(2015) 01 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

Divisional Manager, Oriental Insurance Co Ltd — APPELLANT

Vs

Kamadi Nookaraju S/O Peraiah — RESPONDENT

Date of Decision : 14-01-2015

Acts Referred:

Citation : 2015 2 CPJ 183

Hon'ble Judges : J.M.MALIK , S.M.Kantikar J.

Advocate : SAKSHI GUPTA , K.RADHA

Judgement

1. SHRI Kamadi Nookaraju, the complainant herein, is a boat operator -cum - owner of a fishing boat. He obtained an insurance policy from OP - Oriental Insurance Co. Ltd., for a sum of Rs. 8 lakhs, for his fishing boat. It was for the period from 27.7.1994 to 26.7.1995. The boat was sailed out for fishing on 10.11.1994. While moving ahead, on 22.11.1994, the boat got jolts with heavy bump and the water ingressed into the boat and the boat got drowned. The complainant submitted the claim to the insurance company, which was repudiated.

2. HENCE , the complainant filed a complaint before the District Forum, Kakinada. The District Forum, on 10.10.2007, dismissed the complaint, on the ground that the complainant had failed to discharge the burden of proof to prove that the proximate cause of loss of boat was due to peril of sea.

3. THE said order of District Forum was challenged by the complainant by way of first appeal before the State Commission, Hyderabad; which was allowed by order dated 31.8.2009 and directed the OP/Oriental Insurance Co. Ltd. to pay a sum of Rs.8 lakhs with interest @6% per annum and costs of Rs.3,000/ -. Therefore, aggrieved by the impugned order, the opposite party preferred this revision petition.

4. WE have heard the learned counsel for both the parties.

5. LEARNED counsel for the petitioner vehemently argued that the complainant failed to prove the proximate cause of accident which was due to sea peril. There

was no possibility, that the boat was sunk by peril, the onus was upon the owner to prove it. The ingress of water because of damage or through the holes in the stern glands caused by natural decay. Therefore, it was not a sea peril. The OP had appointed M/s Metcalfe and Hodgkinson (Pvt.) Ltd. as surveyor, immediately after receiving the information of drowning of the boat. Also, the OP received anonymous letter stating that the boat did not sink, but it was sold away by changing its number. Thus, the surveyor''s report submitted on 3.10.1996 was correct, as the claim was not genuine and recommended for repudiation. Thereafter, the OP company appointed Shri K. Nagaruddin as investigator on 26.3.1997. He also stated that the claim was false and recommended for repudiation. Therefore, on 22.10.1999, the claim was repudiated.

6. WE have perused both reports, available on file. The first surveyor had concluded that ''after thoroughly scrutinizing the information gathered by the driver and crew members of "FKKD -025", we are of the opinion that the jerking and bumping of the vessel can only be felt either due to a collision or grounding or in case of any major breakdown of either of the trawling wires.''

7. THE rival arguments from the counsel for the complainant are that there was a breakage of stern tube and water rushed into the boat and this falls under clause 6.22 of the terms and conditions under the Sea Perils. Also he placed reliance upon the Apex Court''s judgment in United India Insurance Co. Ltd. vs. MKJ Corporation , Cons. 4781 NC 1998 (2) CLT 489 SC, wherein it was held that for settling or rejecting an insurance claim, two months'' time is a reasonable time. In the instant case, not only the Insurance Company has taken 3 long years to repudiate the claim but they have also not furnished the copy of surveyor''s report to the complainant. When it is not in dispute that the boat was not traced, the contention of the insurance company that there was discrepancy in the statements of the crew and that the boat, would be subject to jerking and bumping either due to collusion on ground in case of any major breakdown, is unsustainable. Also, there was no technical expert report examined by the insurance company. It is not the case of the complainant that the surveyor and the investigator who were appointed by the insurance company did not raise any doubt about the manner of accident which occurred. Therefore, we are of the considered view that the State Commission''s order has squarely covered all the issues of peril.

8. ON the basis of entirety of facts and the evidence on record, we find no merit in this revision. Hence, dismissed. There shall be no order as to costs.

