(1994) 11 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

HANS RAJ ANAND APPELLANT

Vs

ORIENTAL INSURANCE CO. LTD. RESPONDENT

Date of Decision : 29-11-1994

Acts Referred:

Citation : 1994 0 NCDRC 42 : 1994 2 CPC 367 : 1994 2 CPR 638 : 1995 1 CLT 322 : 1995 1 CPJ 26

Hon'ble Judges : V.BALAKRISHNA ERADI , Y.KRISHAN , B.S.YADAV J.

Advocate : R.K.VIRMANI , A.K.RAINA

Judgement

1. THE Complainant herein, who was the owner of a Tata Diesel, Truck, had insured the truck with the Opposite Party Companyï¿½ Oriental Insurance Co. for as sum of Rs. 4,75,000/-for the period 6.12.1991 to 5.12.1992. While the truck was proceeding with a load of wooden sleepers from Jarmola to Dehradun, it had to stop en-route on 307.1992 due to land slides having blocked the traffic on the road in question. Unfortunately, the portion of the road where the truck had been parked, seems to have given way by reason of the caving in of the earth in the concerned portion of the road due to the collapse of the embankment supporting the road and as a result thereof the truck fell in the flood waters of river Yamuna resulting in the death of the Conductor and his wife who were then seated in the truck. Since the truck was a total loss inasmuch as it fell into the mudy water of the river and could not be traced, the Complainant preferred a claim before the Insurance Company seeking to be indemnified for his loss under the terms of the policy. Intimation about the accident had been given by the Complainant to the Opposite Party Company on 1.8.1992 and simultaneously the claim was also preferred by the Complainant before the Insurer.

2. THE Insurance Company seems to have appointed a surveyor who took his own time to furnish a report to the Insurer. Ultimately the Complainant was compelled to approach this Commission with the present complaint since the claim made by him before the Insurer remained unsettled despite the lapse of nearly one year. After receipt of notice from this Commission, the Opposite

Partyï¿½ Insurance Company served on the Complainant a letter dated 9th July, 1993 repudiating the liability stating that the claim lodged by the complainant was not payable under the policy. The letter is a very brief one. It reads as follows; "Dear Sir, Reg; Motor Claim No. 2299/31/93/00012 Policy No. 31/92/00100 Vehicle No. UP-07B-0599. With reference to your above noted claim it has been found that the loss has occured because of subsidence/ Landslide, peril which was not covered under the policy on the date of loss. We, therefore, regret that the claim lodged by you is not payable under the policy. Thanking You, Yours Faithfully REGIONAL MANAGER"

A reading of the above extracted letter clearly shows that the finding of the Insurer after it had investigated into the matter concerning the loss of the truck was that the loss had occurred because of subsidence/landslide. It also shows that the stand taken by the Insurer was that the said contingency was not covered by the terms of the policy and hence there was no liability on the part of the Insurer to idemnify the insured against the loss caused by reason of such landslide and caving in of the road. The Insurance policy issued to the Complainant has been produced before us, Section I therein under the heading'' Loss or damage'' clearly states that the company will idemnify the insured against the loss or damage to the motor vehicle or its accessories whilst thereon ''by accidental external means ". In our opinion the expression "accidental external means, has to be construed in accordance with its ordinary grammatical meaning and on such connotation we have no doubt whatever that the loss of a vehicle caused by reason of the landslide and caving in of the road certainly corrtes within the scope of the expression "accidental external means,,. The contention to the contrary advanced before us by the Counsel appearing on behalf of the Insurance Company does not appeal to us as correct or acceptable. We, therefore, hold that the repudiation of liability by the Insurer was totally unjustified. The complainant is entitled to recover from the Insurer the full insured value of the vehicle toghether with the interest for the period of delay that has occurred in settling his claim as a result of which, he would certainly has been put to loss by reason of his being rendered unable to carry on his transporation business. We accordingly order that the Insurance Company shall pay to the Complainant the sum of Rs. 4,75,000/- being the insured value of the vehicle which has been lost together with interest thereon at 15% per annum from 15th February, 1993 uptil date of payment. The complainant will also get a sum of Rs. 3,500/- by way of costs of this petition.