(1996) 04 NCDRC CK 0056

In the National Consumer Disputes Redressal Commission

HARIBHAI DHANJIBHAI VANIK — APPELLANT

Vs

National Insurance Co. Ltd. — RESPONDENT

Date of Decision : 17-04-1996

Acts Referred:

Citation : 1997 1 CPJ 589 : 1997 1 CPR 362

Hon'ble Judges : R.C.Mankad , Jatin P.Vaidya J.

Final Decision : Complaint partly allowed with costs

Judgement

1. THE complainant who is a fisherman, owned a mechanised fishing boat named ''Bhagyavati'' (boat for short). He had insured this boat for Rs. 3,60,000/- with the opponent National Insurance Corporation Limited and the insurance policy was valid for the period from June 20 to September 19,1990. THE boat sailed for fishing from Veraval port at about 6 a.m. on July 10, 1990. THE complainant has alleged that at that time the sea was calm. THEre was a crew of 8 persons including tandel on the boat. THE complainant had not gone to the sea with the boat. At about 9.45 a.m. it was reported to the complainant that the boat had sunk and the crew members of the boat were rescued by another boat fishing in the area. THE complainant informed the opponent''s Veraval office about the boat having sunk in the sea on the same day i.e. July 10,1990. On July 11,1990 some parts of the boat including engine were washed ashore. It is the case of the complainant that although the opponent appointed surveyor to survey and assess the loss caused to him nothing was heard from the opponent for a very long time. It was only on April 19, 1993 that the opponent offered to pay Rs.1,71,000/- by way of full and final settlement of the complainant''s claim. This offer was made on ''non standard'' basis. THE complainant, however, refused to accept the offer. It is in the background of the above facts that the complainant has filed this complaint for recovery of total compensation of Rs. 7,11,000/- which includes compensation of Rs. 2,50,000/- for business loss. It may be mentioned here that during the hearing of this complaint, the complainant did not press the claim for compensation of Rs. 2,50,000/ - for business loss.

2. THE opponent has contested the complaint mainly on the ground that the complainant had committed breach of special condition/ warranty regarding adverse weather. It is submitted that when the complainant''s boat was taken to sea, sea was rough and there was warning to fishermen not to venture into the sea. However, the complainant''s boat was taken into the sea for fishing inspite of adverse weather condition. THE complainant was, therefore, not entitled to claim any indemnity under the insurance policy. However, opponent had offered Rs. 1,17,000/- by way of full and final settlement of the complainant''s claim on ''non-standard'' basis. It was the complainant who refused to accept this offer. THE opponent has denied the allegation regarding the alleged loss suffered by the complainant and submitted that he is not entitled to claim compensation as claimed in the complaint. It is not disputed that the insurance policy issued in favour of the complainant contains adverse weather warranty. The insurance policy is produced alongwith Exh. 40 and the condition or clause regarding adverse weather attached to the policy reads as follows: "4. 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 Authorities or c. Concerned State Fisheries Deptt. Warranted during adverse weather. Vessel shall remain in safe waters properly moored; and, if already at sea, shall return forthwith as soon as they become aware of the adverse weather warning and, Vessel shall be manned adequately at all times except when in harbour, sheltered, safe waters when if should be secured properly and adequate watch and ward maintained through the period it remains therein."

There is, however, controversy regarding weather condition at the time when the complainant''s boat had sailed. According to the complainant, he had gone home, after the boat sailed for fishing at 6 a.m. on July 10,1990 and the sea was calm. On the other hand it is the case of the opponent that sea was rough and the boat was taken to the sea inspite of warning issued by the Meteorological Department. It is true that ordinarily fishermen would not venture into sea if the weather is adverse but they do sometimes take risk. it appears that the complainant had written letter dated February 6,1991 to the Director, Meteorological Centre, Ahmedabad (Director for short) to supply meteorological data recorded on July 10,1990. In reply to this letter, the Director wrote letter dated April 9,1991 to the complainant stating the meteorological observations recorded on July 10,1990. It was stated - "1 Veraval was not affected by cyclone on 10.7.90 2 Maximum wind speed recorded in gust during the day- Date Time in IST Direction Speed in kmph 10.7.90 1558 Southwest 52 3 Rainfall recorded during past 24 hours ending at 0830 hrs. IST of date Date Rainfall in Millimeter 10.7.90 000.0 11.7.90 000.6" On the other hand it appears that the opponent had also written letter to the Director seeking information regarding weather conditions prevailing at the sea off Veraval Port. In reply to this letter, the Director wrote to the opponent letter dated November 26,1992 wherein it stated to the effect that the following weather conditions prevailed over the sea area off Veraval on July 9, 10 &

