(2008) 07 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

DEVA SINGH SHAM SINGH APPELLANT

Vs

ORIENTAL INSURANCE CO LTD RESPONDENT

Date of Decision : 21-07-2008

Acts Referred:

Citation : 2008 3 CPJ 274

Hon'ble Judges : R.C.Jain , P.D.Shenoy J.

Advocate : Deepa Chacko , M.L.Mahajan

Judgement

1. -THE short point to be decided in this case is whether the insured godown/ shed is a first class construction or a second class construction and if the insured premises is not built as per the norms of first class construction then whether any amount is payable due to peril caused to the insured? case of the complainant

2. THE complainant''s main activity is trading in different varieties of rice and also export of rice. It is the say of the complainant that his turnover was around. Rs. 150 crores and he was using Kandla port for shipment of rice. Due to heavy congestion in this port for the first time the complainant decided to export from Vishakhapatnam port. The complainant obtained an insurance cover for Rs. 10 crores for different types of rice effective from 17. 9. 1996 to 16. 10. 1996 for one month. On 19. 9. 1996 at about 6. 30 p. m. due to heavy rain resulted in inundation leading to damage of rice stored in the godown at Vishakhapatnam. Complainant received a telephone call intimating him that goods lying in godown worth 26835 bags with net weight of 2655. 67 MT worth Rs. 63 lacs have been damaged due to inundation of water into the godowns on account of heavy rains and cyclone. The complainant lodged a claim on 20. 9. 1996 itself and Insurance Company appointed Shri S. Krishna Murthy of Vishakhapatnam as Surveyor to assess the loss and subsequently another Surveyor S. P. Goel and Company, New Delhi to assess the loss and give a report. M/s. S. P. Goel and Co. assessed the loss at Rs. 36,12,500 after adjusting the salvage value. Though the loss suffered by the complainant was much more, the complainant agreed to the assessment

of damage made by the Surveyors. The complainant informed the Insurance Company on 25. 9. 1996 that Mr. Narayanan, Surveyor from Hyderabad was insisting for disposing of the damaged goods immediately to minimize the losses. On 24. 10. 1996 M/s. S. P. Goel and Co. informed the complainant that they have no objection to dispose of the salvage to the highest bidder. As the amount of claim was very heavy, the Insurance Company appointed an investigator M/s. L. V. Associates and Co. Bombay who came to the conclusion that the claim made by the complainant was genuine and payable. However, the complainant was shocked to receive a letter dated 8. 5. 1999 from the Insurance Company repudiating his claim on false grounds. On 6. 5. 1999 the complainants filed a complaint before this Commission with the following prayer: (a) To direct the respondents to make the payment of Rs. 36,12,500 with interest calculated @ 24% per annum; (b) To direct respondents to pay Rs 5 lacs to the complainant towards suffering and damages for not settling the claim and towards interest; (c) Costs of these proceedings may also be awarded in favour of the complainant; (d) Any other order, which the Hon''ble Commission may deem fit and proper in the circumstances of the case, may also be passed. Case of the Oriental Insurance Company

It is contended by the Insurance Company that they had insured stock only in Class I godown, whereas the claim of the complainant was for a class of construction which was never insured by them. A class I godown is a structure having walls of reinforced cement concrete or bricks, stone or concrete blocks and any type of hard roof consisting of roof tiles, cement sheets, metal sheets or of ceramic fuses. A detailed description of Class I construction building is given in fire insurance tariff. In this case the structure was not having any walls and hence cannot be called a ''godown''. Such a structure not having walls as per specifications is called a ''shed''. The Insurance Company had not insured the property contained in the shed.

3. FROM fire insurance point of view, and more so, in relation to hazards in storm, tempest, flood and inundation risks, the exposure to the risk is greater in a shed than when the property is contained in a class I godown. The complainants had paid insurance premium applicable to a class I godown and not to a class II shed. The Surveyors had stated in their report that if the insured godown would have been of class I construction, the loss would not have occurred, because the damages were mainly due to the gale with rain which hardly lasted for half an hour. The preliminary as also the final survey report indicate that the loss has been caused more by the rainwater falling upon the rice stored in the shed as the curtains around the sheds were blown away by the high wind. It is submitted that the insurance policy covers the risk of flood and inundation and not the risk of rain water. There is, therefore, no admissible claim under the policy. Submissions of the learned Counsel for the complainant The Insurance Company had collected Rs. 44,888 as premium on all the stocks of rice stored in specific godowns at Vishakhapatnam port trust area for a period from 17. 9. 1996 to 16. 10. 1996 for a sum assured to the tune of Rs. 10 crores. The

cover note mentions fire policy ''c including terrorism risk and flood and allied perils. Prior to this, the complainant had received a fax from one of its employees dated 17. 9. 1996 giving the location of the godowns situated at Vishakhapatnam and also mentioning the following words : "newly pacca 1st Class construction"

