
(2012) 07 NCDRC CK 0150

In the National Consumer Disputes Redressal Commission

IFFCO TOKIO GENERAL INSURANCE CO LTD

APPELLANT

Vs

Gokak Textiles Ltd

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 328 : 2012 3 CPJ 522 : 2012 3 CPR 156

Hon'ble Judges : V.B.Gupta , Vinay Kumar J.

Advocate : S.M.Tripathi

Judgement

1. THESE three appeals are filed against order of the Karnataka State Consumer Disputes Redressal Commission in Consumer Complaints Nos.126, 127 & 128 of 2009. The matter in the three complaints concerned three different claims arising under the same insurance policy, taken by the Complainant from the OP/IFFCO Tokio General Insurance Co. Ltd. For this reason, all three complaints were disposed of by the State Commission through a common order, pronounced on 16.12.2011. We therefore deem it appropriate to take up the three appeals together for consideration in this order.

2. THE complainant Gokak Textiles Ltd. is a large Textile mill with 3200 employees. Prior to 2007, it was a part of the Forbes Gokak Ltd. and has become a separate company, as a consequence of de-merger of the textile division of the former.

3. IN the above historical background, the erstwhile Forbes Gokak Ltd. had taken an insurance policy from the appellant/OP, IFFCO Tokio General Insurance Co. for coverage of the machinery and equipment of its textile mills at Gokak against breakdown, for a sum of Rs.692.89 lakhs. The equipment included a 6 MW power generation system, purchased from M/s. TD Power System Pvt. Ltd. Bangalore (hereinafter referred to as TDPS), who were the authorized agents of the original manufacturer in Japan.

4. DURING the currency of the above insurance policy, the problem first arose when a crack was noticed in the turbocharger casing of the generator on

1.2.2005. The OP/insurance coy was informed and it appointed a Surveyor. Apparently, the Surveyor inspected the damaged turbocharger and gave his report to the OP. The second complaint related to the incident of 1.9.2005 concerning break down of the turbocharger due to failure of its rotating assembly. The third complaint arose from the incident of 7.12.2005 concerning the break down of the cylinder head of the power generation system.

5. THE case of the complainant before the State Commission was that despite information of the incidents and despite assessment of the damage by the Surveyors appointed by the insurance company, the claims were not settled. Due to this the complainant was unable to run the machinery and sustained substantial losses. Eventually, the insurance company repudiated the three claims through its letter of 29.8.2007.

6. PER contra, the case of the appellant/OP was that the claims have been repudiated only on the basis of the investigation and the report of the Surveyors and after due application of mind.

7. ON consideration of the evidence led by the two parties, the State Commission reached the following findings:- "8. In complaint No.126/2009 it is contended that on 01/02/2005 during the subsistence of the insurance policy, crack was noticed in Turbocharger casing. It may be due to reversal of exhaust gases after Turbocharger had run for about 6000 hours. Due to the said defect they could not run the machinery. Immediately they contacted the Opposite Party. Opposite party appointed the surveyor. Surveyor inspected the damaged spot on the same day, but took his own sweet time to submit the report. He submitted the report on 18/08/2006. The delay in submitting the said surveyor report is not satisfactorily explained. Then Opposite Party arbitrarily rejected the claim on 29/08/2007. Again there is an inordinate delay in repudiation of the said claim. According to the complainant due to the said crack they have suffered loss and damages to the tune of Rs.26,82,974/-. This damage is not otherwise disputed by the Opposite Party. 9. It is the bounden duty on the part of Opposite Party to examine the said machinery before they covered the risk. After some damages occurred to the machinery, thereafter they cannot take the defense that there was no proper maintenance, handling was not proper, the defective machineries are not immediately replaced or changed or that there is any inherent manufacturing defect etc. The company which supplied the said machineries has examined it and stated that there is no inherent manufacturing defect with the said machinery. Under such circumstances, the repudiation made by the Opposite party appears to be unjust and improper. 10. As far as complaint No.127/2009 is concerned there is a breakdown of the Turbocharger due to failure of rotating assembly on 01/09/2005 that too within the insurance coverage period of 01/09/2005 to 31/08/2006. The said damage was brought to the notice of the Opposite Party immediately. Opposite Party appointed the surveyor and he examined the damaged spot. One of the surveyor M/s Micky Batawadekar has confirmed the loss and damage suffered by the complainant.

But somehow to the reasons best known to Opposite Party, it appointed the second surveyor M/s B.P. Shah, reasons are not known. So this kind of approach of Opposite Party appears to be unreasonable and unacceptable. When one of its own surveyor approved the damages and loss suffered by the complainant and gave the report on 16/11/2005 itself, there was no need for appointment of a second surveyor and that the claim was repudiated on the basis of the second surveyor report on 29/08/2007 nearly after lapse of two years. Under such circumstances, we find there is a proof of deficiency in service on the part of Opposite Party. 11. As far as complaint No.128/2009 I concerned on 17/12/2005 damage occurred to the cylinder head on account of sudden change of load condition or due to air blokage cylinder head was damaged. The nature of damages as alleged by the complainant in all the three complaints is not otherwise disputed or denied. Opposite Party has not got appointed any expert to speak that such damage, crack etc occurred due to improper maintenance, carelessness and negligence on the part of complainant. When there is no such evidence, we have no other go but to believe the say of the complainant in to-to."

