(1991) 08 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

J.SARVESWARA RAO — APPELLANT

Vs

BRANCH MANAGER, NATIONAL INSURANCE COMPANY LTD — RESPONDENT

Date of Decision : 24-08-1991

Acts Referred:

Citation : 1991 2 CPJ 523 : 1991 2 CPR 283

Hon'ble Judges : Lakshmana Rao , Pothuri Venkateswara Rao , Vanaja Iyengar J.

Final Decision : Complaint disposed of

Judgement

1. CASE under Section of 17(a)(1) of the Consumer Protection Act, 1986 praying that in the circumstances stated in the affidavit filed herein the State Commissioner will be pleased to direct the opposite parties to refund Rs. 1,35,000/- which was retained by the Insurance Company out of total loss as assessed by Surveyor with interest at the rate of 13% per annum from 26.9.90 till the date of realisation and also pay interest at the rate of 18% per annum on Rs. 20,85,000/- from 3.10.1988 to 26.9.90 with costs.

2. THIS case coming on for orders, upon perusing the affidavit filed herein, and upon hearing the arguments of Mr. V. Gowrishankara Rao, Advocate for the petitioners and Mr. A.V.D. Narasimha Rao, Advocate for the respondents the State Commission made the following order : The complainant insured his mechanised sailing vessel by name "Shri Vijaya Bharathi Hanuman" of 300 tonnes capacity under Marine Hull Insurance Policy No. 550403/ 4100108/88 for Rs. 24 lakhs covering a period of one month from March 25,1988 to April 24,1988 with the National Insurance Company, the opposite party herein. The Insurance Company collected provisional premium of Rs. 15,711/- subject to the approval of the Tariff Advisory Committee. On April 17, 1988 the vessel ran aground adjacent to the Northern beach waters of fisheries harbour, Madras. All the efforts made to salvage the vessel proved futile. Therefore, the complainant laid a claim with the Insured Company. M/s. J.B. Boda Surveyors Private Limited, Bombay had been appointed as surveyor to assess the loss. It is stated that an

October 3, 1988 the surveyors submitted their report assessing the total loss at Rs. 24 lakhs. Out of that amount, Rs. 4,25,000/- was deducted towards salvaged material. Thus, the net loss was determined at Rs. 19,75,000/-. The complainant claimed Rs. 1,10,000/- towards salvaged charges. Therefore, the total loss was assessed at Rs. 20,85,000/-. Out of that amount, the Insurance Company paid to the complainant on September 26,1990 Rs. 19,50,000/-. The case of the complainant is that though the surveyors submitted the report on October 3,1988 assessing the loss at Rs. 24 lakhs, the Insurance Company failed to pay that amount to the complainant for the period of about two years in spite of the repeated representations made to the Insurance Company and that it ultimately paid Rs. 19,50,000/- on September 26, 1990. It is stated that the complainant requested the Insurance Company on December 18,1990, December 26,1990 and January 25, 1991 through telegram to pay the balance amount of Rs. 1,35,000/- and inspite of such requests, the Insurance Company failed to pay the balance amount of Rs. 1,35,000/-. It is averred that the complainant borrowed Rs. 7,50,000/- from the Director of State ports for the consumption of the vessel. In addition to the sum so borrowed, it is stated that the complainant borrowed huge amounts from others and had also invested some more money procured by him through the sale of his own properties. It is the case of the complainant that due to the inordinate delay of eight years in releasing the loan amount by the Director of State Ports, there was escalation in the cost of the construction of the vessel. Out of Rs. 19,50,000/- paid by the Insurance Company, it is stated that the complainant paid Rs. 14,87,187/- to the Director of State Ports, Kakinada towards the Principal and interest thus paying more than Rs. 7 lakhs towards interest at penal rate. Due to the inordinate delay in settling the claim and paying the amount as per the report of the surveyor, the complainant has filed this complaint under the provisions of the Consumer Protection Act, 1986 (hereinafter referred to as the Act) claiming interest as the rate of 18 per cent per annum on Rs. 20,85,000/- from October 3,1988 to September 26,1990 and interest at the rate of 18 per cent per annum on Rs. 1,35,000/- from September 26,1990 till the date of realisation.

