(2014) 08 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

Jaiswal Cold Storage And Ice Factory APPELLANT

Vs

The New India Assurance Co. Ltd. RESPONDENT

Date of Decision : 04-08-2014

Acts Referred:

Citation : 2014 0 NCDRC 494 : 2014 4 CPJ 18

Hon'ble Judges : J.M.MALIK J.

Judgement

1. THE complainant, Jaiswal Cold Storage & Ice Factory, through its Proprietor, Sh. Jitendra Kumar Jaiswal, Gorakhpur, Uttar Pradesh, is running a Cold Storage Plant, where potatoes were being stored. The complainant obtained an insurance policy from New India Assurance Co. Ltd., OP, for storing of potatoes in its plant, effective from 15.04.1996 to 14.11.1996, i.e., for a period of seven months and the total sum assured was Rs. 56,25,000/ -. The complainant also got his machinery insured with the said OP for the period 15.04.1996 to 14.04.1997, vide Annexure -1 (colly). The machinery room situated on one end, houses two compressors SIN CO. 7.5" x 7.5" -two cylinders. Both the compressors are driven at 400 rpur by 69 up electric motor and one stand by motor is also provided. There is one DG Set of 125 KVA rating also, installed in the Cold Storage Plant and the DG Set provides power at 415 V. 3 phase, 50 Htz. The complainant has also a power connection and the power is supplied by U.P. State Electricity Board and a transformer of 200 KVA capacity is also installed at the plant. The complainant has a direct line connection from Gola Bazar Sub -station.

2. ON 30.08.1996, the Complainant informed the OP that one compressor had broken down on 27.08.1996. In the month of October, 1996, the complainant informed the OP that there was damage to the stocks, i.e., potatoes, about 13,398.70 quintals, valuing at Rs. 40,20,000/ -. The damage to the potatoes was due to breakdown of the compressor of the plant, erratic power supply by the UPSEB and failure of the generating set which resulted in crease in temperature in the cold storage plant. However, the claims submitted by the complainant for a sum of Rs. 40,20,000/ - was ultimately repudiated, on 30.09.1997. On

08.10.1996, one Mr. Ashish Kumar Singh was deputed as a Surveyor by the OP. The Surveyor, in his preliminary report, assessed the loss at Rs. 13,398.70 quintals of potatoes. The reasons specified by him were that there was rise in temperature. Thereafter, due to power failure and non -running of generators, the said incident took place. Thereafter, the OP appointed one M/s. Inder Chadha & Associates, as Surveyor, for assessing the loss. On 17.05.1997, M/s. Inder Chadha & Associates submitted its final report, where it was explained that there was no cause, whatsoever, which arose under the Ml Policy or the FOES extension. The grouse of the complainant is that its claim was wrongly repudiated as the same is covered under the terms of the policy. According to the complainant, the Surveyor gave the following reasons for the cause of the loss: "a) The breakdown of the compressor No. 1 did not have any effect on the storage temperatures;

b) There was failure of electricity from 13.09.1996 to 16.09.1996 and then intermittently till 19.09.1996, the 125 KVA DG Set was sufficient to carry the refrigeration load with one compressor;

c) That the complainant had not run the DG Set during periods of loan shedding and when there was considerable load shedding/power off from 10.09.1996, the GD Set could not take the load and that was indicative of bad maintenance and it cannot be called as ''breakdown'', as defined in the Ml Policy;

d) That there is no MB claim which can give rise to an indemnifiable DOS loss;

e) That the compressors were not run properly or due to some inherent vice in the tubers and therefore the process of sprouting and rottage had already started".

3. THE repudiation letter dated 30.09.1998, gave the following reasons: - "1. There was a breakdown of electricity supply on 13.09.96 at 18/30 hrs., and the power supply resumed on 16.09.96 at 17.30 hours. It failed again on 17.09.06 at 18.00 hours and resumed on 18.09.96 at 13.00 hrs.

2. Electric supply again failed on 18.09.96 by 21.00 hrs and resumed on 19.09.96 at 13.00 hrs. It again failed on 19.09.96 at 19.00 hrs., and resumed at 21.00 hrs.

3. You are also aware of the fact that availability of power is 18 to 20 hours a day in general as per information made available to the company and in spite of this fact, you deliberately failed to maintain your generating set as is evident from your own records, on 14.09.96, 15.09.96 and 16.09.96. The result of which the Turbo Charger became hot which is clearly written in the Log Sheet, but this fact has not been disclosed by you to the Insurer and you are thereby guilty of concealing the material fact to the Insurance Company which is the violation of terms and conditions of policy.

