complainant was made on the

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ground that the policy did not cover the risk or peril of loss by terrorist activities specifically. The question to be determined in the case is whether the repudiation was justified or not. In this regard it is noticeable that from the copy of the policy filed with the complaint it is clear that no extra premium was paid by the complainant to cover a risk arising out of the terrorist activities. It is also clear that the Assurance Company had taken nearly three years in repudiating the claim by doing so on 28th May, 1992 in respect of a loss which occurred on 23rd March,1989. Mr. V.P. Dubey placed before the Commission the decision of the National Commission dated 19th June, 1996 in First Appeal No. 572 of 1993, Manak Singh v. New India Assurance Company, in which also loss had occurred in similar circumstances and the State Commission had, by majority, rejected the claim on the ground that the loss occurring on account of terrorists activities was not a peril which was covered in a comprehensive insurance policy in the absence of proof of payment of extra premium for such a risk and the endorsement to that effect in the policy. The National Commission upheld the decision of the majority and dismissed the appeal on the finding that in these circumstances no deficiency in service could be attributed to the Insurance Company.

5. IN respect of the case of Sri Gurdayal Singh the information which was placed before the Commission was that the loss had taken place on 9th September, 1988 and payment in respect thereof had been approved by the INsurance Company on 20th February, 1989 in respect of which the cheque dated 13th March, 1989 was prepared and further that the INsurance Company came to know through a letter dated 11th August, 1989 from the Assam Government to it that the Terrorist and Disruptive Activities (Prevention) Act, 1987 had been under operation in the whole of the State of Assam with effect from 5th May, 1989.

6. WE are of opinion that the mere fact that a cheque was prepared in respect of the claim made by Sri Gurdayal Singh by the Insurance Company will not entitle the complainant to the award of compensation by the Insurance Company to him in the absence of proof that payment of extra premium for the purpose of covering the risk of loss due to terrorist activities had been made by the complainant and an endorsement obtained on the insurance policy by him in view of the clear pronouncement by the National Commission in the case of Manak Singh, which is similar to the case of the complainant on facts. WE are constrained to hold that in the circumstances of the present case the Insurance Company cannot be faulted for repudiating the claim of the complainant. We are, however, of opinion that the Insurance Company has not been able to put forward any facts to show why it repudiated the claim and communicated the repudiation to the complainant with a delay of nearly three years. Such delayed decision in the matter of a claim by the Insurance Company amounts to deficiency in service on its part for which the claimant is entitled to compensation as it necessarily causes him harassment and mental agony. We hold the opposite party liable to pay compensation to the complainant on this score and assess the amount of compensation at Rs. 15,000/- having regard to the circumstances of the instant case.

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The complaint is allowed in part. The opposite party is directed to pay to the complainant the aforesaid sum of Rs. 15,000/- as compensation together with a sum of Rs. 1,000/- as costs of the proceedings before the Commission within three months failing which the amount due shall carry interest @ 18% per annum from the due date of payment till the date of actual payment by the opposite party to the complainant.

7. LET copies of the order be made available to the parties as per rules. Complaint partly allowed.

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