(1997) 10 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

C.S.ANAND APPELLANT

Vs

New India Assurance Company Ltd. RESPONDENT

Date of Decision : 15-10-1997

Acts Referred:

Citation : 1997 3 CPR 522 : 1998 1 CLT 66 : 1998 1 CPC 87 : 1998 1 CPJ 268

Hon'ble Judges : J.B.Garg , Sada Nand , P.Ojha J.

Final Decision : Complaint allowed

Judgement

1. THE complainant is a registered partnership firm and had been acting as Government Contractors. Though the registered office is at Dalton-ganj, Bihar, there is an administrative office in Sector 22B, Chandigarh. THE complainant undertook construction of Damsal Dam at Village Mehngarwal, District Hoshiarpur on 23.4.1987. THE entire cost of the project was Rs. 1,69,05,686/- and it was to be completed within a period of 24 months from 23.4.1987. When the work was nearing completion during September, 1988 keeping in view the natural calamities such as rains and floods etc. the complainant approached New India Assurance Company, respondent No. 1 having its regional office at Chandigarh to issue a Contractors'' All Risk Policy in the sum of Rs. 1,69,05,686/-. THE cover note and policy are Annexures A-2 & A-3. THE premium of Rs. 84.950/- was paid to the respondent on 6.7.1988 at the time the cover note was issued but the policy has been issued by the respondents on 13.8.1991. On 16.11.1990 an additional sum of Rs. 14,760/- was also deposited as the balance premium on a demand made by the respondents in respect of these issued "Contractors'' All Risk Policy". THE complainant was kept in dark regarding terms and conditions for a long time. THEre were heavy rains and flood resulting in loss to the dam/material. An intimation in this regard was sent to the respondent on 5.9.1988. THE respondents deputed their Surveyors and they were expected to furnish a survey report quickly. THE loss assessed by the qualified Government Engineers was alleged to be Rs. 7,94,385.25, Shri Charanjit Singh, Development Officer of the respondent Company came to the complainant alongwith a crossed cheque of Rs. 1,38,000/- dated 22.7.1991

drawn on United Commercial Bank, Mohali. THE complainant informed on 22.7.1991 that the total loss assessed was in the sum of Rs. 2,38,000/-. THE deduction of a sum of Rs. 1,00,000/- made by the respondents had no justification because it was Contractors'' All Risk Policy. THE complainant expressed his resentment and the cheque for Rs. 1,38,000/- was simply accepted under protest. THE notices were issued by the complainant to the respondents on 23.7.1992. On failure of the respondent the claim put forward is as under : (i) Rs. 7,94,385/- on account of the actual damage caused at the site and assessed by the qualified Engineers together with interest @ 24% per annum minus Rs. 1,38,000/- received as part payment under protest; (ii) Further sum of Rs. 5 lacs as compensation on account of mental torture, physical pains etc.

2. IN reply it has been averred that the complaint instituted on 2.9.1994 is barred by time. On merits, it has been averred that neither there was negligence nor any deficiency in rendering the services on the part of the INsurance Company. The insurance policy was purchased by the complainant at Mohali which is under the jurisdiction of State Consumer Disputes Redressal Commission, Punjab, this Commission has no territorial jurisdiction. There were large number of questions of law and facts and these could not be tried here. The Forms A & B have not been placed on record to show that Shri Harvinder Pal Singh is partner of the complainant concern and competent to institute the complaint. The respondent INsurance Company appointed Shri D.S. Rattan as Surveyor & Loss Assessor and submitted the report dated 3.7.1989. It has been denied that the Engineer of the complainant assessed the loss to the tune of Rs. 7,94,385.25. The total claim of the complainant was worked out to Rs. 2,38,000/- (Annexure R- 1) and out of which a sum of Rs. 1,00,000/- was deducted on account of excess clause and balance of Rs. 1,38,000/- was paid to the complainant towards full and final settlement. The complainant was never compelled to accept this particular sum. In support of the complaint there is an affidavit dated 13.7.1995 of Shri H.P.S. Anand, one of the partners of the complainant. The relevant lines from para 4 of the affidavit are reproduced as under : "Where the Government Engineers of the deponent assessed the loss to the tune of Rs. 7,94,385.25 ps. where after the respondent No. 1, after having the knowledge of the said loss, deputed their Surveyor Shri D.S. Rattan and Associates who visited the site so as to assess the loss caused by the heavy rains and floods etc., therefore, the deponent was informed by the above said Surveyors, after the due discussions, that their survey report shall be submitted with the respondents so that the deponent is suitably compensated in view of the damage so caused at the site by heavy rains and floods".

