
(2005) 11 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

DCM SHRIRAM CONSOLIDATED LIMITED

APPELLANT

Vs

NATIONAL INSURANCE CO. LTD.

RESPONDENT

Date of Decision : 16-11-2005

Acts Referred:

Citation : 2005 0 NCDRC 55 : 2005 4 CPJ 250 : 2006 2 UC 767

Hon'ble Judges : M.B.SHAH , P.D.SHENOY J.

Advocate : J.K.CHAWLA , ANUJ BANSAL , JOY BASU

Judgement

1. THIS complaint is filed by M/s. D.C.M. Shriram Consolidated Ltd., praying for a direction to the Insurance Company to refund additional premium of Rs.26,68,530/- (Rs.25,00,000/- and Rs.1,68,530/- paid by the Complainant on 26.3.1996 and 20.6.1996 respectively) which the Complainant was required to pay under undue influence and coercion, with interest at the rate of 24% p.a. from the date of its collection.

2. UNDISPUTEDLY , the Complainant was taking fire insurance policy for over 30 years only for his three factories/plants, namely, (i) Cement; (ii) Caustic Soda, Calcium Carbide and P.V.C.; and (iii) fertilizers, which are located side-by-side within the same compound at Kota, Rajasthan. The Complainant took out insurance policies upto 1991 for all the three plants against fire risk only. No doubt, it is contended that normally there is no question of flood in the State of Rajasthan. But for the period 1991-92 to 1994-95 the Complainant got the insurance cover extended to the fertilisers factory for flood risk also. In any case flood risk policy was not taken for the remaining two plants/factories, namely, the cement plant and the caustic soda/carbide/PVC plant. Thereafter, the Complainant continued with the fire policy for the three factories and renew it annually even till today. A fire broke out on 26.4.1995 in the caustic soda plant/factory which according to the Complainant has caused loss to the tune of Rs.7.5 Crores. This claim included a part of the damages caused to the fertilizers plant/factory due to the fire which broke out in Caustic Soda plant. The Insurance Company entertained the claim and after due processing, it was finally settled at

Rs.5,92,40,583/-. However, pending finalisation, the Insurance Company paid Rs.1.75 Crores on 7.6.1995. Before settling the claim the Insurance Company pointed out that the insurance cover taken out for fertilizers plant against fire, flood risk was irregular, as the flood risk could not have been extended to one plant only, i.e. the fertilizers plant factory and the Complainant ought to have taken out the policies covering flood risk in respect of all the plants together, as these plants are located within one compound/complex. Thereafter, the claim was finally settled in the month of March, 1996, but payment was not made.

3. DESPITE the settlement of the claim the Insurance Company failed to release the said amount and the sum of Rs.4,17,40,453/- was released on compliance of unjustified demand to pay a sum of Rs.25 lakhs and Rs.1,68,530/- as premium. Insurance Company raised this demand for additional premium by contending that the Complainant ought to have taken insurance policies for flood for the remaining two factories. As the Complainant Company was in financial crisis due to fire, the Complainant paid the said amount. That additional premium was collected for 3 years prior to 1994-95. It is contended by the Complainant that when no coverage for flood risk was extended with regard to the remaining two policies it was totally unjust, arbitrary and unfair on the part of the Insurance Company to collect premium retrospectively. Thereafter, the Complainant wrote a number of letters for refund of the said amount. As the same was not refunded this complaint is filed.

4. PRIMA facie, it appears that the demand and recovery made with retrospective effect by the Insurance Company amounting to a sum of Rs.26,68,530/- towards premium in respect of the policies which were not at all issued, is on the face of it unjustifiable. The Complainant was squeezed, as they were in need of money, to pay the said amount before getting the amount of Rs.4 Crores and odd. The Insurance Company does not dispute the deposit of the aforesaid amount, but it is contended that because of the mistake on the part of their Officer, they have charged the additional premium as a corrective measure; but the same is in accordance with the tariff provisions and provisions of the Claims Management Guide. It is sought to be contended that as per Part-III - Tariffs, Section 10 which provides for special perils - storm, cyclone, typhoon, tempest hurricane, tornado, flood and inundation perils, cover is required to be granted only if the entire property in one complex/compound/location covered under the Fire Policy "C" is extended. The Insurance Company relied upon Part-III - Tariffs: Section 10 - Special Perils. Clause (a) of General Clauses of the said tariff rules reads as under: "(a) Storm, Cyclone, Typhoon, Tempest Hurricane, Tornado, Flood and Inundation Perils cover to be granted only if the entire property in one complex/compound/location covered under Fire Policy "C" is extended to cover this risk and the Sum Insured for this extension is identical to the Sum Insured against the risk covered under Fire Policy "C" "

5. IT is contended that the Complainant has not taken flood policies for the properties situated within the same complex/compound which are covered under

the Fire Policy "C" . Therefore, as a corrective action additional premium was collected for the entire property which was located in one complex/compound. It is submitted that as per the Fire Claims Management Guide premium for the last three years policies is required to be recovered. Findings: In our view, the aforesaid submission is without substance. Firstly, if Section 10 of Special Perils was applicable, it was the duty of the Insurance Company to grant insurance coverage for flood also for other policies. On the contrary, the said Section provides that it is the duty of the Insurance Company to follow the said special rules. If they do not follow the same, it cannot be said that insured is liable to pay the same after a lapse of three years. Further, in case where the insurance premium is not paid for the other premises, then it would be difficult for the complainant to claim any compensation in case of loss with regard to the said premises. No Insurance Company would reimburse the insured for the premises for which no insurance coverage is granted.

6. THE aforesaid clause directs the Insurance Company to grant cover for flood etc. for all the premises which are in one complex/compound. Clause 6 of the said Rules specifically provides - "However, it is made clear that DCC/RCC have no authority to rectify the policy." This means that if insurance coverage is not granted with regard to other premises, then subsequently no claim can be entertained and policy could not be rectified. However, Insurance Company relied upon clause 6.3 which, inter alia, provides as under: "There are cases where incorrect rates are charged under the policy and which does not merit consideration as non-standard claims. In these cases, correct rates are to be charged not only under the affected policy but also for the past three years from the date from which such rate is applicable. Such cases which involve incorrect rating, fall within the guidelines of GIC and Section 64 VB of Insurance Act".

This clause only requires that in case where incorrect rates are charged under the policy which does not merit consideration as non-standard claims, correct rates are to be charged not only under the rectified policy but also for the past three years. In this case, there is no question of non-charging of the correct premium, because insurance coverage was taken only for one premises. In this view of the matter, it is not necessary to discuss the provisions of Section 64 UC in the present case. If there is alleged mistake, the Insurance Company has to suffer, but the insured cannot be compelled to pay premium for which he had not taken insurance coverage. Hence, this complaint is allowed. The Insurance Company is directed to refund the amount of Rs.26,68,530/- with interest at the rate of 9% per annum from the date of its recovery till its payment. The Insurance Company shall also pay Rs.20,000/- as costs, to be deposited with the NCDRC Bar Association Legal Aid Fund.