(2008) 08 NCDRC CK 0058

In the National Consumer Disputes Redressal Commission

CHOICE SHOE MART APPELLANT

Vs

NEW INDIA ASSURANCE CO LTD RESPONDENT

Date of Decision : 02-08-2008

Acts Referred:

Citation : 2008 0 CTJ 1241 : 2008 4 CPJ 66

Hon'ble Judges : B.B.Vagyani , P.N.Kashalkar J.

Advocate : A.S.Patil , Sagare , V.D.Kalke

Judgement

1. -HEARD Mr. V. D. Kalke, Advocate for the appellant. Mr. Sagare, Advocate for respondent No. 1 and Mr. A. S. Patil, Advocate for respondent No. 2.

2. FEELING aggrieved by the dismissal order dated 18. 7. 2007 passed by District Consumer Forum, Raigad, original complainant has come up in appeal. The original complainant carries on business of footwear. His business is known as "choice Shoe Mart". Complainant has his Shoe Mart in Municipal House No. 2861 of Mahad. The complainant had hypothecated his Stock in Trade to Mahad Co-operative Bank Ltd. The complainant authorised the bank to take Shop Keepers'' Insurance Policy. The Bank had taken insurance policy for the complainant, who was its borrower. The policy was renewed from time-to-time. There was heavy rain on 25th and 26th July, 2005. Because of unabated heavy rain, there was a flood. The entire shop belonging to the complainant was sub-merged into water. All the shoes and chappals kept in the shop were completely damaged. The complainant suffered heavy loss. He submitted his claim to the Insurance Company. Insurance Company by letter dated 30. 9. 2005 repudiated the claim of the complainant. Insurance Company repudiated the claim on the ground that the insurance policy was not taken for the shop. Complainant, therefore, approached the District Consumer Forum.

M/s. New India Assurance Co. Ltd. and Mahad Co-op. Urban Bank Ltd. contested the complaint. It is contended by O. Ps. that it was the duty of the complainant to give correct address of the shop premises. The Shop Keepers'' Policy, which was in force at the relevant time was in respect of residential property and not of business premises.

3. DISTRICT Consumer Forum accepted the defence raised by the O. Ps. and dismissed the complaint. It is true that in insurance policy, residential address of the complainant is given. There is separate column in the policy for business premises. In the said column description of business premises is not given. However, nature of business is clearly mentioned in the policy. It is clearly mentioned in the policy that nature of business is footwear shop. On perusal of the record, it is clearly seen that the complainant runs his Shoe Mart in Municipal House No. 2861 of Mahad. It is a fact that House No. 2861 does not find place in the policy. However, this cannot be the ground to reject the claim lodged by the complainant. Material placed on record would clearly go to show that entire stock kept in the shop was damaged on account of flood. The Surveyor also assessed the loss to the extent of Rs. 99,750. The Surveyor was appointed by the Insurance Company. Surveyor had visited the shop premises and after physical verification submitted his report in which loss is assessed at Rs. 99, 750.

4. A contract of insurance is to be construed in the first place from the terms used in it, which terms are themselves to be understood in their primary, natural, ordinary and popular sense. A policy of insurance has, therefore, to be construed like any other contract. The actual words used in the policy are to be interpreted according to grammatical and ordinary sense of word. Sometimes grammatical and literal interpretation of the words employed in the contract leads to unjust results, which parties never intended. In order to avoid unjust results, we must find out the intention of the policy holder and the purpose, for which the insurance policy was taken. If the words employed in the contract are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it proper, as our paramount duty, to put upon rational meaning of the words employed in the contract. We are required to consider the words of the contract to ensure coherence and consistency with the purpose of taking insurance policy to avoid undersirable consequences and unjust results. The words employed in the contract are required to be construed, according to the intention, who makes it and it is the duty of the Court to act upon the true intention of the parties to the contract. Number of documents are placed on record to show that the complainant had taken the insurance policy for his Shoe Mart. Policy was taken for the shop premises. Insurance Company has given Shop Keepers'' Policy. Insurd wanted to avoid loss due to natural calamity and, therefore, he had taken Shop Keepers'' insurance policy. This was the predominant purpose of the insured in taking insurance policy. If the words used in the contract are imprecise, the Court has to go beyond literal confines of the terms to call in aid the intention of the parties, the object sought to be achieved and the consequences that may flow from the insurance policy.

5. UNDER the circumstances, Consumer Fora is required to lift the veil and find out the real intention of the policy in the light of material placed on record.

6. IN the case in hand, complainant had taken loan from the bank. Stock kept in

the shop was hypothecated to the bank. Bank had verified the stock periodically. Happening of event is not at all disputed. The judicial notice can be taken of the fact that because of heavy rains, there was huge accumulation of water at all places, which caused heavy losses. It is a fact that the entire shop belonging to the complainant was submerged in flood water. Complainant suffered heavy losses. This fact is evident from the report of Surveyor. Bank who advanced the loan by way of abundant precaution has taken insurance policy, though it was a primary obligation of the shopkeeper. The bank has admitted in the written statement that the insurance policy was taken by the bank. There is a reference to that effect in the policy itself. It was the duty of the bank to give correct address of the business premises of the shopkeeper to the Insurance Company. Bank cannot escape its duty. The bank was fully aware since long that the insured runs a business of shoes in Municipal House No. 2861 of Mahad. But Bank did not give correct address of the shop premises to the Insurance Co. Insurance Co. has given in fact insurance policy for the Stock in trade. Admittedly, complainant carries on business of Shoes in Municipal House No. 2861 of Mahad.

Forum below without lifting the veil and without finding out the intention and purpose of the policy, dismissed the complaint on hyper technical ground. The insurance policy would clearly go to show that nature of business is footwear shop. Under the circumstances, Insurance Co. should not have repudiated the claim lodged by the complainant on the ground that the Insurance Policy was taken for residential premises.

7. DISMISSAL order passed by the District Consumer Forum is erroneous. There is merit in the appeal. In the result, we pass following order: Order 1. Appeal is allowed. 2. Impugned dismissal order dated 18. 7. 2007 is quashed and set aside. 3. Complaint is partly allowed. 4. We direct respondent No. 1 to pay Rs. 99,750 to the appellant/org. complainant with interest @ 7% p. a. from the date of repudiation i. e. , 30. 9. 2005 till the date of realization. 5. Respondent No. 2 is directed to pay Rs. 5,000 to the appellant by way of cost of the litigation. 6. Copies of the order herein be furnished to the parties. Appeal allowed.

