(2010) 10 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

M P Audyogik Kendra Vikas Nigam APPELLANT

Vs

NEW INDIA ASSURANCE CO LTD RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

Citation : 2011 2 CPJ 16

Hon'ble Judges : K.S.Gupta , S.K.Naik J.

Final Decision : Complaint dismissed.

Judgement

1. MR. Justice K.S. Gupta, Presiding Member-Complaint has been filed, inter alia, alleging that under the licence deed dated 9.10.2007, the complainant granted licence to opposite party No. 2 of its premises consisting of the building and cold storage situated at Pipariya, District Hoshangabad (M.P.) w.e.f. 15.10.2007 for a period of ten years. Under Clause 6(d) of the licence deed, the opposite party No. 2 was obliged to insure the premises and machinery against fire, etc. in the joint names of the complainant and opposite party No. 2. Vide policy dated 31.10.2007, the opposite party No. 2 got insured the building for Rs. 1.10 crores and plant, machinery and accessories for Rs. 1.10 crores in its sole name contrary to said Clause 6(d). It is further stated that on 26.2.2008, a fire broke out in the premises causing heavy damage to the building and the plant, machinery and accessories. Opposite party No. 1-Insurance Company was intimated of the occurrence on 27.2.2008. By letter dated 22.4.2008, the complainant informed the opposite party No. 2 that the estimated loss to the building was Rs. 1,55,01,737 and loss to the plant, machinery and accessories was Rs. 1,34,31,630. This letter was delivered in the office of opposite party No. 2 on 24.4.2008. Opposite party No. 1 Insurance Company was also apprised of the estimated loss. On 6.9.2008, the opposite party No. 2 submitted to the opposite party No. 1 Insurance Company a statement/claim showing loss to the building of Rs. 2,60,69,052 and to the plant, machinery and accessories of Rs. 19,54,000 without the approval of the complainant. Claim preferred by opposite party No. 2 has no significance. It is further alleged that the Surveyor assessed the loss at Rs. 76,22,299 which amount was sent to the complainant through

cheque No. 194603 dated 15.4.2009 along with covering letter dated 15.4.2009 by opposite party No. 1 Insurance Company. This amount was received under protest by the complainant. Complainant has challenged the assessment of loss as made by the Surveyor. It is stated that the claim was reduced from Rs. 2,80,23,052 to Rs. 76,22,229 by the Insurance Company without any justification. Direction is sought to be made to opposite party No. 1 Insurance Company to pay the balance amount of Rs. 1,43,77,771 along with interest and pay Rs. 50,00,000 towards compensation for mental agony by both the opposite parties and cost, to the complainant.

2. WE have heard Mr. Sushil Dutt Salwan for the complainant on point of maintainability of the complaint as we have been of the prima facie view that it is not legally maintainable against the opposite party No. 1 Insurance Company by the complainant. Submission advanced by Mr. Salwan is that the complainant being licensor/owner of the building and plant and machinery, has the insurable interest in the claim arising out of the fire to the insured property on 26.2.2008 and the present complaint is, therefore, maintainable. Reliance is placed particularly on the decision in United India Insurance Co. Ltd. v. Gulab Singh Chauhan and Ors., AIR 2003 HP 102. Attention has been drawn to the proposal form at page 27 on the paper book. Licence deed (Annexure-B) would show that the building and plant and machinery of the cold storage was given on licence by the complainant to opposite party No. 2 w.e.f. 15.10.2007 for ten years on the terms and conditions noted therein and under Clause 6(d), the insurance policy was to be taken by opposite party No. 2 jointly in its name and the complainant. Policy (Annexure-C) would show that it was taken in its sole name by opposite party No. 2. In said proposal form (Annexure-D) opposite party No. 2 has been shown to be the insured and against the column of hypothecation, the name of complainant appears. As regards name of the insured, obviously, the policy is in consonance with the proposal made. It is settled law that insurance policy between the insurer and the insured represents a contract between the parties and the terms thereof have to be strictly construed to determine the extent of liability of the insurer. See Oriental Insurance Co. Ltd. v. Sony Cheriyan, II (1999) CPJ 13 (SC)=VI (1999) SLT 565=II (1999) ACC 196 (SC)=1999 CTJ 556 (SC) (CP) and Polymat India (P) Ltd. and Another v. National Insurance Co. Ltd., IV (2004) CPJ 49 (SC)=VII (2004) SLT 243=2005 CTJ 1 (SC) (CP). Complainant though is having interest in the building and plant and machinery being the owner/licensor thereof, it does not have any privity of contract with opposite party No. 1-Insurance Company. Extent of liability of opposite party No. 1 has to be determined only as per the policy purchased by opposite party No. 2 where under it is only the opposite party No. 2 who is entitled to compensation being the insured. In Gulab Singh''s case (supra) aforesaid first decision of the Supreme Court was not considered. Aforesaid amount of Rs. 76,22,229 seems to have been paid to the complainant at the instance of opposite party No. 2. Second relief claimed in the complaint is connected with the first relief.

3. COMPLAINT is, thus, not maintainable and deserves to be dismissed

accordingly. Dismissed as such. Complaint dismissed.

