
(2007) 08 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

KETI CONSTRUCTION LTD

APPELLANT

Vs

United India Insurance Co Ltd

RESPONDENT

Date of Decision : 10-08-2007

Acts Referred:

Citation : 2008 1 CPJ 304

Hon'ble Judges : S.N.Kapoor , B.K.Taimni J.

Final Decision : Appeal dismissed

Judgement

1. -APPELLANT was the complainant before the State Commission, where he had filed a complaint alleging deficiency in service on the part of the respondent-Insurance Company.

2. VERY briefly the facts of the case are that the appellant-company had got a contract of "build-Operate-Transfer" basis from the Government of Maharashtra Public Works Department (PWD) for construction of a bridge over Koyana river in Satara District, Maharashtra. The policy was obtained on 12. 5. 2000 and it was the case of the complainant that on 15. 5. 2000 on account of earthquake, the work of "erection of staging, centering, scaffolding, shuttering" was damaged. The matter was reported to the respondent on 26. 5. 2000 and a claim was preferred claiming an amount of Rs. 16,50,000. A Surveyor was appointed by the respondent-company and after considering the report of Surveyor and the claim preferred by the appellant, was repudiated. It is in these circumstances, a complaint was filed before the State Commission, alleging deficiency in service on the part of the respondent. The State Commission after hearing the parties and perusal of material on record dismissed the complaint, hence, this revision petition before us.

We heard the learned Counsel for the appellant and perused whatever material is on record.

3. THERE is no disputing the fact that the work was assigned to the appellant by the Maharashtra State Government on 11. 10. 1999 and work was to commence

in October 1999 and it is not in doubt that the work on the site had started on 28. 4. 2000 yet the policy was obtained by making payment only on 12. 5. 2000. As rightly held by the State Commission, the claim of the appellant is based on damages by earthquake, to the constructions made on 13th, 14th, and 15th, May 2000. As rightly observed by the State Commission proximity of date obtaining the policy and the earthquake tremor would arise. As per material on record, there is no disputing the fact that this area was earth-quake prone and work had started on 28. 4. 2000 yet insurance policy was not obtained till 12. 5. 2000. We are not impressed by the argument of the appellant that they had approached the Insurance Company earlier but they did not issue the policy till 12. 5. 2000. No material in support of this contention has been brought by the appellant on record.

4. IN the complaint as also in para 1 of the memo of appeal it is clearly stated that Maharashtra State PWD had given the design of the bridge and the same was to be constructed by the applicant under the supervision of Engineers of Maharashtra State Public Works Department. If this was so, then, in our view, the State Commission was quite right in holding that the damage has been inspected by the State PWD officers and they were the best persons to tell about the time, date and cause of damage but no such report or affidavit of any such officer is filed. This, in our view is to be held against the appellant in view of the circumstances narrated above. It is also not in dispute that the damage allegedly took place on 15. 5. 2000 but the matter was reported to the opposite party only on 26. 5. 2000, leaving little room for the Surveyor to come and visit the site to assess the damage immediately. The appellant has also relied upon the report of one C. V. Kand, a Civil Engineer. The State Commission has observed that report of the said C. V. Kand does not show the time and date of visit, which obviously was held against them. We are of the same view for the simple reason that the explanation given by the appellant, that Mr. C. V. Kand was regularly visiting the site from time-to-time does not cut any ice with us for two reasons: firstly, if Mr. C. V. Kand is regularly visiting the site, then he could be in the employment under whatever arrangement, with the appellant and he cannot be said to be an independent witness and secondly it was obligatory on the part of the appellant to produce the specific report in specific terms related to the assessment of damage caused to the structures subsequent to the alleged earthquake between 13 to 15th May 2000. Since it was a question of damage related to earthquake, it was for the appellant to prove his case, which in our view, he had failed to do. Firstly, damage/loss was not reported in time to enable the insurers to get first hand account of the damages, secondly, no grounds have been shown to disagree with the report of the Surveyor and thirdly, report of one Mr. C. V. Kand cannot be relied upon for the reasons already given above.

5. FOR the reasons given above the State Commission dismissed the complaint. We find no ground whatsoever to interfere with the well reasoned order passed by the State Commission. Even before us no material has been placed to determine the veracity of the loss caused to the structure, shuttering and

scaffolding and the like due to the earthquake occurring between 13 to 15th May, 2000. In the above circumstances, this appeal has no merit, hence dismissed. Appeal dismissed.