(1993) 01 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

DILIPKUMAR CHIMANLAL MODI APPELLANT

Vs

New India Insurance Co. Ltd. RESPONDENT

Date of Decision : 06-01-1993

Acts Referred:

Citation : 1993 1 CPR 308 : 1993 3 CPJ 1236

Hon'ble Judges : S.A.Shah , R.K.Shah J.

Final Decision : Appeal allowed with costs

Judgement

1. THE present appellant is the original complainant who had insured the tobacco in his godown for fire, S.P. (Spontaneous combustion) and flood and had paid the premium of Rs. 2250/- for all the three items. THE policy was in force for 12 months beginning from 20.6.89 to 19.6.90. THEre is no dispute that on 30.7.1989 there was a fire in the godown and certain goods were subjected to said fire. THE assessment appears to have been made by the surveyor of the Insurance Company of Rs. 1,08,172/-. A complaint has also been lodged with the police. A panchnama appears to have been made. THE claim was lodged by the complainant. However, surprisingly, instead of sending the reply by the Insurance Company, the surveyor appears to have sent the reply on 9.10.89 that the claim is not entertainable. Mr. Chudgar, the learned advocate appearing on behalf of the Insurance Company is not able to point out as to whether the Insurance Company has written any letter for formally repudiating the claim. Being aggrieved by the indecision and indifference of the Company, the complainant filed a complaint before the District Forum. However, the District Forum has rejected the claim only on the ground that though there was an incidence of fire having occurred, there was no actual fire (flame), but goods have been burnt on account of the internal heat which can be said to be internal combustion as argued by Mr. Chudgar and, therefore, the complainant was not entitled to the claim. Surprisingly also the District Forum has stated that if a burnt match stick is put in the tobacco, then there will be smoke and there will be a fire, because tobacco is inflammable article and there will be big fire if the tobacco is burnt. On this account there is a breach of policy and the terms of the policy are not

attracted. We fail to understand what is written by the learned District Forum, carries no meaning. THE real issue before the District Forum was as to whether the tobacco was destroyed on account of internal fire, which has also given rise to smoke, such a type of fire is covered under the policy or not.

2. MR. Chudgar vehemently urged that as there were no flames, it cannot be said that there was a fire though he has not disputed that there was smoke and heat resulting into the damage to the goods to the extent of Rs. 1,08,172/- as assessed by the company surveyor. If we look to the terms of the policy and the coverage, it appears that the coverage is not only against fire but also against S.P. It is very well known that tobacco is heat producing article and on account of external heat, in a very hot country there is always the possibility of internal combustion which might not give actual flames but only burning and smoke. There is also in the evidence that the consumer saw smoke coming out from the godown. He not only informed the police but also the Municipality for fire brigade. This is a clear case in which there is no dispute that there was a fire but the only dispute is that since there were no flames, it, therefore, cannot amount to fire and the insured is not entitled to any damages. The same is the observation of the learned Judge, though the latter portion of the judgment is not understandable. However, even if the facts as stated by the learned Judge are accepted that there was no actual flames coming up, even then it cannot be said that the goods are not covered under the policy. The policy is not only against the risk of fire but against the risk of S.P. also. The appellant has with full understanding taken the coverage of internal combustion also. What is internal combustion and how this is not covered is not satisfactorily explained by MR. Chudgar. MR. Chudgar''s contention is that even in an internal combustion there should be flames. We are constrained to say that MR. Chudgar is not right in his submission. The very purpose of adding any additional item and recovering premium for the same clearly show that even in a case if there is no flame by fire the goods are covered on account of S.P. If there is a fire, the same can be covered under first head but if there is no fire and there is destruction of goods due to internal combustion which has also resulted into smoke, the coverage under S.P. is attracted. Unfortunately, the District Forum has not considered this aspect of the policy and, therefore, has committed an error. The Insurance Company has not cared to reply or give explanation for repudiation, as usual. It may not be forgotten that the Insurance Company is holding monopoly of general insurance. There is no other policy which gives coverage to such type of risk except the risk by fire and S.P. It, therefore, necessarily follows that this coverage should be broadly interpretted so that consumers can get the protection and that appears to be the purpose of not defining these words. We are, therefore, of the opinion that the coverage of S.P. fully covers the internal combustion whether there are flames or not. If there is a flame the same will be covered under the head ''fire'' and not internal combustion and the Insurance Company has, therefore, committed an error in repudiating the claim of the appellant. There is a clear deficiency in service which has kept our jurisdiction.

We, therefore, hold that the Insurance Company is liable to pay the damages which has been assessed by the surveyor at Rs. 1,08,172/- with running interest @18% p.a. till the payment is made and cost. However, in order to bring the matter within the jurisdiction of the District Forum the complainant has voluntarily reduced the claim to Rs. 1 lakh. We, therefore, award Rs. 1 lakh to the complainant with running interest @18% and cost which we quantify at Rs. 2,000/- for both the Courts. ORDER The appeal is allowed. The order of the District Forum is set aside. The Insurance Company is directed to pay Rs. 1,00,000/- (Rupees one lakh only) with running interest @ 18% from 1.10.89 [i.e. two months after the date of accident] till full payment is made and cost which is quantified at Rs. 2,000/-. These amounts shall be paid by the Insurance Company within 4 weeks from the date of receipt of this order. Appeal allowed with costs.