(2012) 07 NCDRC CK 0137

In the National Consumer Disputes Redressal Commission

Daya Prakash Sharma APPELLANT

Vs

United India Insurance Co Ltd Railway Road RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 341 : 2012 3 CPJ 452 : 2012 3 CPR 366

Hon'ble Judges : J.M.Malik , Suresh Chandra J.

Advocate : G.D.Sharma , S.K.Ray , J.C.Vashishta

Judgement

1. THE factual matrix of this case are that the petitioner Sh. Daya Prakash Sharma who is the sole proprietor of M/s Kaushik Mushrooms Farm situated at Haryana-Delhi border in Sonepat District, took a term loan of Rs.2,25,000/- during the year 1995-96 for the project to grow mushrooms under a scheme of National Bank of Agriculture and Rural Development of India (NABARD) from Canara Bank, Sonepat. He also got insured the mushrooms growing shed of the said farm by taking insurance policy on 07.12.1994 from the respondent/United India Insurance Co. Ltd. for the period from 07.12.94 to 06.12.95. THE mushrooms shed consisted of 24 rows of beds each measuring 95ft X 5ft in between the plinth area and the roof. THE entire structure of the shed was fabricated with steel pipes, ballies, bamboos, gola-ropes, plastic sheets etc. THE insurance policy was obtained by the Branch Manager, Canara Bank, Sonepat. On 25.03.95, there was storm accompanied by rain in the area due to which mushrooms shed of the farm was totally damaged and the production of mushrooms was stopped with effect from 26.03.95. In the month of April, 1995, the petitioner informed the Manager, Canara Bank about the damage caused to the mushrooms farm and then he came to know that the mushrooms farm had been insured with the United Indian Insurance Co. Ltd. THEreafter, the petitioner kept waiting about the visit of the representative insurance company to assess the damage but since none visited the farm, he sent a letter dated 15.05.95 informing the insurance company about the damage to the tune of Rs.3,50,000/- caused to the shed and also for the assessment of loss. On 17.05.95, Sh.Bharat Bhushan Sharma, the surveyor was deputed by the insurance company and in

spite of his visit, the insurance company repudiated the claim put forth by the petitioner. Alleging deficiency in service, the petitioner lodged a complaint in which he claimed Rs.3,47,819/- as loss to the farm due to storm besides claiming Rs.38,425 as compensation for loss to the boundary wall.

2. ON being noticed, the respondent/insurance company resisted the claim and filed a reply. While admitting the insurance policy in question on the date of occurrence of the event, the respondent company denied other allegations and stated that the mushroom beds were not covered under the policy. It also denied that the mushroom farm was completely damaged. It was pointed out by the insurance company that the petitioner/complainant did not cooperate with the surveyor who was deputed by the insurance company by producing relevant documents. It was pointed out that the sum insured as per policy was only Rs.3 lacs whereas the petitioner claimed loss of Rs.1,74,394/-. It is also stated that the policy in question did not cover mushrooms beds, debris removal and the consequential loss and that according to the insurance company, the petitioner was entitled to Rs.6500/- only as assessed by the surveyor.

3. AFTER hearing the parties and considering the documents placed before it, the District Form, Sonepat vide its order dated 29.11.99 assessed the loss to mushrooms shed to the tune of Rs.1,50,000/- without any interest but denied the claim of Rs.38,000/- regarding the boundary wall as it was not proved on record about the type of construction existing there.

4. AGGRIEVED by this order of the District Forum, the insurance company challenged it by filing an appeal before the State Commission and the petitioner also filed an appeal for increasing the amount of relief. Both the appeals have been disposed of by the State Commission vide its impugned order dated 04.08.2006 by which the State Commission has modified the order of the District Forum to the extent that the petitioner is entitled to a sum of Rs.52,425/- on account of loss suffered by him. Consequently, the appeal filed by the respondent/insurance company was partly accepted by reducing the liability of the insurance company from Rs.1,50,000/- as ordered by the District Forum to Rs.52,425/-. The appeal filed by the petitioner was dismissed having no merits. In these circumstances, the present revision petition has been filed by the petitioner/complainant.