4. It is an admitted fact that before 16.10.96. You have not intimated regarding the sprouting of potatoes and if you had notified this fact earlier, effective steps

should have been taken by disposing of the stocks and then you would have not suffered the loss, which you have now suffered on account of your negligence and in this way, you have not taken sufficient steps to minimize the loss which is further violation of the general terms and conditions of the policy.

4. IT is further to be mentioned here that as per your own records, when there was failure of electric in the aforementioned periods, 125 KVA -GD Set was sufficient to carry the refrigeration load with one compressor but your DG Set could not take load which indicates bad maintenance of DG Set and it cannot be called ''break down'', i.e., a sudden and unforeseen event and in this way, your claim does not come within the meaning of the term ''accident, as defined in "Deterioration of Stocks" of potatoes in cold storage Insurance Policy, which provides any sudden and unforeseen loss or damage to the plant". 5. The complainant submits that the reasons given by the OP for repudiating its claim, are untenable for the following grounds: -

"i) The complainant submits that he had been running his generating set every day, except 14.09.1996 to 16.09.1996, when it was non -operational and therefore, to contend that the claim does not come within the policy, is wrong.

ii) The complainant had not noticed the sprouting of potatoes earlier and therefore, there was no occasion for the complainant to take any steps for disposal of the stocks. It is submitted that the potatoes are kept in gunny bags and not open, therefore, the sprouting, if any, could not have been noticed. In any event, there was no sprouting earlier.

iii) The complainant submits that the reason for deterioration of potatoes has occurred due to a sudden damage to the plant, i.e., failure of electricity and no fault can be attributed to the complainant on this account".

Consequently, the present complaint was filed before this Commission on 23.12.1998, with the following prayers: - "a) Allow this complaint of the complainant;

b) the opposite party be directed to pay a sum of Rs. 40,20,000/ - along with interest @ 24% per annum from 16.10.1996, till date of payment;

c) the opposite party be directed to pay a sum of Rs. 2,00,000/ - towards mental agony and harassment for wrongful repudiation of claim of the complainant;

d) costs of the present proceedings;

e) pass such other order(s) or further order(s) as this Hon''ble Commission may be fit and proper in the facts and circumstances of the case".

5. THE Opposite Party has hotly contested this case. All the allegations have been denied. It is explained that the complaint is not maintainable. Repudiation of the claim was correct.

6. THE learned counsel for the complainant vehemently argued that the reasons

given by the Surveyor or by the insurance company while repudiating the claim are not sustainable in law. Those do not fall in the exclusionary clause of the said policy. The counsel for the complainant has placed reliance on two authorities reported in M/s. Hundilal Jain Cold Storage & ice Factory Pvt. Ltd., Vs. Oriental Insurance Co. Ltd., Original Petition No. 122 of 1995 and Krishna Cold Storage Pvt. Ltd. Vs. General Manager (Technical), New India Assurance Co. Ltd., Original Petition No. 267 of 1997. In the written arguments, the complainant has also referred to other two authorities of this Commission in Massine Cold Storage Ltd. Vs. National Insurance Co. Ltd.,, 2004 CTJ 363 and S.K. Exports Pvt. Ltd. Vs. New India Assurance Co. Ltd., : 2004 CTJ 427. All these arguments have left no impression upon us. The facts of this case are wee bit different and the above said authorities have no application to his case. There is temporary cover note. Its relevant para is reproduced here, as under: - "M/s. Jaiswal Cold Storage & Ice Factory situated at Gola Bazar, Gorakhpur, having proposed to effect an insurance deterioration of stocks as stated above due to accidental breakdown of insured machinery and/or accidental failure of electricity at cold storage''s service feeder for a period of seven months from 15th April, 1996 to 14th November, 1996, the risk as enumerated above is held covered for a period of 30 days only from the aforementioned date of commencement of the risk/from the date of issue of this temporary cover note subject to and as per terms, conditions, exclusion and limitations of the company''s standard refrigeration plant policy and above mentioned clauses:

On receipt of complete details in respect of the risk the company''s policy will be issued. The details should be sent to the company before the expiry of the temporary period of cover, failing which the cover ceases and the insured will be charged premium on the basis of customary scale of short period premium for the time the insurance has been in force".

7. FURTHER , the insurance policy, mentions, as under: - Definitions:

The Term "Accident" shall mean and be limited to: -

a) Any sudden or unforeseen loss or damage to the Plant and Machinery described in Schedule I of this Policy due to an accidental cause covered by the Machinery Insurance Policy specified in Schedule I and not herein after excluded.

