

(2003) 12 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

KISHORE CHANDRA SAHOO

APPELLANT

Vs

BRANCH MANAGER, ORIENTAL INSURANCE COMPANY LTD .

RESPONDENT

Date of Decision : 31-12-2003

Acts Referred:

Citation : 2004 3 CPJ 352

Hon'ble Judges : D.M.Patnaik , Arati Mohanty J.

Advocate : S.N.Mishra , G.P.Dutta

Judgement

1. THE facts and the issues for decision in this case is, the complainant is the Managing Director of the Private Limited Company. THE company entered into a contract with the C.D.A. for development and construction of plots and roads in Sector-8. THE agreement number is 17211/C.D.A. dated 31.12.1997. To recoupe any financial loss during the period of the contract, the complainant had taken out the policy of insurance vide No. 345501/102/12027/44/004/99 with the Insurance Company that was in force in between the dates from 9.6.1998 to 8.12.1999 on payment of due premium. It is the case of the complainant that when eighty per cent of the works were executed, over plot Nos. 1, 2, 3, 4, 5, 6, 7 and 8 due to heavy flood and inundation on 7.7.1999 and 8.7.1999 the work was washed away which fact was intimated to the Branch Manager, Rourkela Branch-O.P. No. 1 in time. A claim was lodged for Rs. 5,82,306.77 vide claim form No. 22 of 2000. But the claim was repudiated on 12.10.2000 without any justifiable reason. Hence the case.

2. IN the written version vide para-6, the INSurance Company took the plea that on 7.7.1999 and 8.7.1999 there was never any heavy flood, nor any inundation. It is further their case that on receiving the claim application they deputed the Surveyor who assessed the loss and after receipt of the Surveyor's report they also got conducted a joint survey at the spot on 26.6.2000 by the Deputy Manager, Assistant Manager, Assistant Manager (Vigilance Department) and Administrative Officer(s). It was their opinion that there was hardly any possibility of flood in that area because of the location and the soil condition as

found. According to them 84 mm rainfall could hardly cause flood in the area. On the basis of this material they repudiated the claim on 28.9.2000. It is further their plea that the nature of the case is such that it needs elaborate evidence and documentation and, therefore, a fit case for decision by the Civil Court. Again it is pleaded that the matter was under investigation by the C.B.I. Heard Mr. S.N. Misra, the learned Counsel for the complainant and Mr. G.P. Dutta the learned Counsel for the Insurance Company. Perused the materials on record. The fact of insurance and its validity during the period in question is admitted. Therefore, the question remains for decision whether the complainant undertook the work and proceeded up to 80% of the construction work. This fact is not disputed in the written version, though the complainant specifically pleaded about the construction work up to that level. Now the question is whether the construction was washed away because of the flood water and inundation. The O.P. admitted there was rain during these two days but the rainfall was 84 mm and this would not wash away the construction as claimed by the complainant.

The Surveyor's report is on record which we have perused. This is dated 27.10.1999. The Surveyor made the survey on 15.7.1999 and 16.7.1999 respectively. He surveyed plot Nos. 1, 2, 3, 4, 5, 6, 7 and 8 in Sector-8 on those dates. The Surveyor found the damage in respect of the above plots and roads and the nature of damage was found and filled area to have been sunked and collapsed and washed away. He has given the dimensions of damage in cubic metres against the plot numbers. He has noted the proximate cause of damage was due to heavy rain on 7.7.1999. The flood water could not be discharged and remained accumulated in the area for more than 12 hours. On 8.7.1999 and 9.7.1999 when the area was reinspected, the accumulated water was found to have been discharged through huge collapse of roads and plots. Thus the report of the Surveyor was positive about the damage caused to the construction work by flood water. In this particular case the loss assessed was total Rs. 5,82,307.07 vide Surveyor's report dated 27.10.1999. It also took the note that there was no question of any deduction towards the depreciation since the constructions were damaged before the area was put to use. The loss was assessed at Rs. 5,82,307.07 p.

3. HAVING heard the Counsels for both sides at length and on going through the assessment, we have no hesitation to hold that the complainant is entitled to the claim of Rs. 5,82,307.07 with interest at the rate of 10% per annum from the date of repudiation i.e., 12.10.2000 till payment is made. The amount be paid within two months from the date of communication of the order. No cost. Complaint disposed of.