(1993) 04 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

K.N. SOMAN NAIR APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 08-04-1993

Acts Referred:

Citation : 1993 3 CPJ 1503

Hon'ble Judges : G.G.Loney , Atanasio Monteiro , Subhalakshimi Naik J.

Advocate : S.S.Sridharan , E.Afonso

Judgement

1. IN this complaint, it is alleged that the Opposite Party namely United INdia INsurance Co. Limited did not settle complainant claim of INsurance for Rs. 100 lakh. The Complainant had insured stock of timber, cut-size ballies and bamboos lying in his promises styled as KNS Enterprises situated at Shantinagar. The complainant alleged that on 3-2-1990, a riotous mob attached his premises and damaged/pilferred the insured goods and caused him loss of Rs. 1.00 lakh. The incident was reported to the local police station. However, O.P. on 8-3-1990 terminated the INsurance Policy in question and appointed a surveyor to assess the loss. Surveyor carried out the survey of the loss caused to the complainant and submitted his report dated 16-4-1990. Surveyor assessed the loss of the complainant for Rs. 61.700.00 but recommended only loss of Rs. 10,800.00. However, O.P. rejected claim of the complainant on 18-6-1990.

2. ACCORDING to O.P. complainant had no valid title of this property where the goods were stocked and stored and, therefore, the claim has been rejected by the O.P. We have heard Mr. S.S. Sridharan, Advocate for complainant and Mr. E. Afonoso, Advocate for opposite party. The admitted facts are that complainant''s stock was insured for an amount of Rs. 1.00 lakh and that on 3-2-1990, policy was subsisting. The incident of riot has not been seriously dispute by O.P. The main reason as stated in para 4of the written version to reject complainant''s claim is that the complainant has obtained insurance policy by fraudulent misrepresentation and non-disclosure of material facts, as regards title of the insured property. On critical examination of insurance policy in question, the

description of place where complainant''s stock was insured indesignated as "stock of timber, cutsize ballies and bamboos in shade of first class and not in open construction situated at Shantinagar, Vasco-de-Gama." From the aforesaid reading it is clear that insurance policy covered the risk of shade, furniture and stock of timber. There is no mention in the policy that immovable property on which the complainant''s shade and stock of timber was situated. Therefore, approach of O.P. was wrong to reject the complainant''s claim assuming that immovable property was insured. According to O.P. there was a dispute as regards immovable property but in our view, that cannot be construed as fraudulent misrepresentation and non-disclosure of material facts because only shade and stock of timber was insured. It is the duty of the Insurance Company to verify the title of property on which the shade is situated before issuing Insurance Policy.

If the Insurance Company is not vigilant to ascertain the title of the property before issuing Insurance Policy, then it should not make grievance that the policy is obtained by fraudulent misrepresentation and non-disclosure of material facts. Failure on the part of Insurance Company to ascertain the title of the property to be insured before issuing the Policy amounts to deficiency in its service. Non-disclosure of material facts as regards title of the property in this case cannot be said to be by fraudulent misrepresentation as policy in question is limited to cover risk on stock of timber and shade.

3. IN the complaint filed by Hasan Sultan Nadaf before the Maharashtra State Commission, similar question arose for consideration. The State Commission rejected the objection of insurer on the ground of failure on the part of INsurance Company to verify the title of insured before the issue of policy. Said findings of Maharashtra State Commission is maintained by the National Commission in first appeal No. 28 of 1992 on 14-10-1992. It has been observed by the National Commission that "It is the duty of the insurer to satisfy himself before issuing the policy of insurance, that the insured has an insurable interest. Only if the insured has furnished wrong or false information, it is open to the insurer to repudiate an insurance, claim on the policy. But it is not open to raise, the question of absence of insurable interest after the Policy has been issued." IN this case, we find that failure on the part of the O.P. to examine title of the immovable property on which the complainant''s stock was situated does not amount to non-disclosure of material facts. Secondly, it cannot be said to be a fraudulent misrepresentation. The complainant had reported the incident to the police on 14-2-1990 i.e. on the next day of incident in which he reported that Mr. S.R. Jaggal Chavdappa, Mr. Atmaram Govenkar, Mr. Vilas and some other persons illegally removed timber and other wood material belonging to the complainant. A copy of the aforesaid report and a letter addressed to the Deputy Superintendent of Police dated 2-2-1990 are placed on record. According to complainant, a riotous mob forcibly removed the material of stock and damaged his construction. Narration of facts from the two reports of complainant discloses an offence of riot under Section 393 of the IPC. It is immaterial whether police

have taken any action or not but the incident reported by the complainant. Undoubtedly discloses an offence of riot. The policy in question cover the risk of riot under clause 6 on the front page. Similarly, under Head "Riot, strike and Malicious Damage clause" policy is intended to cover riot, strike and malicious damage. It clearly states that loss of or visible Physical damage by external violent means to the property insured directly caused by the act of any person taking part together with others in any disturbances of the public peace amounts to riot. Thus Policy in question clearly indemnifies the loss caused due to riot. Under these circumstances, defence of O.P. as stated in para 5 of the written version that complainant''s report merely speak of only shifting the material from disputed land cannot be accepted. Destruction or removal of stock in question is not at the instance of the complainant but at the instance of riotous mob which has Physically damaged complainant''s insured stock. Under these circumstances, we find that there is neither fraudulent misrepresentation made by the complainant nor it is the case of more shifting of the material from disputed land. From the averments made in the complaint duly supported by affidavit of the complainant, we find that the complainant has proved his allegations. A vain attempt has been made by the Insurance Company to terminate the policy in question w.e.f. 22-3-1990 which, in no way affects the complainant''s claim as the policy was subsisting on the date of incident of riot. 7. The complainant has claimed in his complaint that loss of Rs. 1.00 lakh which is permissible limit of insurance policy. Loss was surveyed by the surveyor of O.P. namely, P.A. Balgi & Associates and his report is dated 16-4-1990. The surveyor on the last page of his report gave loss of bamboos, ballies and cut-wood showing the total value of loss at Rs. 61,700.00. However, he has worked out the average value of Rs. 10,800.00. We are not satisfied about the average valuation arrived by O.P. When there is total loss of Rs. 61,700.00 shown in the report, there is no question of striking off average of Rs. 10,800.00 only. Hence, we accept the figure of 61,700.00 as assessed before the surveyor towards total of the complainant for his insured stock. Hence we pass the following order : The Complaint is allowed. The opposite party, United Insurance Company Limited, Vasco-da-Gama is directed to settle complainant''s claim for Rs. 61,700.00 and pay the aforesaid amount to the complainant together with 18% interest from 18-7-1992 i.e. date of complaint within 30 days from the receipt of this order. Complaint allowed.

