
(2012) 07 NCDRC CK 0038

In the National Consumer Disputes Redressal Commission

K. Kasi Visweswar Rao

APPELLANT

Vs

ANDHRA BANK

RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 882

Hon'ble Judges : R.C.JAIN , V.B.GUPTA J.

Final Decision : Revision Petition dismissed

Judgement

1. AGGRIEVED by the order dated 16.11.2006 passed by the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (for short the "State Commission ") in FA 269 of 2004, the original complainant K. Kasi Visweshwar Rao has filed the Revision Petition No. . 550 of 2007 whiie Andhra Bank (opposite party No.1 in the complaint) has filed revision petition No. 766 of 2007. The appeal before the State Commission was filed by the complainant against the order dated 15.10.2003 passed by the District Consumer Disputes Redressal Forum at Kakinada. By the said order, the District Forum had dismissed the complaint against all the opposite parties including the insurance company. The State Commission partly allowed the appeal and also the csenptakt against the Andhra Bank only thereby, directing the bank to pay a sum of Rs. 50,000/- towards the compensation to the complainant with the stipulation that the amount shall be paid within six weeks, failing which the amount would attract interest @ 9% per annum together with cost of Rs. 2,000/-. In these petitions, the bank seeks for setting aside the said order passed by the State Commission while the complainant seeks upgradation of the relief so granted by the State Commission.

2. WE have heard Mr. K. Maruthi Rao, advocate counsel for the petitioner-complainant in petition No. 550 of 2007 and the respondent No.-1 in the other petition, Mr. Anil Tiwari, advocate counsel for the petitioner-Andhra Bank in revision petition No. 760 of 2007 arid respondent No. 1-3 in revision petition No. 550 of 2007 as also Mr. S.K. Ray, advocate representing the respondent-

insurance company in these petitions and have considered their submissions. The undisputed facts leading to the filing of the complaint were that the above named complainant had initially taken a Fire Policy "C in respect of its hypothecated stocks etc., for the period from 17.7.1995 to 16.07.1996. The complainant having failed to renew the said policy, the bank, to whom the stocks were hypothecated, renewed the said policy from 22.07.1996 to 21.07.1997 in account of the complainant by debiting the insurance premium to the account of the complainant. On 06.11.1996 there was a widespread calamity of cyclone in the area where the godown of the complainant was situated as a result of which, the entire stock stored in the godown of the complainant/bank were damaged. Insurance company being informed of the peril appointed a surveyor, who assessed the loss on account of damage to the stocks arising out of the cyclone at Rs. 1,45,000/- but the insurance company repudiated the claim on the ground that the loss or damage to any property due to flood or cyclone was not one of the risks covered by the fire policy "C ". Complainant 's case is that at the time of requesting for the enhancement of limit from Rs. 1,75,000/- to Rs. 2,00,000/- the complainant had requested the bank to also obtain a policy covering the risk of flood and cyclone, which the bank failed to do and therefore, the bank committed deficiency in service and is liable to compensate the complainant. The District Forum dismissed the complaint against the bank as well as the insurance company holding that the insurance company was not liable to indemnify the complainant as the fire policy "C did not cover the risk of cyclone and flood and inundation and it covered the risks of fire, lightening, explosions, riot, strike and other risks mentioned in the policy. The bank was also exonerated from any liability because they had renewed the same policy which was initially taken by the complainant.

3. THE State Commission though affirmed the finding of the District Forum so far as it had exonerated the insurance company from making any payment to the complainant but it held the bank guilty of contributory negligence in not taking a comprehensive policy covering the risk of cyclone, flood and inundation, which was a potential risk having regard to the area where the poultry farm of the complainant was situated. In reaching the said findings, the State Commission has relied upon Clause-5 of the agreement for obtaining cash credit limit has given the following reasons: "This clause states that the stock shall be insured against such risks as the bank deems it necessary with an insurance company acceptable to the bank to the extent of its market value and the insurance policy shall be duly assigned and delivered to the bank.. Though we accept that it is also the primary duty of the complainant to take a comprehensive policy, the bank in default on the part of the borrower to insure the security the bank has a right to do so at the borrowers cost. Therefore, the bank might to have advise atne complainant to take covering for cyclone, Typhoon, flood etc., since that area is a cyclone prone area. In the instant case the complainant had failed to insure his stock against cyclone and typhoon and the secondary responsibility is on the first opposite party bank who can insure and debit the amount to the

account of the complainant. It is apparent on the face of the record with the insurance policies both first one issued on 17.7.1995 and the second renewed the policy on 27.7.1996 are both issued in the name of the Bank account of the complainant. It is held by the National Commission in *Oriental Insurance Company Limited Vs. Dawood Kumar Taj* reported in 1998(3) CPR 49 (NC) that the Bank having debited the accounts of the insured that the amount of premium remitted to the insurer, had not made sure that the proper coverage was provided for and the bank was also made liable to pay the claim amounts. Therefore the bank cannot absolve its liability and we are of the considered opinion that there is deficiency of service on the part of the bank. Taking into consideration the facts and circumstances and also the principles of equity and natural justice we are of the considered opinion that a compensation of Rs. 50,000/- would meet the needs of justice. Case against the insurance company is dismissed since it is an admitted fact that fire policy "C issued by them does not cover cyclone. Therefore we are of the view that Andhra Bank represented by opposite parties no. 1 to 3 are jointly and severally liable and opposite party no. 5 cannot be made liable in his personal capacity. "

4. LEARNED counsel representing the bank would assail the above finding of the .State Commission mainly on the ground that the same is not based on the correct and proper appreciation of the facts and circumstances of the case and evidence and material placed on record. In this regard, it is submitted that the bank had simply renewed the same policy which was taken by the complainant itself for the period i.e. 17.7.1995 to 16.7.1996 and therefore, the bank was not expected to seek a further coverage of cyclone, typhoon and flood etc., more particularly, when the area where the poultry farm of the complainant was situated is not a cyclone prone area. On the other hand, Mr. Maruthi Rao contended that once the bank had renewed the initial policy, they should have taken care in securing and safeguarding the stocks against all possible perils including fire, cyclone, typhoon etc. In our opinion, the question has been addressed and dealt with by the State Commission in detail and in appropriate manner, thereby holding that the bank was guilty of limited negligence and that is why the compensation payable to the complainant was restricted to mere Rs. 50,000/-. Mr. Rao has contended that the compensation awarded by the State Commission is not adequate because the loss occasioned to the complainant was much more and is not even commensurate with the loss assessed by the surveyor i.e. Rs. 1,45,000/-. In our view, in the given facts " and circumstances that the complainant had not obtained the insurance policy covering the risk of cyclone, flood and typhoon etc., and the insurance company was not liable to pay any amount. The complainant himself is guilty of contributory negligence in not securing the stocks against all possible risks. Of course the bank having extended certain financial assistance was also expected to safeguard their interest and the interest of the complainant to the fullest extent by covering all types of risks to which the stocks were open.

5. IN our opinion, the complainant cannot seek enhancement of compensation

based on the assessment of loss made by the surveyor which was relevant only for the purpose of deciding the insurance claim, if the peril due to which the loss was occasioned, was covered under the policy. Since the deficiency of the bank was to the limited extent as noted above, the State Commission was justified in restricting the compensation to a sum of Rs. 50,000/-. We do not see any illegality, material irregularity, much less, any jurisdictional error in the order of the State Commission, which warrants interference by this Commission.

6. BOTH the Revision Petitions are accordingly dismissed leaving, the parties to bear their costs throughout. Revision Petition dismissed.