(1993) 04 NCDRC CK 0095

In the National Consumer Disputes Redressal Commission

FRANCIS XAVIER FISHERIES — APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. — RESPONDENT

Date of Decision : 21-04-1993

Acts Referred:

Citation : 1993 2 CPJ 897 : 1993 2 CPR 415

Hon'ble Judges : G.G.Loney , Atanasio Monteiro , Subhalakshimi Naik J.

Final Decision : Complaint allowed with costs

Judgement

1. IN this complaint, it is alleged that the complainant''s claim for loss of fishing trawler for an amount of Rs. 3.00 lakhs was not settled by the INsurance Company within a reasonable time and, therefore, apart from delay, complainant claims amount of Rs. 3.00 lakhs with 21% interest per annum and compensation of Rs. 500.00 per day for his business loss. Shortly stated facts are that complainant''s fishing trawler F.T. "St. Francis" was registered bearing No. MAR 334 DF while fishing met with an accident and sank in the sea on 17.8.1990. It was insured for an amount of Rs. 3.00 lakhs with the OP.

2. ACCORDING to complainant, he informed the Insurance Company about the accident on the date of accident i.e. 17.8.1990 and also lodged his First Information Report with the police on the same day. It is, further, alleged that the accident was surveyed by a Surveyor appointed by the OP on 27.11.1990 and Surveyor recommended settlement of complainant''s claim on the total loss basis. Complainant alleged that despite his genuine claim, it was not settle data earliest. However, according to learned advocate for O.P. complainant''s claim was settled on compassionate ground to the extent of 60% of his total claim Rs. 1,79,400.00 were, therefore, paid to the complainant by the O.P. vide their letter dated 14.8.1991 towards 60% amount of his total claim. We have heard Mr. S.N.N. Karmali, Advocate for the complainant and Mr. Emirico Afonso and Mr. Singh, Advocates for the O.P.

The OP admitted the incident of accident but submitted that the complainant violated the conditions attached to the Insurance Policy namely adverse weather conditions. According to O.P. as per policy in question, it was necessary for the complainant to follow adverse weather warranty conditions which stipulates that warranted vessel shall not be employed during adverse weather conditions notified by any one of the following authorities : (a) Meteorological Department, Government of India, or (b) Concerned Port Authority, or (c) Concerned State Fisheries Department.

3. OP has placed on record alongwith their written version a report at Annexure-A of the Meteorologist dated 16.8.1990 signed by Meteorologist-In-Charge, Goa Observatory, Panaji, in which there is mention of weather warning for fishermen. It is stated therein that "Winds will be westerly speed 55 to 65 KMPH temporarily reaching 70 KMPH ingests sea will be very rough with westerly waves. Local cautionary signal No Three kept hoisted at all ports from Dahanu to Mormugao of Maharashtra Goa coasts. Fishermen are advised not to go out in the sea during next 24 Horus" The aforesaid warning was circulated in the A.I.R. Bulletin addressed to the State Director of All India Radio, Panaji. It was broadcasted on 16.8.1990 at 2.50 P.M. According to Mr. Afonso, learned Advocate for the opponent, therefore said warning was issued by the notified authority namely Meteorological Department. However, the complainant has committed breach of warranty conditions. According to Shri Afonso, complainant has been granted 60% of his claim on compassionate grounds. It is, therefore, submitted that complainant''s claim be rejected.

4. AFTER going through the record of this complaint and after hearing arguments of both parties, we find that even to consider complainant''s claim on compassionate ground, OP took nearly about 32 months to settle complainant''s claim. We also find that OP has admitted complainant''s allegation as that his fishing trawler met with an accident on 17.8.1990, even the considerable period has been lost to consider complainant''s claim on compassionate ground. The complainant has stated that despite letter from OP dated 14.8.1991, actual payment has been made to the complainant only on 7.4.1993 is yesterday. Obviously, in our view there is inordinate delay in settlement of complainant''s claim which certainly amounts to deficiency in service of OP. However, we appreciate the gesture shown by the Insurance Company to settle complainant''s claim to the extent of 60% of his total claim on compassionate ground. The complainant has claimed full insured amount of Rs. 3.00 lakhs and interest @ 21 % from 1.9.1990 till actual realization of his claim plus Rs. 500.00 per day as loss in business. Considering the breach of warranty conditionings committed by the complainant, in our view decision of OP to settle complainant''s claim to the extent of 60% of his total claim cannot be said to be unreasonable. Hence we reject the rest of complainant''s claim. We, further, find that for the inordinate delay of 32 months, it would meet ends of justice if the complainants paid interest @ 18% per annum from 14.8.1991 i.e. the date on which OP offered 60% amount of his claim to the complainant till 07.4.1993. The complainant also be paid Rs. 1000.00 as costs of this complaint. Hence, we pass the following order. ORDER Complaint allowed with costs.

