
(2003) 06 NCDRC CK 0062

In the National Consumer Disputes Redressal Commission

KARRI MAHALAXMI

APPELLANT

Vs

Divisional Manager, Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 18-06-2003

Acts Referred:

Citation : 2004 2 CPJ 660

Hon'ble Judges : P.Ramakrishnam Raju , C.P.Suresh J.

Final Decision : Complaint allowed with costs

Judgement

1. THE complainant is a owner of fishing boat Dolphin type bearing registration number KKD 1754. It was also registered with the Port Authorities under Registration No. FKKD 749. THE complainant also insured her boat with the opposite party under policy No. 432502/217/131/MH/079/96 dated 4.12.1995.

2. WHILE so that boat sailed out on a fishing voyage from Kakinada Port in the early hours on 29.2.1996 towards Bhyravapalem fishing grounds. On completion of 3 hauls of fishing it was noticed that the boat was getting jolts and the crew members got into the engine room and found that the inner compartments of the boat were filled with water. They also noticed that the water was gushing from the bottom of the hull. The driver also confirmed that the stern tube adjacent to stern tube plange broke away. The driver, therefore, started navigating the boat towards shore to save the boat and lives. After 30 minutes of the journey towards the shore the water level has increased and the engine stopped. The crew placed a marking buoy in that area where the boat started sinking and they jumped into the sea to save their lives with life-buoys and jerry cans. The boat capsized at about 8.00 to 9.00 p.m. on 29.2.1996. WHILE they were swimming one of the boats KKD 1460 which was coming in that route rescued them and carried them upto Bhyravapalem canal during that night. On receiving the message the complainants son Ganga Raju intimated the same telegraphically to the opposite party and other authorities on 1.3.1996. The opposite party appointed M/s. Metcalf and Hudgkinson Private Limited, Kakinada. Though search operations were conducted under the instructions of the Surveyor with the help

of Professional Salvors M/s. Dharmadi Apparao and Party the sunken boat could not be traced. The opposite party maintained stoic silence over the claim dragging on the same for years without any settlement. Hence this complaint claiming a compensation of Rs. 5,50,000/-.

The opposite party while denying the material allegations in the complaint admitted that the complainant is the owner of the boat bearing registration No. KKD 1754. The registration of the boat expired by 24.2.1996. There was no renewal of the same from that date. There was no seaworthiness certificate from the Registrar of Indian Fishing Boats, Kakinada from 24.2.1996 which is fatal as per the policy conditions. There was no valid registration on 29.2.1996, the alleged date of mishap. On coming to know of the mishap the opposite party immediately appointed M/s. Metcalf and Hudgkinson (P.) Ltd., as Surveyors who reported that the boat was yawing after one hour of steaming in the direction from Bhyravapalem and there was no mention of rough weather either by the crew or Meteorological Department. It is further reported that if the water has gushed into the boat the floating ship would submerge and in such circumstances jolting is not associated unless there is heavy weather disturbance in the sea. It is also not possible for the driver to conduct investigation by entering into the fish hold as it is not possible to enter into the fish hold by removing the external covers of the propeller shaft and inspect the stern gland in the water filled compartment. As the sky was clear and visibility was 8 miles and many fishing boats are in the vicinity the mishap could have been noticed by them and the crew would have easily attended to the loose bolts. The stern tube flange would never give way in a calm weather condition which is unnatural. As the claim appears to be suspicious and investigation was ordered and the outcome of the investigation is awaited there is no deficiency in service. There is no cause of action for the complainant for approaching this Commission. The complaint is premature and is liable to be dismissed.

3. THE complainant filed Exs. A-1 to A-19 besides filing his affidavit. THE opposite party filed Ex. B-1 report but no affidavit evidence is filed. The point, therefore that arises for consideration is whether there is deficiency in service on the part of the opposite party and if so to what extent?

4. THE complainant as owner of Dolphin type fishing boat got it registered with Kakinada Port Authorities with Registration No. KKD 1754 as per A.P. State Harbour Craft Rules, 1980. THE same was also insured with the opposite party on 4.12.1995. THEse facts are undisputed. It is claim of the complainant that the said boat capsized at about 8.00 or 9.00 p.m. on 29.2.1996 while it was conducting fishing operations sailing from Kakinada towards Bhyravapalem fishing grounds. Though Surveyors by name Metcalfe and Hudgkinson (P.) Ltd., were appointed, when a claim is preferred by the complainant, but no final decision is taken yet and the opposite party is maintaining stoic silence and hence this complaint claiming a sum of Rs. 5 lakhs. The opposite party contends that though the fishing boat was issued a certificate by the Registrar of Indian

Fishing Boats, Kakinada on 23.3.1995 the same is not renewed and hence the registration certificate obtained by the complainant comes to an end and hence the claim is violative of the warranty conditions in the policy such as non-obtaining certificate of seaworthiness and on this account the C.D. is liable to be dismissed. It is further contended that because of suspicion about the alleged sinking of Dolphin Fishing Trawler KKD 1754 an investigation was ordered into the said incident, the result of which is awaited. The alleged mishap occurred on 29.2.1996. The Surveyors submitted their report Ex. B-1 on 23.1.1997. The complaint was filed on 28.2.1998. Though 7 years after the incident and five years after the filing of the complaint have elapsed no final decision one way or the other is taken by the opposite party. To say the least it is a very sad state of affairs. We, therefore, constrain to hold that this itself is a circumstance that there is deficiency in service. We could have gone into the merits of the claim ourselves but we refrain from doing so as it is the prerogative of the opposite party to take a decision and we do not trench upon the jurisdiction of the opposite party. Therefore, while directing the opposite party to take a final decision within a period of four weeks from the date of receipt of this order and communicate the same to the complainant, we hold that there is deficiency in service in not taking a final decision within a reasonable period of 3 to 6 months from the date of presentation of the claim and for this deficiency we direct the opposite party to pay a sum of Rs. 30,000/- to the complainant within a period of 8 weeks from today, failing which the said sum will carry interest at 9 per cent per annum from the cut-off date till payment.

5. THE complaint is allowed to the extent indicated above with costs of Rs. 5,000/-. Complaint allowed with costs.