8. WE have carefully considered the records and heard Shri S.M.Tripathi, Advocate for the appellant, IFFCO Tokio General Insurance Co. Ltd. Learned counsel argued that the complaints were time barred as the incidents, from which the claims arose, occurred in the year 2005, while the complaints before the State Commission were filed in the year 2009. Shri Tripathi cited the decision of Hon"ble Supreme Court Kandimalla Raghavaiah and Co. Vs. National Insurance Co. Ltd. and Anr., III (2009) CPJ 75 (SC). He drew our attention to the following observation of the Apex Court:- "13 The term "cause of action" is neither defined in the Act nor in the Code of Civil Procedure, 1908 but is of wide import. It has different meanings in different contexts, that is when used in the context of territorial jurisdiction or limitation or the accrual of right to sue. Generally, it is described as "bundle of facts", which if proved or admitted entitle the plaintiff to the relief prayed for. Pithily stated, "cause of action" means the cause of action for which the suit is brought. "Cause of action" is cause of action which gives occasion for and forms the foundation of the suit [See: Sidramappa V. Rajashetty & Ors., (1970) 1 SCC 186]. In the context of limitation with reference to a fire insurance policy, undoubtedly, the date of accrual of cause of action has to be the date on which the fire breaks out."

9. LEARNED counsel explained that in the above case the cause of action had arisen with the fire that broke out on 23.3.1988. The Consumer Complaint was filed on 24.10.1997 i.e. over nine years thereafter. For the loss suffered on 23.3.1988, the insurance company was asked by the Complainant to supply the claim form on 6.11.1992. By that time the period of limitation for the purposes of Section 24-A of the Consumer Protection Act had expired. The Apex Court held that the complaint before the Commission against the insurance company for deficiency in service, whether for non-issue of claim forms or for not processing the claim under the policy, ought to have been filed within two years from the date of the fire i.e. 23.3.1998.

10. SRI Tripathy argued that the "cause of action", in the present appeals, arose, with the breakdown of the power generation system, in the year 2005. As more than four years had elapsed when the consumer complaint were filed in 2009, the State Commission should have dismissed the complaints under Section 24-A of the Consumer Protection Act, 1986. We would like to note that the two sets of facts are very different. In the appeal before us, the cause of action arose in 2005 with the brake down of the power generation system and arose again with the repudiation of the claim in 2007.

11. THE concept of recurring cause of action has been explained by the Apex Court in *Raja Ram Maize Products Vs. Industrial Court of M.P. and Ors.*, (2001) 4 SCC 492 in the following terms:- "10. The concept of recurring cause of action arising in a matter of this nature is difficult to comprehend. In *Balakrishna Savalram Pujari Waghmare V. Shree Dhyaneshwar Maharaj Sansthan*, AIR 1959 SC 798 it was noticed that a cause of action which is complete cannot be recurring cause of action as in the present case. When the workers demanded that they should be allowed to resume work and they were not allowed to resume work, the cause of action was complete. In such a case the workers going on demanding each day to resume work would not arise at all. The question of demanding to allow to do work even on refusal does not stand to reason."

Facts of the case before us need to be seen in the light of the law laid down in the above decisions. The incidents of breakdown of the power generator in 2005 were reported to the insurance company. Surveyors were appointed in the same year and their reports were obtained by the insurance company. Together with the grounds of repudiation, these are the "bundle of facts" due to which the cause of action would re-occur when the claims were repudiated by IFFCO Tokio General Insurance Company on 29.8.2007. Therefore, the period of limitation would run from the date of repudiation in 2007 and not from the date of loss in 2005. We therefore, have no hesitation in rejecting the argument of learned appellant counsel that the State Commission should have dismissed the complaints on the ground of limitation. Moreover, acceptance of his argument would also amount to punishing the complainant for the inordinately long delay on the part of the appellant/OP in deciding these claims under the insurance policy.

12. THE State Commission has rejected the contention of the appellant/OP that the equipments suffered from inherent manufacturing defects, on the ground that the equipment had already run for over 6000 hours. Interestingly, the letter of repudiation itself says:- "Since the three claims related to the same machine a joint meeting between the surveyors Mr. Milind Bhatawadekar and Mr. B. P. Shah was convened to ascertain the cause for repeated failures of the machine, but consensus could not be achieved. Mr. B. P. Shah brought in technical experts, M/s. Material Technology Development Centre, for failure analysis in absence of detailed failure analysis report being provided by the manufacturers." Thus,

there was no unity of opinion between the two Surveyors. As for the report of the MTDC, a perusal of the report and the written statement of the appellant/OP before the State Commission will show that this report was substantially based on assumptions about what could have led to the loss. This would explain why para 3.3 the Appeal Memorandum itself says that the decision regarding non-admissibility of the claim could be reconsidered by the appellant/OP if the circumstances so warranted, based on manufacturers failure analysis report to be submitted by the Complainants.

13. FROM the above, it is clear that instead of seeking the report of the manufacturer on the cause of loss the OP/ Insurance Company went ahead to repudiate the claims, despite absence of clarity at the level of Surveyors and placing reliance on a questionable technical report. The State Commission has therefore rightly rejected repudiation of the claims on the ground of inherent manufacturing defects.

14. FOR the reasons detailed above, we find no substance in these appeals and dismiss them for want of merit. Consequently, the impugned order passed by the Karnataka State Consumer Disputes Redressal Commission in consumer complaint Nos.126,127 and 128 of 2009, is confirmed. Considering the facts and circumstances of this case, we also deem it proper to direct the appellant to pay Rs.25,000/- towards costs to the Complainant.