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(2008) 07 NCDRC CK 0065

In the National Consumer Disputes Redressal Commission

Case No : 150 of 2001

Imperial Exports Ltd. APPELLANT

Vs

Oriental Insurance Co. Ltd. RESPONDENT

Date of Decision : 15-07-2008

Acts Referred:

Citation : (2008) 07 NCDRC CK 0065

Hon'ble Judges : K. S. Gupta, P. D. Shenoy

Judgement

1. Complaint was filed by Ruchi International Ltd., inter alia, alleging that it purchased Fire ''C'' policy of Rs. 3.00 crores for three months commencing from 24.3.1998 for the stocks of Soya Deoiled Cake (for short DOC) stored at Galpadar Godown (Rishi Godown) and MMC Godown at Gandhi Dham, Kandla covering the additional perils of flood, storm and tempest, etc. from the opposite party -Insurance Co. Subsequently, stocks kept in Friends and Friends Godown and Adinath Godown was also covered by the policy. It was alleged that the stocks of Soya DOC stored at Galpadar and Friends & Friends Godowns were damaged on account of cyclone which hit Kandla on 9.6.1998. On being informed of damage, the opposite party appointed M/s. Keypsens, Delhi and M/s. Bhatt & Associate, Ahmedabad as Joint Surveyors to assess the loss. Joint Surveyors submitted their survey report dated 1.6.1999. Opposite party further appointed Suresh Kumar Keemati, Chartered Accountant to verify the records of the complainant. Insurance Co. appointed yet another Chartered Accountant, M/s. Raj Kumar Shah & Associate to verify the insurable interest of the complainant in the stock kept in Friends & Friends godown. Both these CAs submitted their reports to the Insurance Co. Opposite party failed to settle the claim despite letters and the service of notice dated 9.3.2001 by the complainant Company. It was prayed that opposite party may be directed to pay a sum of Rs. 166 lakhs with interest @ 18% p.a. from the date of submission of survey report and the cost. 2. Opposite party - Insurance Co. contested the complaint by filing written version. Since the dispute between the parties centres around the adjustments made in joint survey report dated 1.6.1999, we only need to notice that in

written version, the Insurance Co. does not dispute the purchase of the policy by the complainant, cyclone having caused damage to the stocks of Soya DOC at Galpadar and Friends & Friends Godowns, appointments of M/s. Keypsens and M/s. Bhatt & Associate as joint Surveyors, Suresh Kumar Keemati and M/s. Raj Kumar Shah & Associate, C.A. and submitting of reports by them. K.C. Khanna and Co. was also alleged to have been appointed to investigate the claim specially in the context of insurable interest in the stock of Soya DOC at Friends & Friends Godown and the complainant not having co-operated with K.C. Khanna & Company. It was stated that Joint Surveyors assessed the loss at Rs. 79,00,962. 3. Assessment of loss of materials in two godowns as made by M/s. Keypsens and M/s. Bhatt and Associate in their joint survey report dated 1.6.1999 which is material, runs as follows:

"Assessment of loss for Godown situated at Galpadar, Gandhidham

Value of Stock-3,576. 445 M. Tons :

At Rs. 6,500 per M. Tons :

Rs. 2,32,46,892.50

Less : Sound

(i) 1,691 M Tons x 6,500 Rs. 1,09,91.500 00

(ii) 59.02 M. Tons x 6,500 (segregated at Indore) Rs. 3,83,630 00

Rs. 1,13,75,130.00 Rs. 1,13,75,130.00

Rs. 1,18,71,762.50

Salvage for damaged goods as segregated at Gandhidham

(i) For totally damaged goods (796.500 M. Ton x Rs. 600) Rs. 4,77,900.00

(ii) For partly damaged goods (685.450 M. Ton x Rs. 2,300) Rs. 15,76,535.00

Rs. 20,54,435.00 Rs. 20,54,435.00

Rs. 98,17,327.00

Salvage realizable from Indore for partially damaged goods

(i) 182.475 M Tons x Rs. 2300 Rs. 4,19,692.50

(ii) 162.00 M Tons x Rs. 2,300 Rs. 3.72.600.00

Rs. 7,92,292.50 Rs. 7,92,292.50

Assessed Loss for material : Rs. 90,25,035.00

Add

(i) Segregation Expenses at Galpadar 3576 M.T. : x Rs. 275 (Gandhidham)

