(1996) 02 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

INDIAN PAINTS And CHEMICALS (P) LTD. APPELLANT

Vs

National Insurance Co. Ltd. RESPONDENT

Date of Decision : 15-02-1996

Acts Referred:

Citation : 1996 2 CPJ 511 : 1996 3 CPR 441

Hon'ble Judges : P.C.Misra , Biswanath Rath J.

Final Decision : Appeal dismissed

Judgement

1. THE complainant in C.D. Case No. 176/93 before the District Forum, Cuttack, being dissatisfied with its order passed in the said case, has preferred this appeal. THE complainant''s case, as narrated in the complaint petition, is that the National Insurance Company Ltd., the opposite party in the said case, is guilty of deficiency in service as they repudiated the claim of the complainant illegally and without due application of mind. Further the complainant has said in the complaint petition that it is engaged in manufacturing paints and chemicals for which it purchased raw materials from outside Orissa and brought them to the factory premises by road through transport vehicles. It took out an insurance policy known as the Open Policy covering the period from 4.7.91 to 3.7.92. THE complainant-Company purchased 12,000 litres of mineral turpentine oil from M/s. India Oil Corporation Ltd. at Haldia on 26.6.92 and while transacting the same through a truck, the truck met with an accident on 27.6.93 after which the tanker overturned and the entire stock of the mineral turpentine oil got drained out from the tanker. THE complainant has, therefore, claimed a sum of Rs. 70,911.04 paise on 23.8.92 and his claim was repudiated by the opposite party in May, 93 on the plea that the liability was not covered by the premium paid by the complainant. It was further alleged that as the Company did not give a copy of the policy showing the terms and conditions of insurance, the complainant is not aware of the obligations cast on the complainant-Company in the matter of payment of premium and therefore, the aforesaid plea of the opposite party-Insurance Company is unacceptable. It was also stated that the policy of insurance was not supplied to the complainant-Company inspite of repeated

demands, one of which was done by a letter, annexed to the complaint petition as Annexure 3. THE Insurance Company denied its liability on the ground stated in the letter of repudiation annexed to the complaint petition as Annexure- 1. It- is stated that the consignment which was involved in the accident was not covered under any policy of insurance as the required premium was not paid under the policy by complainant- Company. To make it more elaborate it was stated that out of the consignments which the complainant-Company transacted during the period covered by the insurance policy, the consignment which was involved in the accident, was the 7th consigement. Under the terms of the policy it was to be in force for a period of 12 months from 4.2.91 to 3.2.92 unless previously exhausted by a declaration. In the event of the policy not being exhausted by declarations within the aforesaid period, it may be suitably extended or a pro-rata refund of premium on the undeclared balance may be allowed to the assured, at the option of the Company. THE complainant paid a premium of Rs. 1,000/- and therefore was required to submit a declaration for each consignment indicating the value thereof. This evidently was not done by the complainant for which the Insurance Company took the plea that the aforesaid premium of Rs. 1,000/- was exhausted by the first two consignments and a portion of the third consignment. Since the complainant-Company failed to pay any further premium which was necessary to be paid for the remaining consignment, the consignment therafter were not covered by the policy. THErefore payment of compensation demanded in respect of the 7th consignment, which was not covered under the policy, does not arise. THEy had submitted a report of the Asstt. Branch Manager showing details of the consignment received by the Company during the currency of the policy and the premium computation for each consignment is given in Annexure B to the show cause. On these pleas it was mentioned in the show cause that the opposite party-Insurance Company justified their repudiation of the claim under Annexure - I. THE District Forum, considering the case of both the parties came to the conclusion that the complainant''s Company was fully aware of the terms and conditions of the policy that was taken by it and the plea of ignorance of the terms and conditions is not acceptable. Alternatively it also says that even assuming that the complainant Company was ignorant of the terms and conditions, even then there is no justification for the claim as the complainant has not paid any premium. In the result, the complaint petition was dismissed by the District Forum. Hence this appeal.