4. THIS fax message was given to the Insurance Company and insurance cover was obtained for specific godowns and the godown names and locations of the godowns built of first class construction. Each one of the Surveyors and Loss assessors have assessed the loss to the rice stored in the godowns damaged due to inundation of water. He quoted following three paragraphs from the report of S. Krishna Murthy, Surveyor: "the Sarat Chatterjee godowns are all pucca buildings. Out of five godowns in this complex, the large four godowns are built in two rows in North-South direction with one behind the other. Out of these four godowns, three are of open sided with A. C. sheet roofing on M. S. tubular trusses. The trusses are supported at ends with columns of M. S. Channels. The flooring was of P. C. C. and almost in level with the surrounding ground. Water drain gutters are provided along the compound wall. Electrical wires are run in conduits. These three buildings conform to Class II construction only. They measure 170 M x 20 M, 312 x 20 M (western row) and 90 x 20 M (eastern row and behind the covered godown) respectively. The western side of the first West side godown from entrance where work was in progress was reportedly covered to its full height with plastic sheets secured onto M. S. pipes and placed between the trusses. The fourth large godown (eastern side row and first from entrance) was a totally covered godown conforming to Class I construction. The superstructure was built of bricks between RCC Column framework. The roofing was of A. C. sheets on M. S. tubular trusses. The flooring was of PCC and almost in level with surrounding ground. The electrical wires were run in conduits. This building measuring 170 M x 20 M was divided at the centre to form 2 separate blocks provided with rolling shutters. The fifth godown conforming to class I construction and located near the entrance and built along the western compound wall was used for storing urea. Description of Accident Scenario the insured''s stocks of rice were stored in the first godown on the western row situated at Sarat Chatterjee Godown (VSP) Pvt. Ltd. , godown complex and also at Bothra Shipping Services godown as on 19. 9. 1996. The loss was confined to stocks stored at Sarat Chatterjee godown. One of the Joint Surveyors Sri S. Krishna Murthy visited the godown on 20. 9. 1996. During this visit it was found that the stocks of rice stored in the Sarat Chatterjee godown on the western side in the first row was affected by gale and rain water. The side curtains reportedly hung from top along the western side of this godown were displaced and few lying on the ground. The rice stored in heaps (sieved and unsieved), 100 kg. bags, 50 kg. bags repacked sieved rice and broken rice were affected to various degree by water. The rice was wet, discoloured and formed into lumps. At places fungus had started developing on the bags. The wet rice on the top layers was emitting foul smell. Film of water layers had formed on the floor at places in and around the rice stocks. There were indications of the damages to surrounding

properties such as lamp post, trees, etc. , due to the gale lashed on the previous day. "

He submitted that the difference in insurance premium between class I and class II construction is nominal and the complainant could have easily paid higher premium for class I construction if that was brought to his notice by the Insurance Company. This was not done, as damage to the insured stock is not disputed. The Insurance Company should reimburse the minimum loss to the tune of Rs. 33. 60 lakh with interest.

5. THE complainant has only gone by the version of his employee in whose fax message it was mentioned that the godown belonged to class I construction, which was factually incorrect and the same fax copy was given to the Insurance Company. Submissions of the learned Counsel for the Insurance Company

6. IT is learnt that as United India Assurance Company at Vishakhapatnam had refused to insure the goods stored in the second class construction the complainant had approached the Branch of the Oriental Insurance Corporation located at Amritsar. The Oriental Insurance Company had issued a cover note on the basis of the fax given by the complainant, which was sent by his employee from Vishakkapatnam wherein it was mentioned that godown was of first class construction. Loss, which had taken place in respect of rice which was entirely stored in the open-sided shed. This has been stated by both the Surveyors namely S. P. Goel and Co. as well as S. Krishna Murthy. She stressed that the rice was stored in a shed of second class construction. Fire policy covers only the perils of Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, Flood and Inundation and there was no cyclone on the date of the peril i. e. 19. 9. 1996 according to the weather report. Hence, the claim is not payable. Findings

It is not in dispute that the insured had obtained an insurance cover for the rice stored in godowns at Vishakhapatnam port, it is also not in dispute that several bags of rice were damaged due to inundation of water The Surveyors and Loss Assessors have calculated the loss caused due to the peril. As per Tariff Advisory Committee Regulations in class I construction, walls should have made of RCC, bricks, stone or concrete blocks with or without framework of unencased steel. Brickwork with an outside bracing of timber filled in with brick (for earthquake protection). Cladding of gable ends with AC/cgi sheets permitted, provided the base of the cladding is atleast 4. 5 M above the surrounding ground level.

7. THE Surveyors S. P. Goel and Co. reported that the affected godown admeasured 170 M x 20 M is open from all sides. The roof is of A. C. sheets resting on M. S. tubular trusses supported on M. S. channel columns. Flooring is of PCC and is in level with surrounding ground. The gable height is around 7 mtrs. Thus, as per insurance terms, the classification of godown premises is of class II construction. M/s. L. V. Associates have observed that the class of construction of godown M/s. Sarat Chatterjee and Co. Pvt. Ltd. has been declared as 1st class construction in the cover note whereas on inspection of the

site it was observed that the godown was not a godown, but it was only an open shed, even without a platform, only due to this reason the rain water along with gale damaged the stored rice in these godowns. Had this been a 1st class construction with the sidewalls the loss would not have occurred. (Emphasis added)

8. VIEWED from any angle the structure in which insured rice was stored and was damaged and for which the claim was made by the complainant did not have walls at all. There was no raised platform and the flooring was at the same level as the ground outside the structure. As the asbestos roof was supported by M. S. tubular trusses and angles, this structure can at best be called a shed conforming to the specifications of class II construction. The case of the complainant is that he insured the goods on the basis of the fax message and Insurance Company did not intimate him about the difference in premium payable for class I and class II construction holds no water, because the complainant is not an illiterate person who could not have understood the implications of such a difference. He owns a big export house and has been exporting huge quantity of rice from Kandla port and only due to congestion at the said port he shifted to Vishakhapatnam port. Accordingly, we do not find any merit in this complaint and, therefore, the complaint is hereby dismissed. There shall be no order as to costs. Complaint dismissed.

