(1997) 07 NCDRC CK 0079

In the National Consumer Disputes Redressal Commission

Branch Manager, National Insurance Company Limited — APPELLANT

Vs

C.H.RATHAIAH — RESPONDENT

Date of Decision : 10-07-1997

Acts Referred:

Citation : 1999 2 CPJ 73

Hon'ble Judges : A.Venkatarami Reddy , J.Ananda Lakshmi , K.Ranga Raos J.

Final Decision : Appeal allowed in part

Judgement

1. THE complainant in O.P. 97/95 District Forum, Guntur was awarded contract by the first opposite party i.e. Superintending Engineer, CERP Circle i.e. Government for carrying out the work of improvements to Bhimunigunta drain from 2.472 Km. to 5.60 km. consisting of excavation of earth from the drain, formation of standard banks on both sides of the drain wherever necessary, construction of model sections and pipe inlets. THE complainant insured with the second opposite party i.e. National Insurance Company Limited for a sum of Rs. 10,68,000/- covering the period from 20.5.1992 to 19.8.1992 plus 3 months maintenance period against the loss or damage or destruction by any cause including the loss caused due to rain and cyclone. THE complainant paid the requisite premium. According to the complainant he completed the work. But during the maintenance period there was sudden depression causing cyclone resulting in the drain received the flood water between 17.11.1992 and 19.11.1992 causing erosion and silting the bed of the drain. THE complainant intimated on 14.12.1992 to the second opposite party i.e. Insurance Company about the damage to the works due to cyclone and for taking necessary steps for payment of compensation. THE first opposite party assessed the loss caused due to cyclone at Rs. 2,24,300/-. THE complainant submitted claim forms on 28.1.1993 with all relevant documents to the first opposite party who certified the claim forms on 8.2.1993 and sent the same to the second opposite party. When the second opposite party returned the claim forms, the complainant signed the papers and the second opposite party appointed a Surveyor and got the damage assessed. But both the parties did not settle the claim. THE

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complainant, therefore, filed the above complaint alleging that there is deficiency of service on the part of both the opposite parties, and claimed a sum of Rs. 2,24,300/- towards damages for the insured property, Rs. 1,24,860/-towards interest on Rs. 2,24,300/- from 17.11.1992 to 13.3.1995, and at 24% p.a. i.e. Rs. 1,45,000/- towards compensation for mental agony and suffering and Rs. 5,000/- towards expenses.

2. THE first opposite party filed its version stated that there is no deficiency of service on the part of the first opposite party towards the complainant as the complainant is not a consumer so far as the first opposite party is concerned and that the complaint is not maintainable and that there was no contract between the complainant and first opposite party to pay the damages to the complainant. In the contract, it was also mentioned that the policy has to be taken by the contractor in the name of first opposite party and that there was no mention that the first opposite party is responsible for payment of any insured amount to the complainant. It was further stated that as per the stipulation under Clause 50(1) of the agreement, the insurance shall cover during the period of maintenance of six months. But the complainant took policy covering the period of only three months of maintenance period. THEy also denied that the complainant completed the work and the complainant has not been permitted certificate to that effect. Since the insurance was not obtained covering the period of six months maintenance, the claim is invalid and it is the lookout of the complainant to get the payment from the second opposite party as the first opposite party forwarded the claim forms received by it to the second opposite party. The second opposite party i.e. Insurance Company after receiving the notice in the complaint, did not file its version and remained ex-parte.

No oral evidence was adduced by both the parties and on behalf of the complainant Exs. A-1 to A-22 were filed and on behalf of opposite parties Exs. B-1 and B-2 were filed.