5. THE main question that has arisen for our decision in this case is as to whether the mushrooms shed consisting of 24 rows of beds each where the mushrooms were grown was covered or not. It is the contention of the learned counsel for the petitioner that the State Commission has wrongly interpreted the word "building" as mentioned in the insurance policy document and has given it altogether a different meaning after separating the same from rest of the lines of the policy which is neither according to the spirit of the policy nor the dictionary meaning and the same is against the principles of natural justice. Having excluded the mushrooms beds from the insurance cover, the State Commission has erred in proceeding to allow the claim of the petitioner only in respect of the

shed to the extent of Rs.14,000/- and damage to the boundary wall for Rs. 38,425/- thereby accepting a total claim of Rs.52,425/-. The counsel placed reliance on judgments in the cases of UHC Ltd. Vs. Harchand Rai Chandan Lal (2005 ACJ 570), General Assurance Society Ltd. Vs. Chandmull Jain (1966 ACJ 267 SC), OIC Ltd. Vs. Sony Cherian {1999 CCJ 1333 (SA)} and M/s Modern Insulators Ltd. Vs. Oriental Insurance Co. Ltd. {2000(1) (SC)} with a view to persuade us to accept his submission that word "building" would include mushrooms beds also in the Farm and hence the actual loss of Rs.1,74,394/- suffered by him in the storm and the rain which is well within the insured value of Rs.3 lacs should be allowed since the State Commission gravely erred in excluding the damage in respect of the mushrooms beds by excluding the same from the definition of the building as covered by the policy document.

6. ON the other hand, learned counsel for the respondent company has submitted that the contents of the insurance policy are absolutely clear and the same cannot be taken to include the mushrooms beds because the details of the property are contained in the policy document itself and there is no scope for ambiguity regarding the coverage under the policy.

7. WE have carefully considered the submissions made by the counsel for the parties. Perusal of the impugned order passed by the State Commission makes it clear that the State Commission has considered the documentary evidence and assessed the acceptable claim of the petitioner by a well reasoned order while partly accepting the appeal of the respondent/insurance company. In respect of the main point of controversy i.e. mushrooms beds being covered by the policy document or otherwise, the State Commission has recorded the following reasons in support of its order:- "14. A perusal of the cover note dated 7.12.94 shows that M/s Kaushik mashrooms was got insured by Canara Bank by paying premium of Rs.1164/- which was effective from 7.12.94 to 6.12.95. The detail of property which was insured is as under; "a building above plinth including boundary walls &/or stock all fittings like bans, ballies, electrical fittings. Built up Ist class construction used as a mashrooms farm, insured against fire policy-C." Building to the tune of Rs.2,50,000/-. Bans to the tune of Rs.40,000/- and electrical fittings to the tune of Rs.10,000/-. 15. The insurance policy annexure C-1 which was issued on the basis of cover note states that it was for earthquake risk cover on building, bans, electrical fittings and flood risk. 16. Now the question arises whether the shed which was fabricated with steel pipes, ballies, bamboos, gola-ropes, plastic ropes, plastic sheets and poola etc. consisting of 24 rows of beds each measuring 95 ft. X 5ft. in between plinth area and the roof where in the beds mushrooms were grown was covered or not. According to the policy document, only building, stock, and fittings like bans, ballies and electrical fittings are covered. There is no mention in it that mushrooms bed would also be covered by the insurance policy. The report of surveyor Mr. Bharat Bhushan Sharma dated 10.3.96 has been placed on file. In the said report, the surveyor has defined the building to be the house for he purpose of living or a structure for other purpose. As per dictionary meaning, the building means a brick house

having the outer solid structure and not the inner contents. The building may be an office or industrial building lying so many articles in it but that cannot be considered a part of building. Therefore, the building does not cover the inner beds and compost. However, in the insurance policy bans, ballies used for constructing the roof, besides electrical fittings are covered. Even the boundary walls is also covered because the building is mentioned to be above plinth level including boundary walls." (Emphasis provided)

8. WE have also perused the policy document a copy of which is placed on record and we agree with the view taken by the State Commission. The wordings of the policy document in question are such which do not leave us with any doubt about the non-coverage of mushrooms beds inside the building. We do not see any reason to differ from the finding of the State Commission. The respondent/ insurance company has not challenged the impugned order as such it has already become final against the insurance company. There is no scope for any further relief to the petitioner in the given facts and circumstances of the case. We have therefore no option but to dismiss the revision petition and to confirm the impugned order, which does not call for any interference. No costs.

