(1995) 03 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

DEVI DASS GOPAL KRISHEN WAREHOUSE — APPELLANT

Vs

Oriental Insurance Co. Ltd. — RESPONDENT

Date of Decision : 29-03-1995

Acts Referred:

Citation : 1996 3 CPJ 245

Hon'ble Judges : Malik Sharief-Ud-Din , KrRameshwar Singh J.

Final Decision : Complaint allowed with costs

Judgement

1. THIS complaint arises out of a dishonoured insurance policy. The complainant had insured his vehicle 784-JKQ with the opposite party under Policy No. 234102/ 31/91/01114/302, for a sum of Rs. 2,16,500/-. The vehicle was totally lost in an accident due to vis-major on 4.11.1991. A. communication to this effect was addressed to the Insurance Company and the Insurance Company deputed Shri Arora and thereafter one Mr. Deepak Surveyors and both of them reported total loss. In his report dated 26.7.1991 Shri Chopra made a report that in terms of the market value of the vehicle the liability of the Company is to the tune of Rs. 1,86,523/-.

2. THE Insurance Company found the claim inadmissible on the ground that the accident in which the vehicle was lost does not fall within Clause F under Section 1 (Loss of damages) as according to their interpretation the loss due to land slide/rock slide does not fall under Clause F (Accidental External Means). Only on this ground his claim has been denied. Objections excepting this particular ground other defence has been offered and the repudiation of the claim was conveyed to the complainant by a letter of the opposite party dated 14.9.92. We have waited enough for the Counsel for the respondent but unfortunately he did not turn up. This claim is a very old one and there is no reason for us to keep it pending particularly when the resistance to the demand of the claim is offered only on the ground that according to the interpretation of the Insurance Company the claim is not covered by Clause F namely (Accidental External Means). The matter therefore rests on the interpretation of Clause F. In our view

the proper interpretation put on the expres sion (Accidental External Means) would be a loss due to some external force not within the control of humans. We are sorry to state that the learned Counsel for the opposite party has not appeared and has deprived us of his assistance in the matter. In any case in view of the opinion expressed by us we are of the view that the claim of the complainant has wrongly been denied. We, therefore, allow this complaint and direct that the respondent shall pay a sum of Rs. 1,88,523/- as a loss worked out on market value with interest @ 12% from the date of Surveyor''s report till the date of final realization of the said amount. We further direct that this claim shall be paid within 2 months from the date of the order failing which the complainant shall be entitled to invoke Section 21 of the Act. In view of the facts of this case and in view of the fact that the Clause was wrongly interpreted. We do not think it to be a fit case for compensation but we assess the costs of this litigation at Rs. 5,000/-. This amount shall also be paid to the complainant within the period prescribed. Since the opposite party has failed to appear, the order be treated as ex-parte. Complaint is disposed off. Complaint allowed with costs.