Exceptions:

The Company shall not be liable for: -

iv) Any damage to stocks caused by a rise or fall in temperature due to stoppage of any section or sections of the Refrigeration Plant for repairs, maintenance, overhauling or for replacement of parts or due to wear and tear of the plant and equipments or failure of any part or parts requiring periodical renewal and operation of fuses and kindred devices.

vi) Any damage if the temperature in the Refrigeration Chambers does not exceed 40*F (4.4*C)".

Warranties:

6. The Insured shall take care to see that:

i) The temperatures inside the Cold Chambers are brought down to 34*F (1.1*C) in all the floors of all the chambers before loading commences and

ii) Further ensure that the temperature in all the chambers does not exceed 50*F (10*C) during the entire period of loading and 40*F (4.4*C) during the subsequent period of storage".

8. NOW let us turn to the report of the Surveyor. The preliminary service record prepared by Mr. Ashish Kumar Singh, Surveyor and Loss Assessor, mentions as under: - "(f) D.G. Set: There is one D.G. Set of 125 KVA rating of Kirlosker Cummins. The D.G.S.T. provides power at 415 V. 3 phase, 60 Htz and is sufficient to meet out the power requirement of the cold storage during power failure. The D.G. Set was found in good running condition at the time of my survey externally. But, the operator could not start the D.G. Set on my request. It appears that the D.G. Set is not in proper working order, due to which the deterioration of potatoes took place.

(g) Power supply:

.... Availability of power is only 18 -20 hours a day in general, as per information made available to me. The suction load is 414 KVA, which is sufficient to fulfill the requirement.

Cause of damage: The maximum potatoes were deteriorated and converted into liquid due to failure of electricity and non -operation of Compressor, as a result the temperature became high as apparent from the logbook. It was also noted that the D.G. Set was out of order during the period of failure of electricity, as a result the turbo charger became hot, which is clearly written in the log -sheet. This fact has not been disclosed by the Insured to the Insurers. Had the compressors been used properly, the deterioration of the stock could have been minimized. Further, it is to point out that if, even for a little extent, the deterioration is started, there is no way to arrest the further deterioration until it is not taken out of the Chamber, and after aggregation, it is not loaded again. But, it has not been done, as the insured could not give any information in this regard. Most of the potatoes which have not deteriorated, were thrown away at the time of my survey".

The Surveyor agreed that there was loss of 18,697 quintals of potatoes.

The main Surveyor is Mr. Inder Chadha & Associates. The relevant extracts from his report, dated 17.05.1997, are these: - INSPECTION:

9. The normal practice for potatoes in cold storages is to initially bring down the storage temperature to 40*F, the warranted carrying temperature and then gradually to 34 degrees F. IT is also recommended that the temperature be taken down to 32 degrees for some time. This is done to arrest and kill whatever little

sprouting that may have taken place.

10. However, in this case, scrutiny of the log sheets show that the minimum temperatures reached were on 20.05.1996 at 37/35 degree F

In June, temperatures were maintained of around 39/37 degree F

In July, the temperatures were 40*F and 42*F.

That clearly indicates that during periods load shedding the compressor has not been run. This is also evident from the log book records, which clearly corroborate the fact that during periods of load shedding, the DG Set has not been run.

It is also well known fact that temperature fluctuations of this type will cause sprouting and excessive shrinkage.

CAUSE OF THE LOSS:

C. In this case, we find: -

i) The insured has not run the DG Set during periods of load shedding.

ii) When there was considerable load shedding/power off from 10.09.1996, the D.G. Set could not take the load. This is indicative of bad maintenance and cannot be called a "breakdown" of a sudden and unforeseen event, as defined in and understood in the MI Policy.

D. There is, therefore, no MB. Claim which can give rise to an indemnifiable D.O.S. Loss.

E. The temperature fluctuations as mentioned, wherein in June, the chamber temperatures were down to 36/34 degrees only to rise to 44/42 degrees F (above the warranted carrying temperature) in July without any reported cause and then further to 47/45 degrees in September, 1996, is clearly indicative of either the compressors were not run properly or due to some inherent vice in the tubers, the process of sprouting and rottage had already started. This process is exothermic, i.e., gives off heat, which might also be a reason as to why the temperatures stated rising and could not be controlled.

F. Also, it should be noted that had the insured notified the underwriters when the sprouting was first noticed in September, and effective steps taken to dispose of the stocks, there would not have been so much aggravation of the loss resulting in so much damage. A major portion would have fetched a salvage value of say Rs. 125/ - to Rs. 150/ - per quintal as against the prevalent market rates of Rs. 350 to Rs. 400 per quintal then.