3. THE District Forum held that the complainant did not pay any consideration to the first opposite party who awarded contract to the complainant and the first opposite party did not agree to render any service to the complainant for any consideration and even though the first opposite party alleged that the complainant did not take the policy covering the risk for six months of maintenance period, but took only 3 months maintenance which is contrary to the contract. But so far as the claim of the complainant against the Insurance Company is concerned, as the cyclone occurred within 3 months period of maintenance which was indisputably covered by the policy, it is not of much consequence whether the complainant obtained the policy covering the risk for the maintenance period of 3 months instead of six months and that there is no deficiency of service on the part of the first opposite party as it forwarded the claim forms to the second opposite party for settling the claim. The District Forum held that the second opposite party was informed by the first opposite party about the damage to the insured property and furnished necessary

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information for settlement of the claim. But the second opposite party never bothered to settle the claim of the complainant. But merely informed the first opposite party by letter dated 21.12.1992 Ex. A- 8 that no contractor has approached them except one Adapala Veeraiah and P. Suryanarayana Raju submitting the estimates of losses, and that it is not possible for them to depute Surveyor unless the estimates of losses received and therefore they have treated the remaining claims as ''No Claims''. Since the correspondence revealed mat the complainant preferred the claim with full particulars and the first opposite party sent the same to the second opposite party, in the absence of the version filed by the second opposite party and as no evidence was adduced on their behalf the District Forum held that there is deficiency of service on the part of the second opposite party and directed the second opposite party to pay to the complainant a sum of Rs. 2,24,300/- with interest at 18% p.a. from 18.2.1993 i.e. after giving three months time from the date of occurrence till the date of payment and Rs. 10,000/- towards mental agony and expenses incurred in corresponding with the various departments.

4. AGGRIEVED by the said order, the second opposite party-Insurance Company preferred this appeal. The learned Counsel for the appellant filed before us, a copy of the policy and Surveyor report. It is pertinent to note that although the opposite party had sufficient opportunity to file the papers before the District Forum, they have not chosen to do so. Even these documents do not show which light on the merits of the case we present deal with the same. Be that as it may as there is no dispute with regard to the policy issued covering the risk, as the complainant informed the second opposite party as evidenced by Ex. A-2 on 29.11.1992 about the damage to the insured property due to cyclone which was acknowledged by the second opposite party as evidenced by Exs. A-3 and A-4. The complainant again wrote Ex. A-5 dated 27.1.1993 to the second opposite party. On 10.12.1992 as evidenced by Ex. A-6, the complainant was asked to submit the damage particulars. Ex. A-9 dated 1.2.1992 is the claim made by the complainant to the second opposite party. Thereafter as could be seen from Ex. A-11 the complainant was asked by the first opposite party to come to their office and sign on the claim papers. Ex. A-13 is the letter dated 4.3.1993 by the first opposite party estimating the damage to the work at Rs. 2,24,300/-. Ex. A-8 is the letter dated 13.2.1993 by the second opposite party repudiating the claim of the complainant on the ground that No claim was preferred. The above documents clearly show that the complainant preferred the claim and furnished the particulars. But inspite of it, the second opposite party merely sent a general letter to the first opposite party i.e. Ex. A-8 repudiating the claim on the ground that ''No Claim'' was made by the complainant. In view of the aforesaid documents, we agree with the finding of the District Forum that the complainant did prefer a claim giving all particulars. But the second opposite party merely sent a letter to the first opposite party generally repudiating the claim of the complainant on the ground that ''No Claim'' was preferred by the complainant which is not true and hence there is deficiency of service on the part of the

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second opposite party. It is next contended by the learned Counsel for the appellant that a clause was attached to the policy limiting the liability of the Insurance Company during the maintenance period only to loss or damage to the contract works caused by the insured contractor(s) in the course of the operations carried out for the purpose of complying with obligations under the maintenance provisions of the contract. As in the instant case, the damage was caused due to cyclone, even according to the complainant during the maintenance period, and not caused by the contractor in the course of operation carried out by him, for the purpose of complying with the obligations under the maintenance provisions of the contract.