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Rs. 9,83,400.00

(ii) Segregation Expenses at Indore 397.00 x Rs. 170 (Indore) :

Rs. 67,490.00

Total :   Rs. 1,00,75,925.00

Adjustment of Loss proportionate to the Floater Policy As per the Floater Policy condition, if the number of godowns are less than ten (10), the maximum sum insured on one location should not exceed 30% of the total sum insured. At the given circumstances, the number of location are less than ten (10) and hence the maximum Sum insured at Galpadar Godown should be 30% of the total sum insured i.e. Rs. 3,00,00,000 amounting to Rs. 90,00,000.

Total value of stock at Galpadar godown is 3,576.445 M. Tons @ Rs. 6,500 per M. Ton :

Rs. 2,32,46,892.50

Hence, adjustment of loss according to the limitation of sum insured under Floater Policy in the assessed loss of Rs 1,00,75,925 comes to

Rs. 90.00.000.00 _______________ x Rs. 1,00,75,925.00 2,32,46,892.50 Rs. 39,00,879.43

Rounded off to   Rs. 39,00,879.00   …..(A)

Assessment of Loss for Friends & Friends Godown

(A) Fully Damaged Cargo

(i) 521.265 Mts. @ Rs. 6500 P MT   Rs. 33,88,222.50

(ii) Less Salvage @ Rs 600 PMT (620.190x600) (-)   Rs. 3,72,114.00

Rs. 30,16,108.50

(iii) Add Salvage + Transportation +Segregation Charges @ Rs. 275 PMT (620.190 W Rs. 275)   Rs. 1,70,552.25

(iv) Net Value Claimable   Rs. 31,86,660.75   …..(A)

(B) Partially Damaged Cargo

(i) 316.285 Mts. @ Rs. 6500 PMT   Rs. 20,55,852.50

(ii) Less Salvage @ Rs. 2300 PMT (316.285 x 2300)   Rs. 7,27,455.50

(iii) Net Value   Rs. 13,28,397.00

(iv) Add Salvage + Transportation + Segregation Charges @ Rs. 275 PMT Rs. 86,978.37

Net Claimable Value   Rs. 14,15,375.37   …..(B)

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Net Assessed Loss (A + B) Rs. 46,02,036.12

Adjustment of Loss proportionate to the total sum Insured

Total value of material in Friends & Friends Godown is 1040 MT @ Rs. 6500 per MT Rs. 67,60,000.00

As against the Sum Insured of 30% of the Total sum insured i.e. Rs. 90,00,000.00

Value at Risk

Amounting to Rs. 67,60,000 appears to be adequate, hence proportionate adjustment on account of Floated Policy is not warranted.

Gross Adjusted Loss for the material at Friends & Friends Godown Rs. 46,02,036.12

For the material lying at Galpadar Godown: Rs. 39,00,879 00

Rs. 85,02,915.12

Under Insurance

The value of stock lying at Galpadar Godown Rs. 2,32,46,892.50

The value of stock lying at Friends & Friends Godown Rs. 67,60,000.00

Total value of stock comes to: Rs. 3,00,06,892.50

After applying under-insurance, the gross assessed loss of Rs. 85,02,915.12 comes to

Rs. 3,00,00,000.00 ________________ x Rs. 85,02,915.12 Rs. 3,00,06,893.00 Rs. 85,00,962.00