11,1990. "Wind Southwesterly 25 to 30 knots Weather Isolated rain/ thundershowers Visibility Moderate becoming poor in rain/thundershowers Sea condition Rough to very rough Any warning Yes, Weather warning for issued fishermen for Gujarat coast for wind speed exceeding 45 Kmph issued on 9th, 10th and 11th July 1990".

News regarding the boat sinking at sea were reported in daily newspaper "Fulchhab" published from Rajkot on July 11,1990. The relevant part of the newspaper is produced with list which is at page 48. Alongwith the news regarding sinking of the boat, there are reports regarding high velocity wind from Rajkot and Jamnagar, It is stated that the weather had taken serious turn since more than two days and that wind of high velocity was blowing during day and night.

Report of examination dated July 12,1990 of the Port Officer, Veraval is produced by the complainant at Annexure-G with the complaint. Same report is produced by the opponent with last Ext. 18. In this report of the Port Officer, details regarding the circumstances in which the complainant''s boat sunk have been stated, it is stated to the effect that on July 10,1990 mechanised fishing boat ''Bhagyavati'' sailed for local fishing. On reaching 10 to 12 fathom of water off Somnath Temple at about 0700 hrs. and dropped 30 nets. Big waves dashed against the boat due to rough weather. When the big waves dashed against the boat, water entered the engine room. Water was bailed out with the help of pump and buckets. However, when another big wave dashed against the boat, more water entered the engine room and engine stopped working. The boat was pitching and rolling constantly and it was full of water. It sank within 15 to 20 minutes at about 08.20 hrs.

3. THE letter of Director produced by complainant at Annexure-D does not give complete picture. It only states that there was no cyclone, that the maximum wind speed was 52 Kmph. and that no rainfall was recorded on July 10,1990. Nothing is stated about the condition of the sea. However, the report sent to the opponent by the Director and the report of the Port Officer clearly show that sea was very rough and the wind was blowing at a speed exceeding 45 Kmph. THE Director''s letter or report also shows that warning regarding rough weather was issued to fishermen of Gujarat. From the above evidence it would appear that when the complainant''s boat ventured into sea in the morning on July 10, sea was not calm and risk was taken to go to the sea for fishing. It further appears that the boat was not far from the shore when it sank. THErefore, considering the evidence as a whole, it appears to us that the complainant''s boat sailed for fishing from Veraval Port inspite of adverse weather. THEre was thus breach of the condition regarding adverse weather in the insurance policy. Under the circumstances, if the Insurance Company has offered to pay Rs. 1,71,000/- on non-standard basis by way of full and final settlement of the complainant''s claim, it could not be said that there was deficiency of service on the part of the opponent in not agreeing to pay full amount as claimed by the complainant.

However, there is deficiency of service so far as delay in making above offer is concerned. THE incident took place on July 10,1990 and on the same day the complainant had informed the opponent''s Veraval office. THE surveyor had submitted its report to the opponent on April 3,1992 (report is dated March 11,1992). THErefore, there is no explanation as to why such a long time was taken for submitting survey report or why decision to settle the claim on non-standard basis was not taken till April 19,1993, the date of the letter making offer to the complainant. THErefore, to the extent there was delay in making offer there was deficiency of service on the part of the opponent. However, if interest is awarded on the amount offered by the opponent, in our opinion, it would take care of the compensation payable to the complainant for the delay on the part of the opponent in taking decision on the complainant''s claim. In the facts and circumstances of the case, in our opinion, the complainant is not entitled to claim anything more than Rs. 1,71,000/- together with interest and cost. In the result, we partly allow this complaint and direct the opponent to pay to the complainant Rs. 1,71,000/- together with interest @ 12% p.a. from April 1,1991 till realisation and cost of Rs. 1,000/-. Complaint partly allowed with costs.

