(1996) 06 NCDRC CK 0098

In the National Consumer Disputes Redressal Commission

JAISWAL ALLOYS (P) LTD. APPELLANT

Vs

Oriental Insurance Company Ltd. RESPONDENT

Date of Decision : 06-06-1996

Acts Referred:

Citation : 1996 2 CPJ 428 : 1996 3 CPR 344

Hon'ble Judges : D.N.Baruah , J.N.Sarma , D.Dutta J.

Final Decision : Complaint allowed

Judgement

1. COMPLAINANT No. 1 is a company incorporated under the Companies Act, 1956 with its registered office at 20, Vrindaban Market, Athgaon, Guwahati and is represented by complainant No. 2-the Managing Director. The complainants claimed for compensation of Rs. 12,3,158/- for the loss sustained by them alongwith interest @ 18% per annum.

2. THE facts for the purpose of this case may be stated as follows : THE complainant-Company manufactures MS Ingot from scrapes. THE factory is situated at West Boragaon on the National Highway 37, Guwahati. THE said factory was insured with the respondents-the Oriental Insurance Company Ltd. for damages that may be cause due to explosion etc. during the period of insurance, i.e. from 15.10.93 to 14.10.94. On 13.8.94 one of the Induction Furnaces was exploded. THE complainant Company immediately informed the Insurance Company and on receipt of the information the Insurance Company deputed its Surveyor to carry out inspection of the damage caused to the Induction Furnace. THE Surveyor on 14.8.94 visited the factory and made inspection. On 10.10.94 he submitted his report. In column No. 11 of the said survey report the Surveyor stated thus : "As explained vide 10(b) above the damages to the Furnace was caused due to electrical fault and hence a machinery breakdown covered by your policy. THE Insured have the Fire policy under New India Assurance Company Ltd. Dispur Branch and the loss of building, foundation etc. would be covered by this policy as a consequential loss. THE machinery breakdown loss has been considered in this report as per the terms of

policy. THE Induction Furnace mainly consist of a frame, coil craddle, coii and hydraulic lifting connectors which his togetherly known as crucible. Out of two such crucibles one crucible has been damaged as discussed early. THE insured has submitted a quotation on 16.8.94 based on which the loss has been assessed .."

After giving details, the loss was assessed at Rs. 12,13,555/-. THE Surveyor also pointed out that there were two furnaces and out of which only one furnace was damaged. Accordingly, he assessed the damage to Rs. 7,99,591/-. After deduction of salvage the net liability of the Insurer was assessed to Rs. 7.02,749/-. In Column No. 12 of the survey report he recommended thus : "THE claim is therefore, recommended for settlement at Rs. 7,02,749/- which in my opinion will fairly and reasonably indemnify the Insured." THE complainant requested to settle the claim at Rs. 12,84,158/-. In spite of repeated reminders the respondents have not settled the claim. Hence the present complaint. Written version has been filed by the respondents repudiating the claim on various grounds.

We have heard Mr. J. Chutia, Counsel appearing for the complainants and Mr. P.N. Choudhury, Counsel appearing for the respondents. Mr. Chutia submits that as per the policy of insurance the complainant is entitled to compensation besides other compensation. Mr. Choudhury, however, submits that the complainant is not a consumer, inasmuch as, the complainant is engaged in commercial activities. Mr. Choudhury further submits that the policy covers centrifugal force or internal pressure. He submits that the explosion took place as the water came in contact with the whole coil and as per the survey report also the policy is not covered by insurance. Over and above, the Insured have a Fire policy under the New India Assurance Company Ltd., Dispur Branch and the said Insurance Company was not made a party in this petition.

3. ON hearing the Counsel for the parties it is to be seen whether the claimant is entitled to any compensation, if so, to what extent. It is true, remedy is not available before this Commission if the claimant is not a consumer. Consumer has been defined in Section 2(d) of the Consumer Protection Act. Section 2(d) is quoted below : "Consumer" means any person who - (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are

availed of which the approval of the first mentioned person."

In the present case, the complainant comes within the purview of Section 2(d)(ii) of the Consumer Protection Act, because the Insurance Company promised to indemnify the insured against unforeseen and sudden physical damage by any cause contained in the terms of the policy. Undoubtedly, insurance is a service, therefore, we have no hesitation to come to the conclusion that the complainant is a consumer, inasmuch as the claimant receives services by way of insurance policy. That being the position, we have to see whether the claimant is entitled to compensation if, so, to what extent. The Surveyor in his report stated that the damage to the furnace was caused due to electrical fault and the furnace is covered by insurance policy. Accordingly he recommended for settlement at Rs. 7,02,749/-. On hearing the Counsel for the parties and perusal of the survey report as well as the policy certificate, we are of the opinion that the complainant is covered by the policy, hence he is entitled to compensation.

4. NOW, the question is to what extent of compensation the claimant is entitled to. The Surveyor in his report stated that the sum Insured value is Rs. 15,98,633/- against the Induction furnace. Though the number of Induction furnaces is not mentioned in the policy, he found two Induction furnaces in the factory. Therefore, the sum insured for one furnace comes to Rs. 7,99,316.50. After determination of salvage value etc. the Surveyor recommended for settlement of the claim for Rs. 7,02,749/-. In view of the above, we accept the said amount as the compensation for explosion of one Induction furnace. We hold that the claimant is not entitled to the entire amount claimed for as only one Induction furnace out of two was damaged. The claim as per the policy of Insurance Company ought to have been the said amount if it was settled immediately after the submission of survey report. At least, the claim ought to have been settled within a period of two months from the date of receipt of the survey report, i.e. by 10.12.94. However, the Insurance Company failed to settle the claim within a reasonable time limit. Therefore, the complainant is entitled to get interest @ 15% per annum from 10.12.94. Considering the loss suffered by the complainant, we also award a sum of Rs. 10,000/- towards the cost of litigation. Accordingly, we direct the respondents to pay a sum of Rs. 7,02,749/- with interest @ 15% per annum from 10th December, 1994, till the payment is finally made. The respondents shall also pay a sum of Rs. 10,000/- towards cost of litigation. Payment must be done within a period of two months from the date of receipt of this judgment.

5. THE complainant may produce certified copy of this judgment before the respondents for necessary action.

6. THE complaint is allowed to the extent indicated above. Complaint allowed.