2. THE learned Counsel appearing for the appellant strenuously argued that the complainant-Company had taken open policy for the first time during the year 1991-92 and previous there it was obtaining specific policy, the terms and condition of which are different. It was urged that the copy of the policy was not made over to the complainant-Company despite repeated requests copy of a which has been annexed to the complaint petition as Annexure 3. It has been argued by the learned Counsel appearing for the appellant that non-supply of the copy of the policy itself amounts to deficiency in service and the Insurance

Company can be made labile for the consequences thereof. THE District Forum has not accepted the contention of the complainant on this score on the ground that the complainant-Company is a reputed and well established Company and it cannot be accepted that on the date of entering into the policy the complainant-Company did not know about the terms and conditions thereof. THE reasons given by the District Forum not to accept the aforesaid plea of the complainant in our opinion is unassailable. Besides the above it appears to us that the aforesaid plea of the complainant-Company cannot be accepted for another reason. THE opposite parties have filed a copy of the transit proposal/declaration submitted by the complainant-Company on 26.6.92 to cover the consignment which was sent on that date. If the complainant-Company was not aware of the terms and conditions of the policy, it could not have submitted the aforesaid declaration which has been annexed to the show cause as Annexure- A. To explain the situation emerging out of Annexure-A, the learned Counsel appearing for the complainant-appellant submitted that the Company was under the impression that it was to submit a declaration in respect of the particular consignment when it entertained apprehension about its transit for which reason it did not submit any such declaration earlier and for the first time such a proposal/declaration was submitted on 26.6.92. This plea is fully absent in the complaint petition which was specifically stated in Annexure-1. THE letter of repudiation mentions that all despatches are to be declared to them for insurance without any option for selection or omission by the insured. It was also stated therein that while it has to deposit premium against all such despatches it was observed that full premium of Rs. 1,000/- was only capable of covering the complainant''s dispatch on 6.7.91 and 24.7.91 in full and partly for the despatch of dated 8.11.91 and the captioned declaration dated 26.6.92 was not considered for acceptance as there was no deposit of premium against the said declaration. THE complaint petition does not meet any of the objections taken in the aforesaid letter of repudiation. It is therefore hard to believe that the complainant-Company was unaware of the obligations on its part to submit declaration for despatch of the consignment during the period covered by the policy. It was argued with emphasis by the learned Counsel appearing for the appellant that Annexure-3 is a document of September, 91 wherein the Insurance Company was requested to send copy of the insurance policy which they did not comply with. The opposite party has filed an affidavit stating that the very policy was handed over to the Secretary of the complainant''s Company in his office. The aforesaid statement in the affidavit being challenged by the appellant on the ground that it does not disclose the fact that the policy was handed over, the statement of the complainant should be accepted to the effect that copy of the policy was not made over to the complainant which fact has also been supported by an affidavit but the same was not filed by him. Assuming that copy of the policy was not made over to the complainant, it was expected of the Company to know the terms and conditions of the policy before entering into the transaction. As a matter of fact a policy of insurance is the essence of the contract between the insurer and the insured. The insured shall send a proposal to the insurer in a form disclosing certain particulars intending to obtain a particular type of policy and it is thereafter the insurer to accept the proposal which constitutes a contract. Thus the complainant-Company which wanted to have a particular type of policy owes an obligation to know the terms and conditions of the type of policy it intends to have. If the complainant had the opportunity of knowing the terms and conditions of the policy before it entered into the transaction but did not do so and blindly singed a proposal form entering into a policy of Insurance, it is the Company alone which is to be blamed and not the Insurance Company. Supply of a copy of the policy to the insured is a subsequent event by which time a contract has been entered into. We therefore find no merit in the contention of the learned Counsel appearing for the appellant that the Insurance Company was guilty of deficiency of service. If under the terms of the policy the obligations and acts are required to be discharged and performed by the insured but has not been done, the insured cannot be entitled to compensation either in terms of the policy or for deficiency in service on the part of the insurer.

In conclusion, we find no merit in this appeal and hence dismissed. Appeal dismissed. _____________