(2002) 01 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

D.RAJANI DEVI APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 02-01-2002

Acts Referred:

Citation : 2002 2 CPJ 369 : 2002 3 CPR 225 : 2003 1 CLT 287

Hon'ble Judges : P.Ramakrishnam Raju , Mamata Lakshmanna J.

Final Decision : Complaints allowed with costs

Judgement

1. O.P. No. 59/1995 : The complainant is carrying on business in aqua culture at Seethanagaram H/o Nowpada Village, Santha Bommali Mandal, Srikakulam District. For the said purpose she dug 14 ponds. She purchased prawn seedlings and stocked them on 27.8.1994 in those ponds. The stocking was done before the Inspector of Fisheries, Tekkali who was deputed by the Assistant Director of Fisheries, Srikakulam on application made by the complainant. The Inspector of Fisheries issued a certificate showing the stocking, etc. Basing on the said certificate, Assistant Director of Fisheries also issued a certificate dated 14.9.1994 certifying the said stocking for the purpose of coverage of insurance of prawns was done in those ponds. The total water spread area is 14 hectares, approximately one hectare for each pond. Those certificates disclose the particulars like date and total number of seed stocked, rate of survival, total expected survival, total expected yield and total expected return.

2. THE opposite parties'' Insurance Company agreed to insure the prawn and bunds for Rs. 18.00 lakhs. Accordingly the complainant submitted the proposal form for Brackish Water Prawn Insurance and paid an insurance premium of Rs. 33,310/- through a cheque dated 17.9.1994 and obtained a receipt/voucher dated 30.9.1994. Though the complainant waited for receipt of the insurance policy, the opposite parties did not issue the policy but went on postponing on some pretext or other. While so the complainant noticed disease to the prawn and accordingly issued a telegram on 5.2.1995 to the opposite parties asking the latter to send Surveyors. In response to the telegram the second opposite party

deputed Surveyor who inspected the ponds and noticed the disease. But to the surprise of the complainant the second opposite party issued a letter dated 9.2.1995 stating that the policy expired by 22.1.1995 and hence the claim cannot be entertained. O.P. No. 60/1995 :

The complainant in O.P. No. 60/1995 is the husband of the complainant in O.P. No. 59/1995. He filed this complaint with almost identical allegations but the number of ponds dug by him are 8 only. The certificates issued by the Inspector of Fisheries and the Assistant Director of Fisheries clearly give the details that the total extent of water spread area is 8 hectares in respect of eight ponds belonging to this complainant as well as other details like date and total number of seed stocked, rate of survival, total expected survival, total expected yield as well as total value. It is also the case of the complainant that he submitted a proposal for Brackish Water Prawn Insurance with the opposite parties'' Insurance Company for these eight ponds. The latter, on verification of the certificates issued by Inspector of Fisheries and Assistant Director of Fisheries and also on physical verification of the prawn and the ponds directed him to pay insurance premium of an amount of Rs. 19,410/-, both for the prawns stocked and for the bunds, for these eight ponds for insuring them for Rs. 12.00 lakhs; and he accordingly paid the said amount under a cheque dated 18.9.1994 and obtained a receipt/voucher on 30.9.1994. He noticed the disease affected to the prawn and accordingly informed the opposite parties'' Insurance Company by telegram dated 5.2.1995 which is a joint telegram issued on behalf of both the complainants referred to above and got a common reply dated 9.2.1995, already referred to stating that the policy expired on 22.1.1995 and there is no liability to entertain his claim. Hence, both the complaints.

3. IT is the case of both the complainants that the objection that the insurance coverage expired by 22.1.1995 is false. Hence, both the complainants approached by way of these two complaints claiming Rs. 18.00 lakhs and Rs. 12.00 lakhs with interest at 18% per annum from 5.2.1995 together with damages of Rs. 25,000/- each. In the counter affidavit filed by the first opposite party it is admitted that the complainants in O.P. No. 59/1995 obtained a Brackish Water Prawn Insurance Policy for Rs. 7,50,000/- covering the period from 30.9.1994 to 22.1.1995. The seedlings were stocked on 27.8.1994 and they would be ripe for harvest after ten fortnights (150 days). As the policy expired on 22.1.1995 it rightly repudiated the claim. The opposite parties'' Insurance Company deputed a Surveyor by name B. Pydi Raju who inspected the prawns on 6.2.1995 and submitted his report on 7.2.1995. As per his report it is seen that he found the prawns are in good healthy condition. Accordingly he recommended for repudiation.