The complainant has not named any Government Engineer who assessed the loss not to speak of an affidavit in support of the claim to the tune of Rs. 7,94,385.25 in respect of occurrence which took place in the first week of September, 1988 and intimation regarding occurrence was despatched to the respondent in the beginning of September, 1988. Thus the loss assessed at Rs. 2.38.000/- by Shri

D.S. Rattan, a Surveyor deputed by the respondent remains unchallenged. The plea that the respondent is entitled to deduct Rs. 1,00,000/- from the total loss on account of ''Exclusion Clause'' has no merit in the circumstances of the case because the insurance policy which contained this exclusion clause was issued on 13.10.1990 after more than two years three months after receipt of the premium of Rs.84,950/-on 6.7.1988. The mention of exclusion clause to the tune of Rs. 1,00,000/- could not be held to be binding on the complainant who got the premises insured on 13.8.1991 and the occurrence took place in the beginning of September, 1988. The learned Counsel for the respondents has drawn our attention to letter Annexure R-1 signed by Shri H.P.S. Anand a partner of the complainant on the printed letter head of the complainant Contractors. It is reproduced as under : "It is hereby agreed to that the loss due to unprecedented floods, inundation, collapse etc. at Damsal Dam, District Hoshiarpur, during the period July-August is for an amount of Rs. 2,38,000/- (Rupees two lakhs thirty-eight thousand only). This will be subject to the term and conditions of the insurance over. For M/s. C.S. Anand (CHD) Sd/- Partner"

3. A perusal of this letter shows that it did not bear any date. During the course of arguments we wanted to find out what was the date of this letter but on behalf of the respondents there was no answer regarding the execution of this letter. This goes to show that in this case also the usual practice of receiving undated receipts signed by a client was adopted and in the circumstances of the case the plea that the deduction of Rs. 1,00,000/- was made without any objection has no merit. The occurrence of flood is not in I dispute. The complainant could not bring on record the evidence regarding the loss alleged and claimed by him in the complaint. In such circumstances we hold that the respondent is liable to pay a sum of Rs. 2,38,000/- and nothing is deductible out of it. Since Rs. 1,38,000/- has already been paid to the complainant, the respondents are liable to pay the balance Rs. 1,00,000/- together with interest @ 12% per annum from the date of institution of the complaint till realisation. The complainant is also entitled to cost Rs. 2.000/-. As regards connected Complaint No. 505 of 1993 which relates to the second occurrence at Damsal Dam Project, which allegedly took place in the last week of September, 1988. The demand of the complainant to the tune of Rs. 16,68,997/-. The details of the loss have not been mentioned or worked out in the complaint or even in the affidavit dated 13.3.1995 placed on record after more than two years of the filing of the complaint. Shri D.S. Rattan, the Loss Assessor visited the site regarding second occurrence as well and the relevant lines regarding this occurrence from the statement are reproduced as under : "The second occurrence took place after a short interval and we are informed comparatively late about it. I visited the site after the second occurrence as well. Since the relevant papers were not furnished by the complainant despite our reminders, I did not furnish any assessment report. Before preparing an assessment report of second occurrence we wanted to have some documents regarding original measurements and those were not supplied to us. I am unable to show a letter through which I had demanded documents from the

complainant, such letters may be with the Insurance Company. The letter dated 24th June, 1995 has been seen by me, it is R-3 and it bears my signatures. It is true that one of the reasons given by me was that the time period between the first occurrence and second was too short. In order to assess the loss in case of second occurrence I had asked for the repairs carried out after the first occurrence so that one could work out the loss properly, however, the required information was not received though it was repeatedly asked for and it was only in November that the information was supplied. We have not submitted any assessment regarding the second occurrence because required papers/ documents were not received from the complainant".

4. A perusal of the pleadings and the statement and the fact that the occurrence is also admitted by the State employees because it was the work being carried out for the State Government. It is held that the second occurrence of flood at the same premises Damsal Dam did take place. The plea that the details of the repairs carried out by the complainant in respect of the first flood but not supplied to Shri D.S. Rattan could not render the complainant ineligible from claiming the compensation. It was a large project and its cost estimated to Rs. 1,69,05,686/-. The complainant has photographs relating to this loss as Annexure A-6. A flood warning issued by the Executive Engineer, Kandi Water Shed Drg. Division, Hoshiarpur which related to the period 25.9.1988 and 26.9.1988. There is also a copy of wireless message in this regard Annexure A3 and some details regarding items damaged on account of heavy floods-IInd (September & October, 1988). All this established that there was a second flood as well which the complainant Contractors met with. After considering the pleadings and documents referred to above, we hold that the respondents were deficient in ignoring this second claim altogether. We hold that the respondents are liable to pay Rs. 50,000/- in respect of the second claim and this complaint is disposed of with the direction that the aforesaid sum shall be paid by the respondents to the complainant within a period of two months from the date of judgment. In case the respondents fail to pay the said amount within the stipulated period they shall be liable to pay interest @ 12% per annum from the date of decision. Complaint allowed.