5. THE learned Counsel for the respondent/ complainant disputed the attach of such clause to the policy. He produced the policy issued to him which does not contain any such clause attached to the policy. Moreover if any such slip was attached to the policy to form part of the policy, the same will be mentioned in the first page of the policy itself stating that a slip was attached to the policy. But in the instant case, there was no such endorsement or note made in the first page of the policy and the slip attached does not contain the signature of the complainant and as the opposite party No. 2 did not produce the policy, before the District Forum, we are inclined to accept the contention of the learned Counsel for the respondent that no such slip was attached to the policy as there was no such endorsement was made in the first page of the policy and also as the slip does not contain the signature of the complainant. Hence the contention of the learned Counsel for the appellant that the policy does not cover loss due to cyclone during the period of maintenance cannot be accepted.

6. THE learned Counsel for the appellant invited our attention to the decision of High Court of A.P. in W.P. Nos. 14676 and 15175/94. In the said case the Superintending Engineer withheld the amount payable to the petitioner/ contractor and also insisting the petitioner to rectify the damage cause by the cyclone to the works carried out by him. Questioning the same the contractor filed a writ petition after referring to Clauses 50.1 and 50.2 and Clause 17 of the agreement entered into with the contractor the learned Judge held that "Reading these three clauses together it is obvious that the contractor was liable only for the damages occurring due to his own negligence and incompetence and any damage occurring due to cause over which he has no control were excluded from his responsibility and insured. In fact, insurance policy has also been taken and that policy states that the Insurance Company will pay for the property damaged or destroyed for any cause other than those specifically excluded under the policy. It is common ground that damage by cyclone is fully covered by insurance policy. THE respondents have actually made a claim for insurance and in the form given for making the claim it is specifically stated that the work was completed before the cyclone". The learned Single Judge there fore held that the risk relating to unforeseen circumstances which has been separately insured and specifically excluded under Clause 50 of the agreement and hence action of the Superintending Engineer withholding the amount or demanding the contractor to

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complete the work cannot be sustained. This order was affirmed by a Division Bench of A.P. High Court in W.A. No. 1270/94. It was observed by the Division Bench of Hon''ble High Court of A.P. that having regard to the terms and conditions of the insurance policy, the insurance policy could have been effective utilised for recovering the damages caused to the work in question. The respondents are understood to have lodged their claim for insurance in the prescribed form, but it appears that the Insurance Company rejected the claim on the ground that the loss did not fall within tile purview of the insurance policy. A careful note is also required to be taken of the fact that the insurance policy does not specifically exclude the claim for damage arising from the destruction caused by cyclone.

In view of the aforesaid observations, the Insurance Company cannot take shelter under the aforesaid decision of High Court of A.P. to repudiate the claim of the complainant.

7. MOREOVER the repudiation is quite general saying that only two contractors preferred the claim and all the remaining claims under the contract were treated as ''No Claim'', which is very vague as the documents disclose that the complainant did prefer a claim, we are satisfied that the repudiation is not bona fide and there is deficiency of service on the part of the Insurance Company. 15.It is next submitted by the learned Counsel for the appellant that the Surveyor report which was filed before us and not before the District Forum shows that the loss was assessed at Rs. 2,51,057.44 P is. Since the compensation awarded by the District Forum i.e. Rs. 2,24,300/- is less than what was reported by the Surveyor, it cannot be said that awarding of such compensation towards the loss suffered by the complainant is excessive. 16. It is lastly submitted by the learned Counsel for the appellant that having awarded interest at the rate of 18% p.a. from 18.2.1993 till the date of payment, the District Forum ought not have awarded separate compensation of Rs. 10,000/- for mental agony and expenses. We are satisfied that having awarded interest at 18% p.a., the District Forum ought not have awarded compensation of Rs. 10,000/- to the complainant. 17. In the result, the appeal is allowed in part and the order of the District Forum insofar as it directed payment of compensation of Rs. 10,000/- is set aside and in other respects the order of the District Forum is confirmed. There shall be no order as to costs in this appeal. Appeal allowed in part.

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