4. SO also in O.P. No. 60/1995 a similar counter was filed admitting that the complainant obtained a Brackish Water Prawn Insurance Policy for Rs. 4,50,000/- commencing from 30.9.1994 to 22.1.1995. The seedlings were stocked on 27.8.1994 and would be ripe for harvest after ten fortnights (150 days). As the

policy lapsed on 22.1.1995 the claim was rightly repudiated. The Surveyor, B. Pydi Raju also found that the prawns were in good healthy condition and, therefore, recommended for repudiation. In O.P. No. 59/1995 the complainant was examined as P.W. 1 while her neighbour as P.W. 2 and the Sarpanch of Nowpada Village as P.W. 3. Besides this she filed Exs. A-1 to A-15. The opposite parties examined two witnesses including the Surveyor as R.W. 1. They marked Exs. B-1, B-1a and B-2. In O.P. No. 60/1995 the complainant examined himself as P.W. 1. Both parties requested that the evidence recorded in O.P. No. 59/1995 can be read as evidence in O.P. No. 60/1995 also. The opposite parties in O.P. No. 60/1995 did not separately examine any witnesses except adopting the evidence of R.Ws. 1 and 2 adduced in O.P. No. 59/1995. As most of the evidence is common in both the O.Ps. they are disposed of by this common order. The points for consideration are : (1) What is the date of stocking of the prawn in the ponds ? (2) What are the sums insured in each of the O.Ps. ? (3) Whether the repudiation of the claim in valid ? (4) To what relief ? Points 1 to 4 :

5. EX. A-4 issued by the Inspector of Fisheries in both the O.Ps. shows that stocking was done on 12.9.1994, prawns of fifteen days old. EX. A-5 certificate was issued by the Assistant Director of Fisheries confirming the same. These two certificates amply corroborate the oral evidence of P.W. 1 in both the O.Ps. that stocking was done on 12.9.1994. The learned Counsel for the opposite parties relies on EX. A-6 registered notice issued by the complainant in O.P. No. 59/1995; wherein it is stated that the complainant on stocking prawns with a view to have insurance coverage for the same paid the prescribed premium and obtained an insurance policy No. 150201/47/94/420 from the Company and, therefore, the stocking was already done by 27.8.1994 and if ten fortnights are reckoned from that date the period would end by 22.1.1995. We cannot give credence to this submission as this notice EX. A-6 does not show that stocking was done on a particular day. Even assuming that the complainants have stated that the date of stocking was 27.8.1994, the same cannot be given much credence in view of EXs. A-4 and A-5 which clearly show that the seedlings were stocked on 12.9.1994 which were of 15 days old. These are the certificates issued by the concerned Department and by technical people. Therefore, the impression of lay people like complainants cannot be relied on in fixing the date of stocking. There is no contra evidence adduced by the opposite parties that the dates mentioned in EXs. A-4 and A-5 are either mistake or false. The mere mention of the date 27.8.1994 in the policies by the opposite parties without reference to the complainants cannot have any relevancy inasmuch as the policies are tailor-made to suit their convenience as hereinafter discussed. As such we are constrained to hold that the date of stocking was only on 12.9.1994 and not earlier since there is no warrant to suppose that the stocking was done on 27.8.1994.

