

(2003) 11 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

KAMAL YADAV

APPELLANT

Vs

Branch Manager, United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 13-11-2003

Acts Referred:

Citation : 2004 2 CPJ 276

Hon'ble Judges : M.A.A.Khan , Ratan Prakash J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is directed against the order of the learned District Forum, Kota dated 15.3.2002 whereby the complaint filed by the appellant has been dismissed.

2. FACTS relevant for disposal of this appeal in brief are that the appellant Shri Kamal Yadav who is proprietor of M/s. Raj Kamal Enterprises is the dealer in petrol/petroleum products of respondent No. 2 BPCL. The appellant had got it insured for loss and damage, etc. with respondent Insurance Company for the period from 1.7.1999 to 30.6.2000 which also covered the underground tank meant to store petrol/diesel, etc. It has been the case of the appellant that because of excessive rains in Kota in the month of July, 1999; underground storage tank having a capacity of 45 KL was dislodged and upturned; the diesel contained therein fell in the pit where the tank was lodged and thus became a waste. It is the grievance of the appellant that because of this incident and overturning of the diesel underground tank, appellant suffered heavy losses in which 11,652 ltrs. of diesel was wasted. The appellant informed the incident to the Insurance Company the same day on telephone i.e., 30.7.1999 and a written information to that effect was sent also on 3.8.1999. The Insurance Company got the loss/damage surveyed through its Loss Assessor and Surveyor and the appellant also supplied all the necessary particulars and information to the Insurance Company. According to the appellant, although a claim of Rs. 1,62,994.30 was made by the appellant but the Surveyor Shri V.K. Jain assessed/ approved, a loss of Rs. 1,07,954/-. Aggrieved and finding that his claim has been

by an amount of Rs. 55,040.30 and that too having been refused by the Insurance Company vide their communication dated 13.9.2000, the appellant approached the District Forum to claim a total amount of Rs. 3,12,994.30 including financial loss valued at Rs. 1 lakh and Rs. 50,000/- as compensation for mental agony, etc. along with interest @ 22% p.a. w.e.f. 30.7.1999. The complaint was resisted by the respondent Insurance Company but supported by the respondent No. 2 i.e., BPCL. The stand of the Insurance Company has been that the appellant had approached the District Forum on incorrect facts as neither there were excessive rains at Kota on the date of the incident nor the underground diesel tank overturned because of heavy rains. According to the Insurance Company, although the Surveyor Shri V.K. Jain had opined that the underground diesel tank got overturned because of heavy rains but to ascertain the real cause of loss of the diesel contained in the underground diesel tank, the respondent deputed a Retired Superintending Engineer and Vigilance Officer Shri Swadhin R. Mehta who was an expert in such matters; to assess the cause of the incident and the loss, etc who found that the loss to the appellant has not occurred due to excessive rains as alleged. The Insurance Company, therefore, repudiated the claim of the appellant on correct grounds. It has been also the stand of the respondent Insurance Company that the underground diesel tank was also not installed by the appellant as per standing instructions and measures as laid down by the BPCL and, therefore, it was urged that the claim has been rightly refused and the learned District Forum has not committed any error while disallowing the complaint.

We heard the learned Counsel for the parties at great length and have carefully gone through the material made available on the record.

3. THE only questions which call for determination in this appeal are: (1) Whether heavy (excessive) rains took place in Kota on 30.7.1999? (2) If so, whether the underground diesel tank got upturned or overturned and resulted in the wastage of the quantity of diesel as alleged by the appellant?

Though it has been vehemently argued by the learned Counsel for the appellant that there were heavy rains in Kota on 30.7.1999 but the appellant had failed to establish that heavy rains in fact took place on 30.7.1999 at Kota. In fact, except the opinion expressed by the Surveyor Shri V.K. Jain, there is no other proof to support and corroborate the fact that heavy rains took place in Kota on 30.7.1999. On the other hand, the respondent has successfully established with the assistance of meteorological report of the Meteorology Department that neither on 30.7.1999 nor around this particular date heavy rains took place at Kota. In our opinion, the findings arrived at by the learned District Forum to the effect that no heavy rains took place at Kota on 30.7.1999 is a finding of fact and is unassailable. Our answer, therefore, to question No. 1 is in the negative.

4. NOW coming to the second question as to whether the underground diesel tank overturned due to heavy rains on 30.7.1999 it may be pointed out that from the documents and photographs placed on the record of the learned District

Forum it appears that in the pit where the underground diesel tank was placed, it was not properly installed since it was not fitted and clamped therein as per specifications laid down by the BPCL. Even if it is believed that heavy rains took place on 30.7.1999 at Kota it does not appeal to reason that an underground diesel iron/steel tank having the capacity of 45 KL containing 13,369 ltrs. of diesel could overturn by sheer storage of some quantity of water in the pit where the tank was placed. It also does not appeal to commonsense that iron/steel diesel tank having a capacity of 45 KL and containing 13,369 ltrs. of diesel could get overturned even if excessive rains take place because to overturn such a huge structure with enormous weight a very big tank (pit) with lot of empty space would be needed to instal and fix as per specifications. The overturning of such a storage tank is possible only when such a underground tank is not installed properly with appropriate and strong fixtures and huge quantity of water gets stored underneath it. In our opinion, it appears that the underground diesel tank was not properly installed and fixed by the appellant in the pit in question as is evident from a bare perusal of the photographs placed on the record. Furthermore, even according to the appellant, the said storage tank was commissioned somewhere in the month of June, 1999 and the incident is stated to have occurred on 30.7.1999 i.e., within one month. The version given by the appellant that the underground storage tank was duly installed and fitted with appropriate fixtures, etc. and that the appellant has been getting the insurance done for the last more than 10 years is of no avail and does not render any assistance to the appellant in the facts disclosed. We, therefore, have no hesitation in observing that the learned District Forum has not committed any error in giving reliance to the report of an expert Shri Swadhin R. Mehta about the impossibility of the overturning of the underground diesel storage tank on account of any excessive rains at Kota on 30.7.1999 when as per the photographs and date of rainfall recorded and obtained from the Meteorology Department there were no excessive rains in that Region around 30.7.1999. Consequently, we finding no ground whatsoever to interfere in the findings and conclusions arrived at by the learned District Forum in dismissing the complaint filed by the appellant. The appeal, therefore, has no substance and is dismissed with cost on parties. Appeal dismissed.