
(1999) 08 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

MANJIRA ROCK DRILLERS

APPELLANT

Vs

United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 31-08-1999

Acts Referred:

Citation : 2000 1 CPJ 261

Hon'ble Judges : S.Parvatha Rao , T.Ranga Rao , Mamata Lakshmanna J.

Final Decision : Complaint dismissed

Judgement

1. THIS complaint was presented before this Commission on 28.1.1993 under Section 17(a)(1) of the Consumer Protection Act, 1986 with the following averments.

2. THE complainant is a firm dealing in the business of digging borewells, tubewells with compressor and rigs, etc., in addition to doing business in consultation. THE complainant obtained an insurance policy bearing No. 051403/31/71/062/91 in respect of Layland Truck and Compressor No. AHA 8145 for the period from 31.3.1991 to 30.3.1992 from United India Insurance Company Ltd. (opposite party) for a total value of Rs. 6,50,000/- covering all the risks of the rig with compressor and other machinery. THE rig was damaged on 6.6.1991 due to fire explosion in the compressor and engine when they were on the truck. THE complainant immediately informed the opposite party about the accident by his letter dated 7.6.1991. THE opposite party appointed one Mr. M.S. Madhava Rao as Surveyor and he enquired into the matter and submitted his report, but the opposite party without settling the claim of the complainant again appointed Mr. Madhusudhan as second Surveyor. But the said Madhusudhan has not come to the complainant to enquire about the matter. THE complainant was put in darkness about the progress of his claim. THE opposite party again appointed one Shivkumar as a third Surveyor and ultimately repudiated the claim of the complainant by its letter dated 12.8.1992 stating that the damage to the compressor engine fitted on rig mounted truck is due to mechanical breakdown and not due to explosion. THE repudiation made by the opposite party is without

any basis and is arbitrary. THE opposite party is bound to satisfy the complainant with the material in support of the grounds on which it repudiated the claim of the complainant. THE complainant sent a letter dated 22.8.1992 protesting to the repudiation made by the opposite party and mentioning all his objections in that letter. THE opposite party has not supplied the copies of the reports of the Surveyors. THE Surveyors appointed by the opposite party have no basic knowledge in the field. THEy have not made reliable enquiries from the persons who got good experience in this field. THE manufacturer of the rig informed the complainant that there cannot be any mechanical breakdown. THE complainant always maintain the vehicles and the machinery in good and perfect condition and there cannot be any scope for any mal-functioning of the rig component. THE contention of the opposite party that due to the mechanical breakdown the damage occurred to the machine is not tenable. THEre is deficiency in service on the part of the opposite party in not settling the claim of the complainant. THErefore, the complainant prays for a direction to the opposite party to pay to him a sum of Rs. 4,00,000/- towards damages and a sum of Rs. 1,00,000/- for the delay in settling the claim. One B.B. Chaya Devi, Divisional Manager of the opposite party Insurance Company at Hyderabad filed a counter affidavit denying the allegations made in the complaint and contending that the opposite party sent a letter dated 14.8.1992 to the complainant repudiating the claim of the complainant on the ground that the damage was due to mechanical breakdown which is an exclusion in the policy, that the matter was openly discussed with the complainant but the complainant was not convinced, that the complainant in his letter dated 7.6.1991 informed the opposite party that Cummins engine fitted to the rig mounted truck was damaged in an explosion while the rig was in operation on 6.6.1991, that the opposite party appointed M.S. Madhava Rao as Surveyor and he submitted his report dated 6.1.1992 opining that the alleged damage to the engine was caused on account of starvation of lubrication which will lead to Gudgwen pin wrenching off and hitting the Cylinder block while in motion resulting in the breakdown of cylinder block causing heavy damage to the Crankshaft, Pistons, Connecting Rods, Camshaft and Cylinder head, that when the matter was referred to the manufacturer they called this damage as freak accident which seldom takes place in the engines which are provided by air-vents whenever air pressure is built inside the engine, that the said Surveyor submitted another report dated 13.5.1992 stating that the damage was not due to explosion and it was only due to mechanical breakdown and leaving the settlement of the claim of the complainant to the opposite party, that the opposite party appointed Mr. Madhusudhan as second Surveyor and he also endorsed the view that the damage was due to mechanical breakdown and not due to explosion and the Crankshaft in motion and the connecting rod must have hit the wall of the cylinder block resulting in the breakdown of wall of the cylinder block and the breakage of lower half of the piston, that the opposite party again appointed another senior Surveyor Mr. N. Shivkumar to enquire into the matter and he submitted a report dated 11.7.1992 stating that the damages to the compressor were caused due to mechanical breakdown and not due to explosion

for the reasons mentioned in his report, that there is sufficient material to show that the damage caused to the compressor and rig were due to mechanical breakdown, that the complainant has not produced any material to show that the alleged damage was due to explosion and that, therefore, the claim of the complainant for payment of damages is not sustainable. It is also stated in the counter affidavit that the complainant has no locus standi to file the complaint since the policy was issued in the name of one V. Ravinder Reddy and the complaint was filed by a firm M/s. Manjira Rock Drillers and that the complaint is liable to be dismissed.

At the time of enquiry one V. Ravinder Reddy said to be the partner of the complainant firm filed his affidavit dated 31.7.1998 reiterating the facts mentioned in the complaint and praying for a direction to the opposite party to pay to him the total sum of Rs. 5,00,000/- as compensation. he got Exs. A1 to A8 marked in support of his claim. The opposite party got Exs. B1 to B4 marked in defence. No oral evidence was adduced by either party.

3. THE point for consideration is whether there is deficiency in service on the part of the opposite party. The case of the complainant firm is that its compressor and rig were damaged due to explosion and that because the insurance policy Ex. B1 issued by the opposite party covers the risk of damage caused on account of explosion the complainant firm is entitled to damages of Rs. 5,00,000/-. The contention of the opposite party is that the three Surveyors appointed by it enquired into the matter and submitted Exs. B2 to B4 reports stating that the damage was on account of mechanical breakdown and not due to explosion. The documents relied upon by the complainant are Ex. A1 xerox copy of the insurance policy, Exs. A2 to A4 letters written by the complainant to the opposite party requesting for payment of damages stating that the damage was due to explosion, Ex. A5 letter of the opposite party to the complainant and Exs. A6 to A8 copies of the reports of the Surveyors. There is no material filed on behalf of the complainant to show that the compressor and the rig in question were damaged due to explosion. There is no dispute by the complainant that the damage caused to the compressor and the rig due to breakdown is not covered by the policy. There is no expert opinion on behalf of the complainant to show that the damage caused to the compressor and the rig of the complainant was on account of explosion. The man who was in charge of the vehicle at the time of the alleged explosion has not been examined by the complainant. He did not give any affidavit stating that the damage occurred on account of explosion. There is no evidence to show that there was spontaneous combustion. The three Surveyors appointed by the opposite party Insurance Company made a thorough investigation and came to the opinion that the damage to the complainant's compressor and rig was on account of mechanical breakdown. We are, therefore, of the view that the repudiation made by the opposite party of the claim of the complainant is based on sufficient material showing that the damage was due to mechanical breakdown and that the opposite party applied its mind and the repudiation made by it is not arbitrary. Accordingly we hold that there is no

deficiency in service on the part of the opposite party and that the complainant is not entitled to the relief of compensation claimed by him.

4. IN the result, the complaint is dismissed but without costs in the circumstances of the case. However this order will not preclude the complainant to approach the Civil Court for appropriate reliefs. Complaint dismissed.