6. IT is admitted that the complainants issued a telegram on 5.2.1995 in response to which a Surveyor was appointed who visited the ponds on 6.2.1995. Under Ex. A-12 dated 9.2.1995 the second opposite party repudiated the claim of

both the complainants on the sole ground that the risk period under the policies expired by 22.1.1995. As we have already held that the date stocking was 12.9.1994 which is for a period of ten fortnights, the policies would be in force till 12.2.1995. The complainant in O.P. No. 59/1995 seems to have informed the M.R.O. about the attack of the disease by 5.2.1995 who in turn informed the said fact to the Assistant Director of Fisheries under Ex. A14. The Assistant Director of Fisheries in his turn visited the ponds and issued certificate Ex. A13 that the prawns stocked in Brackish Water ponds belonging to the complainant were affected by white spot virus disease causing damage to crop. So also Exs. A-12 and A-11 in O.P. No. 60/1995 issued by the Mandal Revenue Officer and the Assistant Director of Fisheries respectively clearly show that the prawns stocked in Brackish Water ponds belonging to the complainant were affected with white spot virus disease. These proceedings in our opinion clinch the issue that the prawns were affected by white spot disease even by 5.2.1995. Hence, the prawns were infested with disease which was noticed by 5.2.1995 on which date a telegram was issued to the opposite parties to inspect and send a Surveyor. We are of the opinion that the repudiation of the claim by notice dated 9.2.1995 is unjust as hereinafter discussed. The next aspect that falls for consideration is what are the insured amounts for which the policies were taken. The complainant in O.P. No. 59/1995 filed Ex. A-11 which shows that a sum of Rs. 33,310/- was paid towards the premium. So also Ex. A-10 in O.P. No. 60/1995 shows that the complainant therein paid Rs. 19,410/- towards the premium for the policy. The opposite parties contend that the complainants insured for a sum of Rs. 7,50,000/- and Rs. 4,50,000/- respectively, while the complainants maintain that they have insured for Rs. 18.00 lakhs and Rs. 12.00 lakhs respectively. Which version is correct is the next question that falls for consideration. R.W. 2 who is the Senior Divisional Manager of the second opposite party says that the premium will be calculated on the sum insured for. What percentage of premium is fixed can only be seen from the policy. He did not file any rules and regulations governing the Brackish Water Prawn Insurance, but merely says that what percentage of premium is determined can only be known from the policy. The case of the complainants is that the policies were not issued until the complaints were filed. It is also further contended that the policies were withheld and kept back with the opposite parties with a view to change the terms according to their convenience. It is seen a specific plea is taken by the complainants in the complaints that the policies were not issued in spite of their demands, but postponed on some pretext or other on the ground that the policies were under preparation and finally they were never handed over to them till the date of filing of the complaints. For this the counter affidavits are delightfully silent. Therefore, in the absence of any denial of this averment, we are of the opinion that the opposite parties have not handed over the policies in spite of several demands by the complainants but they were furnished only after filing the complaints. It is pertinent to note that even R.W. 2 also admits that he has no proof of delivery of the policies. Therefore, the version of the R.W. 2 that the policy throws light as to what percentage of premium is determined cannot be swallowed. He states that he has not charged premium on the basis of the proposal form but he admits that he had received Exs. A-4 and A-5 which contain several details including the value of the prawn as Rs. 18.00 lakhs and Rs. 12.00 lakhs respectively. As the complainants have specifically submitted the proposal forms for insurance coverage of Rs. 18.00 lakhs and Rs. 12.00 lakhs and also paid the premiums accordingly as early as on 30.9.1994 through cheques dated 18.9.1994, it does not lie in the hands of R.W. 2 to reduce the sums insured unilaterally without even intimating the complainants. Inasmuch as the policies were not issued to the complainants immediately or at any rate before the peril took place, we are of the opinion that the opposite parties cannot turn round to reduce the sums insured unilaterally without notice and without reference to the complainants. In the circumstances of the case, we are of the opinion that the opposite parties have kept back the insurance policies with them only with a view to reduce the sums insured or the period of risk to suit their convenience in case of any eventuality that may arise in future. This practice of not even furnishing the insurance policies after having collecting the full insurance premium to say the least is unfair trade practice. Therefore, we cannot give any credence to the policies which are clearly tailored to suit their convenience and which are furnished after filing of the complaints. Hence, we prefer to accept the version of the complainants that the sums insured were only Rs. 18.00 lakhs and Rs. 12.00 lakhs respectively and not Rs. 7,50,000/- and Rs. 4,50,000/- respectively as contended by the opposite parties.