The Insurance Company has filed counter admitting the issuance of Marine Hull Insurance Policy covering the mechanised sailing vessel of the complainant for Rs. 24 lakhs for a period of one month from March 25, 1988 to April 24, 1988. It has not denied the collection of premium of Rs. 15,711/-from the complainant subject to approval of Tariff Advisory Committee. It is, however, mentioned that in accordance with the rules and regulations governing the Marine Hull Insurance Company had referred the matter to the Tariff Advisory Committee for rating for the purpose of collection of premium in respect of the vessel in question and that before any approval could be obtained from the Tariff Advisory Committee, the complainant had come up with a claim for compensation stating that the vessel ran aground and wrecked in the water near Madras. There is no dispute about the loan of the vessel in the sea at Madras. The plea of the Insurance Company is that it had appointed M/s. J.B. Boda Surveyors Private Limited, Bombay for

conducting a preliminary survey. After the preliminary survey report was received, it is stated that the matter was referred to M/s Tony Fernandez, investigators and average adjusters, for the purpose of final survey. The final survey report according to the Insurance Company was submitted on March 12,1990 assessing the loss at Rs. 20,85,000/- after deduction of Rs. 4,25,000/- towards the salvaged value. The Insurance Company processed the claim at all levels as was mentioned in the counter. It has not denied that a sum of Rs. 19,50,000/- was paid to the complainant only on September 26,1990, retaining the balance of Rs. 1,35,000/- since the approval of the Tariff Advisory Committee regarding the tariff rate applicable to the vessel in question was not yet received. The plea of the Insurance Company is that it was unable to settle the claim and pay the balance amount to the complainant as the Tariff Advisory Committee has not yet approved the tariff rate applicable and that the claim will be settled soon after the approval of the Tariff Advisory Committed is received.

3. A preliminary objection is raised on behalf of the Insurance Company that the claim is not maintainable under the provisions of the Act. We do not find any substance in this objection having regard to the decisions of the National Consumer Disputes Redressal Commission as well as this Commission. "Consumer" means any person who hires any services for consideration. "Service" means service of any description which is made available to potential users and includes the provisions of facilities in connection with insurance as defined in Clause (o) of sub-section (1) of Section 2 of the Act. Having regard to the facts and circumstances of the case, there can be no dispute that the complainant hired the services of the Insurance Company in connection with insurance, for a consideration. There can also be no dispute that the Insurance Company makes available its services in connection with insurance to potential users. Thus, the complainant is a consumer within the meaning of the Act. His complaint is that the services of the Insurance Company suffer from deficiency. Any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance of service undertaken to be performed amounts to deficiency. The main grievance of the complainant is that due to the negligence on the part of the Insurance Company in settling the claim of the complainant, he has suffered loss. In those circumstances, we do not find any merit in the preliminary objection raised by the Insurance Company as to the maintainability of this complaint. Therefore, the objection is over-ruled. The next question that requires consideration is whether there is any deficiency in the service rendered by the Insurance Company and if so, whether the complainant can be granted the relief as prayed for.

4. THE undisputed facts are that the mechanised sailing vessel of the complainant has been insured with the opposite party-Insurance Company covering a period of one month from March 25, 1988 to April 24, 1988 for an amount of Rs. 24 lakhs. THE Insurance Company collected provisional premium of Rs. 15,711/- subject to the approval of the Tariff Advisory Committee. During the one month period covered by the policy, the sailing vessel ran aground and