Hence, Gross Adjusted Loss: Rs. 85,00,962.00

Less: Excess Rs. 3,00,000 for each Location Rs. 6,00,000.00

Net adjusted Loss: Rs. 79,00,962.00

The Net Adjusted Loss therefore, comes to Rs. 79,00,962 which has been apprised to the Insured." 4. Aforesaid report dated 18.6.1999 of Suresh Kumar Keemati, CA confirms the conclusion reached in Joint Surveyors report dated 1.6.1999 that the stocks of Soya De oiled Cake on 9.6.1998 at Galpadar Godown was 3576.445 MTs and while at Friends & Friends Godown was 1040.05 MTs. In its report dated 6.3.2000, M/s. Raj Kumar Shah and Associates, CA has opined that the complainant had insurable interest in the stock of Soya DOC stored at Friends and Friends Godown on 9.6.1998. To be only noted that the Joint Surveyors in aforesaid report dated 1.6.1999 had left the decision to be taken by the opposite party- Insurance Co. in regard to insurable interest of the complainant in the stock of Soya DOC at Friends & Friends Godown. 5. It is not in

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dispute that the opposite party - Insurance Co. had closed the case on 23.11.2001 on ground of the complainant not having co-operated with K.C. Khanna & Co., CA. On closure of case, our attention was invited on behalf of the Insurance Co. particularly to the letters dated 29.5.2001 sent by K.C. Khanna & Co. to Insurance Co. (copy at page 197) and 1.6.2001 (copy at page 198) allegedly sent by K.C. Khanna and Co. to the complainant. Complainant alleged that the letter dated 1.6.2001 was never received by it and has been fabricated and the allegation in regard to non-cooperation is untrue. Order dated 20.1.2006 would show that the opposite party was directed to file the affidavit of K.C. Khanna. Order dated 19.4.2006 notices the statement made by Shri Joy Basu, Adv. for the opposite party that though the draft affidavit was sent to K.C. Khanna but he declined to sign and return it to the opposite party. In absence of affidavit and the stand taken by complainant to the said effect, the Insurance Co. must be held to be unjustified in closing the case. Closure of the case was deficiency in service on the part of the opposite party- Insurance Company. 6. It was contended by Mr. G.L. Rawal, Advocate for the complainant that M/s. Keypsens & M/s. Bhatt & Associates, Joint Surveyors fell in error while making observation in the report dated 1.6.1999 that as per policy conditions if the number of godowns are less than 10, maximum sum insured on one location should not exceed 30% of the total sum assured and the maximum sum assured for the materials at Galpadar and Friends & Friends Godown would be 30% of the total sum assured i.e. Rs. 3.00 crores. According to him, there is no such condition in the policy in question. It was further contended that the Joint Surveyors also fell in error in deducting Excess of Rs. 3.00 lakh for each location which should have been Rs. 2,500 each for the two godowns under the Policy conditions. Copy of the Policy is placed on the file. Bare perusal thereof would show that it does not contain any condition that if the number of godowns are less than 10, the maximum sum assured on one location should not exceed 30% of the total sum assured. Thus, the complainant without adjustment on that count is entitled to the total assessed loss of Rs. 1,00,75,925.00 in respect of Galpadar Godown and Rs. 46,02,036.12 in regard to Friends & Friends Godown as per the said report dated 1.6.1999. 7. Exclusion Clause No. 1 of the Policy provides that, "the Insurance does not cover the first Rs. 2,500 of each and every loss in respect of which the insured is indemnified by this policy". Obviously, deduction towards Excess @ Rs. 3.00 lakh for each location, totalling Rs. 6.00 lakh could be Rs. 5.000 for the two locations. Award of Rs. 1,00,75,925.00 plus Rs. 46,02,036.12 minus Rs. 5,000 i.e. 1,46,72,961.12 deserves to be made against the opposite party-Insurance Co. Since the complainant has been deprived of the use of money all these years, it is entitled to interest which, in the facts and circumstances of the case, is quantified at 6% p.a. simple interest after two months of the last report dated 6.3.2000. Accordingly, complaint is allowed with direction to the opposite party - Insurance Co. to pay amount of Rs. 1,46,72,961 with interest @ 6% from 7.5.2000 till realization. Insurance Co. will also pay Rs. 15,000 as cost to the complainant. Complaint allowed.

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