G. In short, we do not find cause whatsoever, under the M.I. Policy or the FOES extension, under which the Underwriters liability might arise.

The final decision on the same vests with the privileged discretion of the

Underwriters".

9. THERE is Jaiswal Cold Storage Temperature Chart. Its relevant portion at page 44 of the paper -book, runs as follows: - border=1 cellspacing=0 cellpadding=0>

Date

Chamber -I

Chamber -II

Remarks

1 -9

47/45*F

46/44*F

40/38*F

40/38*F

Sunday - Line on 2130 hrs.

2 -9

5 -9

9 -9

45/43*F

39/37*F

41/39*F

40/38*F

39/37*F

41/39*F

10 -9

13 -9

14 -9

45/43*F

44/42*F

45/43*F

40/38*F

23/30 OFF

1830 ON

1830 OFF

OFF GEN. T/B

HOT.

15 -9

16 -9

17 -9

18 -9

50/48*F

40/47*F

50/48*F

46/44*F

1800 hr. ON

19.05 Hr. OFF

1830 ON

19 -9

29 -9

1 -10

48/46*F

64/62*F

66/64*F

- -

52/49*F

48/46

Compressor not restored.

3 -10

66/44*F

48/46*F

10. IT is well settled that the terms of the policy have to be construed as it is and we cannot add or subtract something. Policy contract is between the parties and

both parties are bound by terms of contract. This view was taken in Hon''ble Supreme Court''s authorities reported in United India Insurance Co. Ltd. Vs. M/s. Harchand Rai Chandan Lai, : JT 2004 (8) SC 8. It may be mentioned here that FOES insurance cover does not include load shedding or rationing of supply by Authorities or even erratic power supply. Deterioration of any part of any machine caused by or naturally resulting from normal use or exposure, or loss due to willful neglect or gross negligence of the insured or his representatives is excluded. The accident has been defined as any sudden and unforeseen loss or damage to the plant or machinery described in Schedule -I of the policy. The policy specifically, clearly and unequivocally warrants that the temperatures in the cold chambers are brought down to 34 degrees F in all the floors of all the chambers before loading commences. It further mentions that temperatures in all the chambers does not exceed 40*F during the subsequent periods of storage. The insurer is required to use all refrigeration units, including standby units, during the time that power is being made available to them by the supply authorities to ensure that the temperature inside the cold storage chambers does not exceed 40 degrees F. The insurance company is not liable for any loss occasioned by deliberate acts of Government or Municipal or Local Authority or performed Supply Authority not performed for the sole purpose of safe -guarding life or protecting any part of the supply undertaking or any exercise of such authority of its power to withhold or restrict or ration supply. The accidental event is to be differentiated from the known deliberate omission on the part of the Electricity Department.

11. THE case of the complainant is that the refrigeration plant is run by two compressors with a standby compressor as well as a DG set (Diesel Generator Set). According to the complainant, on 27.08.1996, one of the two compressors broke down and he informed the OP on 30.08.1996 consequent to which a surveyor was deputed and ultimately, the compressor was repaired and re - installed in the machine room on 04.10.1996. However, the refrigeration plant continued to operate without the second compressor from 30.08.1996 to 04.10.1996. There was failure of electric supply from 13.09.1996 to 19.09.1996. Further, for almost three days, i.e., from 13.09.1996 to 16.09.1996, there was no electricity, thereafter, till 19.09.1996, electricity supply was absent for almost 19 hours, daily. Still, the complainant did not think it prudent to check if the stock of potatoes were in correct position or had deteriorated. The complainant did not annex any chart regarding failure of electricity after 19.09.1996.

12. AGAIN , on 18.10.1996, the OP received complainant''s letter intimating that on 16.10.1996, stocks of potatoes in the refrigeration plant had deteriorated. The Preliminary Surveyor reported that there was gross violation of the terms and conditions of the policies, a lack of basic maintenance and procedure and precaution in running the refrigeration plant, delayed intimation which led to deterioration of stocks. Again, the log -book confirms that during the periods of load shedding, the DG Set was not run. The temperature fluctuations of this type will cause sprouting and excessive shrinking. This clearly goes to show that there

was bad maintenance.

13. THE above said incident occurred due to negligence, inaction and passivity on the part of the complainant itself. It cannot pass the buck on the other side. One is required to be vigilant and act prudently. The general feeling of the peoples that they do not care for the goods because they are insured, is hereby condemned. The complaint is, therefore, dismissed. No order as to costs.