wrecked due to rough and strong winds in the sea near Madras on April 17, 1988. M/s J.B. Boda Surveyors Private Limited, Bombay, a licensed surveyor appointed by the Insurance Company assessed the loss at Rs. 20,85,000/- after deducting the value of the salvaged material. It is an admitted fact that a sum of Rs. 19,50,000/- was paid to the complainant by the Insurance Company on September 26,1990. It is evident that the risk had taken place on April 17,1988. Immediately thereafter, the complainant submitted a claim to the Insurance Company for Rs. 24 lakhs. Only on September 26,1990 the complainant was paid Rs. 19,50,000/- by the Insurance Company. The question is whether the delay of more than two years in settling the claim, having regard to the facts and circumstances of the case constitutes deficiency in the service required to be maintained by the Insurance Company under law or undertaken to be performed by it in pursuance of the Insured Policy. For the purpose of deciding the question, it would be necessary to refer to the relevant provisions of the Insurance Act, 1938 and the rules and regulations made there under. The Tariff Advisory Committee is established under Section 64-UC of the Insurance Act, 1938 to control and regulate the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business. The Tariff Advisory Committee is conferred power under Section 64-UC of the Insurance Act, 1938 to control and regulate the rates, advantages, terms and conditions that may be offered by insurers in respect of any risk or any class or category of risks, and the rates, advantages, terms and conditions fixed by the Committee shall be binding on all insurers. In fixing, amending or modifying any rates, advantages, terms or conditions, the committee shall ensure that there is no unfair discrimination between risks of essentially the same hazard, and also that consideration is given to past and prospective loss experience. Every decision of the Advisory Committee shall be valid only after and to the extent it is ratified by the Controller. Fixed by the Advisory Committee, he shall be deemed where the insurer is guilty of breach of any rate, advantage, term or condition to have contravened the provisions of the Insurance Act, 1938. The Advisory Committee may require any insurer to supply to it such information or statements as it may consider necessary.

5. THE Tariff Advisory Committee framed rules, regulations, rates, advantages, terms and conditions for transaction of Marine Insurance Business in India in accordance with the provisions of Part II B of the Insurance Act, 1958, and they are in force from 31st March, 1982. THE opposite party-Insurance Company has referred to the rules and regulations governing the Marine Hull Insurance in its counter in order to stress that the vessel in question falls within the definition of "Major Fleet" as the sum insured is more than Rs. 5 lakhs. All risks in respect of such "Major Fleet" shall be referred to the Tariff Advisory Committee for rating. THErefore, the stands taken by the opposite party-Insurance Company is that the mechanised sailing vessel of the complainant herein has been insured provisionally subject to the approval of the Tariff Advisory Committee and that the matter has been referred to the Committee for fixation of the rate. In

accordance with the rates fixed by the Tariff Advisory Committee then in force, the Insurance Company collected provisional premium of Rs. 15,711/- for the coverage of one month. It is asserted on behalf of the Insurance Company that as required under the rules and regulations, it sought approval of the Tariff Advisory Committee regarding the rate, immediately after the insurance policy has been issued to the complainant and that till now the Tariff Advisory Committee has not sent any communication regarding the approved rate applicable to the vessel in question. THErefore according to the Insurance Company, it is justified in retaining the balance amount of Rs. 1,35,000/-.

6. WE are unable to accept the contention advance on behalf of the Insurance Company. The object of "Insurance" is to place the person in the same financial position which he was occupying before the happenning of the risk covered by the policy of insurance, by making good the loss caused due to the risk. It is no doubt true that the Tariff Advisory Committee has been conferred power under the Insurance Act, 1938 to control and regulate the rates and terms and conditions that may be offered by insurers. The Tariff Advisory Committee laid down the rates. On the basis of the rates fixed by the Tariff Advisory Committee, the opposite party-Insurance Company collected provisional premium of Rs. 15,711/- from the complainant subject to approval by the Tariff Advisory Committee and issued the insurance policy covering the period from March 25, 1988 to April 24,1988. The risk had taken place on April 17,1988 and the vessel ran aground in the sea at Madras on April 17,1988. Till this day, the Insurance Company could not settle the claim finally solely on the basis that it has not received any communication from the Tariff Advisory Committee regarding the approved rate applicable to the vessel in question. The settlement of a claim under the insurance policy is required to be finalised expeditiously, as otherwise the insured will be put to much loss and hardship. Determination and approval of the rate applicable to a particular vessel is a matter which should be finalised as soon as possible after an insurance policy has been issued, at any rate within a reasonable time thereof. In the instant case, for more than two years after the risk had taken place, the Insurance Company is unable to settle the claim solely on the ground that the Tariff Advisory Committee has not approved the rate applicable to the vessel in question. Delay of more than two years in settling the claim, under any circumstances will result in imperfection or inadequacy in the quality, nature and manner of performance of the service, which the Insurance Company has undertaken to render. Therefore, it amounts to deficiency in service. Sub-section (2) of Section 64 UM of the Insurance Act, 1938 provides that no claim in respect of a toss exceeding twenty thousand rupees in value on any policy of insurance shall be settled unless the insurer has obtained a report on the loss from a surveyor appointed to assess the loss. The case of the complainant, is that the Insurance Company had appointed M/s J.B. Boda Surveyors Private Limited, Bombay to assess the loss and that the surveyor had submitted the report on October 3, 1988 assessing the loss at Rs. 24 lakhs. The Insurance Company admitted the appointed of M/s J.B. Boda Surveyors Private