The learned Counsel for the opposite parties'' Insurance Company contended that as per the Survey Report, Ex. B-2 the prawns in the tanks were healthy. In the report what is stated is that at the time of visit of the Surveyor the Manager showed him some dead prawns. When they observed the other prawns they found that there was red spot and the same spot spread over the entire body of the prawn and causes death. But during the standard sample nettings they found that the prawns are in good healthy condition and he submitted the report on 8.2.1995. R.W. 2 also admits that the Surveyor''s report was received by him on 8.2.1995. After receiving the Surveyor''s report he issued the repudiation letter dated 9.2.1995 marked as Ex. A-12. If really this report Ex. B-2 was submitted to the opposite parties in this fashion, R.W. 2 would not have overlooked the said report while issuing the repudiation letter, Ex. A12. Ex. A-12 merely reads as follows : "We are in receipt of your above telegram (dated 5.2.1995) informing us the attack of disease to your prawns in ponds. In this connection we would like to inform you that the insurance taken by you vide our policy Nos. 150201/47/93/418/94 and 150201/47/93/420/94 expired on 22.1.1995 (both). Hence, we regret to express our inability to entertain your claim."

No reference is made to this report in the repudiation letter. From this Ex. A-12, we are of the considered opinion that this Ex. B-2 was not filed before R.W. 2 on 8.2.1995. It goes without saying that it must have been subsequently prepared to suit the convenience of the opposite parties. In any view of the matter surely it was not the report, if at all any report was filed by 8.2.1995. This view of our gets further strength from the subsequent events. The complainant in O.P No. 59/1995 issued a legal notice through her Advocate under Ex. A-6 which preceded the filing of the complaint, wherein she besides stating that the opposite party has been slyly avoiding sending the policy for the reasons best known to him, stated that the prawns stocked were affected by white spot disease and on her representation the Surveyor has visited the site, inspected the prawns stocked in the ponds and promised to report the matter to the opposite parties. For this the opposite parties kept mum without issuing any reply. If really the Surveyor had reported that the prawns were not affected by any disease but they were healthy, what prevented them from issuing a reply is unimaginable. Non-issue of a reply on vital aspect whether the peril has occurred or not certainly goes a long way in exposing the hollowness of the contentions of the opposite parties that the Surveyor had already reported by his report dated 7.2.1995 which was received by them on 8.2.1995. This Ex. A6 notice dated 15.2.1995 was issued practically on the heels of submission of the said report within a week. Therefore, the opposite parties would not have failed to reply had it been true that the said report was available with them as is now sought to be projected as a defence of this claim. As already seen the report of Ex. B-2 has not seen the light of the day till it was filed in the Court in February, 1996 and as its existence was not revealed either in repudiation letter, Ex. A12 or by issuing any reply to the legal notice issued under Ex. A6, we are of the opinion that this survey report came into existence much later than the date it bears and hence no reliance can be placed on it. For all these reasons the repudiation of the claim by the opposite parties is unsustainable.

7. NOW the next question is what is the compensation the complainants are entitled to. As already seen that the complainants in both cases have insured the prawn for Rs. 18.00 lakhs and Rs. 12.00 lakhs respectively. It is their case that prawns were affected with white spot virus disease. In O.P. No. 59/1995 Exs. A14 and A13 dated 5.2.1995 and 6.2.1995 issued by the M.R.O. and the Assistant Director of Fisheries establish that the prawns were affected with white spot virus disease. Similarly in O.P. No. 60/1995 Exs. A12 and A11 dated 5.2.1995, and 6.2.1995 issued by the M.R.O and the Assistant Director of Fisheries clearly establish the same. It is also the common knowledge that this white spot disease has no cure and it spreads in no time and engulfs the entire area. The evidence of the complainants in this regard is not disputed and there is no contra evidence adduced by the opposite parties.

8. FOR all these reasons we are of the opinion that the complainants are entitled to the sums insured i.e. Rs. 18.00 lakhs and Rs. 12.00 lakhs respectively after deducting policy excesses of 20%. The sums so arrived at will carry interest at 12% per annum from the date of filing of the complaints till the date of realisation. The complaints are accordingly allowed with costs of Rs. 5,000/- each. Time for payment six weeks. Complaints allowed with costs.