Limited, Bombay. But, it is stated that the Surveyor has appointed only to make a preliminary survey. It is further stated that the preliminary report was received and that the matter was referred to M/s Tony Fernandez, investigators and average adjusters, for the purpose of final survey and that the final survey report was submitted by it only on March 12, 1990. It may be noticed that the provisions of the Insurance Act, 1938 do not contemplate appointment of a Preliminary Surveyor and a final surveyor. Whatever it be, we see no justification on the part of the Insurance Company in taking more than two years time in having the loss assessed by a licenced surveyor. The very delay in getting the loss assessed proves negligence on the part of the Insurance Company. Even after the final report of the surveyor which was alleged to have been submitted on March 12, 1990, the amount of Rs. 19,50,000/- was paid to the complainant only on September 26,1990. All these facts clearly establish the imperfection or inadequacy in the quality, nature and manner of performance of the service undertaken to be rendered by the Insurance Company and thus it amounts to deficiency in the service. As a result of the negligence on the part of the Insurance Company, the complainant has suffered loss and injury, as the facts of the case reveal.

It is stated that the complainant had borrowed Rs. 7,50,000/- from the Director of State Ports, apart from huge amounts from private sources for construction of the sailing vessel in question. It is stated that the principal and interest payable to the Director of State Ports accumulated to Rs. 14,87,187/- by the time the amount was paid to the complainant. Therefore, the complainant claimed compensation by way of interest at the rate of 18 per cent per annum on Rs. 20,85,000/- from October 3,1988 to September 26,1990. Regarding the loss, there can be no dispute as it has been assessed by the licenced surveyor and accepted by the Insurance Company. 18 per cent per annum is the normal rate of interest charged by the commercial Bank. As we have already mentioned, the complainant suffered loss due to the negligence on the part of the opposite party-Insurance Company in settling the claim and therefore, he is entitled to claim compensation. The complainant claimed compensation in the nature of interest at the rate of 18 per cent per annum. Having regard to the facts and circumstances of the case, we find that the claim made by the complainant is quite reasonable Therefore, we direct that the opposite party-Insurance Company shall pay interest to the complainant at the rate of 18 per cent per annum on Rs. 20,85,000/- from October 3, 1988 to September 25, 1990. It is admitted that on September 26, 1990 the Insurance Company paid Rs. 19,50,000/- to the complainant and it had retained Rs. 1,35,000/- because it is still awaiting the approval of the Tariff Advisory Committee. We have already mentioned that the delay in the settlement of the claim on the ground that the Insurance Company has not received the approval of the Tariff Advisory Committee regarding the rate amounts to deficiency in the service. Therefore, we further direct that the opposite party-Insurance Company shall pay to the complainant the balance amount of Rs. 1,35,000/- with interest at the rate of 18

per cent per annum from September, 26,1990 till the date of realisation.

7. THE consumer dispute is accordingly disposed off with costs of Rs. 500/- payable by the opposite party-Insurance Company to the complainant. Memorandum of Costs Appellants costs Rs. Ps. Cost to be paid by the respondent to the consumer company 500.00 To be paid by the respondent to the appellant 500.00 Complaint disposed of.

