(2013) 08 NCDRC CK 0045

In the National Consumer Disputes Redressal Commission

M/S Budhania Service Station — APPELLANT

Vs

NATIONAL INSURANCE CO. LTD — RESPONDENT

Date of Decision : 02-08-2013

Acts Referred:

Citation : 2013 0 NCDRC 577 : 2013 4 CPJ 230

Hon'ble Judges : J.M.MALIK , S.M.Kantikar J.

Advocate : L.C.RAJPUT , YOGESH MALHOTRA

Judgement

1. M /s. Budhania Service Station, Unit-II, the petitioner/complainant, in this case, obtained a Standard Fire and Special Perils Insurance Policy from the National Insurance Co. Ltd., respondent/opposite party, for a sum of Rs.10,00,000/- .

2. IN the night falling between 15th-16th September, 2005, due to heavy rains in Talera Region, Rajasthan, situation of water uplift and flood was occurred . The complainant ''s installation, i.e., underground diesel tank came out breaking its barrier connection and damaged the installations. This caused the diesel to flow out. The OP was apprised of this fact. Sh.Amit Kumar Srivastava, surveyed the premises, on 19.09.2005 and forwarded his report on 14.08.2006. He opined that the loss of the complainant, up to Rs.66,272/-, was caused. The complainant submitted, as a matter of fact, loss of 10,339 litres of diesel, was caused to it and 1521 litres diesel became unfit for sale, due to mixing of flood water. According to the petitioner, the total loss in the sum of Rs.3,68,514/- was caused and the complainant was also entitled to interest @ 12% p.a., Rs.30,000/- as compensation for mental agony and costs of litigation, in the sum of Rs.2,000/-. A complaint was filed before the District Forum.

3. THE OP contested the case. The District Forum allowed the complaint and directed the respondent to pay a sum of Rs.3,15,236/-, towards loss caused, with interest @ 9% p.a. from 02.08.2007, the date of filing of complaint, till its realization. Rs.5,000/- towards mental agony and harassment and Rs.1,000/- towards cost of the complaint were also granted.

4. AGGRIEVED by that order, the OP preferred an appeal before the State Commission, which observed, as under :- "We have considered the arguments of the parties. In our opinion, there is no justified basis for not accepting the survey report. The Surveyor in his report has made it clear that the uplifting of the tank was not due to flood or water rising. But tank came out due to the increase of underground water level, it has also been assessed that the tank was not installed properly, at 3-4 Mtrs. Deep, surrounding standard concrete and cement and was simply placed by digging a pit. In such circumstances, we have no other basis to have a different opinion from the decision of the Hon ''ble State Commission in Kamal Yadav ''s case whose facts are applicable with the present case. Hence, this appeal is accepted, the order dated 03.08.2007, passed by the Ld. District Forum is set aside and complaint of the complainant is dismissed ".

We have heard the counsel for the parties. Both the counsel have relied upon the judgment cited above (Kamal Yadav Vs. Branch Manager, United India Insurance Co.Ltd. and Anr., II (2004) CPJ 276). The facts of the said case are somewhat different. In that case, the complainant could not prove that excessive rains took place in Kota, on 30.07.1999. It was observed that underground diesel tank was not installed properly since it was not fitted and clamped therein, as per specifications laid down by BPCL. In that case, the tank got over-turned. It was observed that it appears that the underground diesel tank was not properly installed and fixed by the appellant in the pit in question as is evident from a bare perusal of the photographs placed on the record. The storage tank was commissioned in the month of June, 1999 and the incident took place on 30.07.1999, i.e., within one month. It is, thus, clear that the facts of the said authority do not dovetail with the facts of this case.

5. IN this case, the Surveyor has reported, in Para 6.0, as under :- "6.0 INSURER ''S LIABILITY: As explained earlier that due to heavy rain & accumulation of water has caused the underground tank to come out above the ground breaking the inlet & outlet pipe lines. This phenomenon is known as "uplift " and relevant in design and erection of underground tanks in civil engineering. The reason for uplift is rise in water table. In petrol pumps, the tanks are lowered up to 4-5 mtrs depth. These tanks are jacked up by bolts grouted deep on ground to save them from uplift in the event of rise in water table. Empty tanks or tanks having large surface area in compression to the volume are exposed to "uplift " phenomenon. Coming back to the coverage under fire policy - flood/inundation, as understood in the subject insurance is the "escape of water from its normal confine. Now, in the said case, the tank is placed in a pit of masonary wall and grouted with bolts. Due to rise in water table and accumulation of water above tank, water seeped inside the pit. The pit volume is not sufficient enough to lift the tank even when it is completely filled with water. The main reason is rise in the underground water table which has large volume and could push a tank either empty or filled with contents. Since there is no insured peril operated (Rise in underground water table is not flood/ inundation), insurer has no liability towards this claim ".

6. IT is, thus, clear that the above said incident happened naturally. The tank was installed as per the requirement. Report of the Surveyor does not point out that due to negligence of the petitioner, the loss was caused. Moreover, there is one more Surveyor, appointed by the complainant, himself. His report is also relevant and its relevant portion is, reproduced, as under :- "The uplifting effect can only be due to rise in sub-soil water level, which can only be due to storage or strangulation of water in up-stream and moving to lower-level, on down-stream, as flood water passed through ground-level and saturation of ground below is possible. As rain or flood water was not impounded in up-stream, only saturation of ground level with increase in horizontal force resulted in uprooting and over-topping of tank, after failure of pit wall and scouring of earthen layer down-stream and over tank. Thus, based on technical aspects of Civil Engineering, soil mechanics and hydraulics Engineering, I am of the opinion that damages of under-ground tank and pit are due to flooding of area during torrential rains in Talera area of Bundi District, during the period. This opinion, based on technical theories is issued without prejudice ".

It must be borne in mind that the Agents/Inspectors of National Insurance Company did not discharge their duties properly. The insurance policy entails an astronomical amount of Rs.10,00,000/-. Before granting the insurance policy, it was the duty of the insurance company to issue the policy, after considering all the requisite formalities. They should have taken the opinion of an Expert, at the time, before grant of insurance policy. This fact has to be differentiated with the facts of the suppression of material facts of the deceased. A Doctor cannot, prima facie, tell the patient that he is suffering from Kidney problem or whether he has got stones in the gall bladder or is suffering from Diabetes mellietus, or cancer, etc. There can be suppression of facts in respect of those diseases. However, there can be no suppression of facts when the building is lying in front of the Inspector, at the time of the inspection of the tank. If there were some infirmities or defects in the tank, the respondent should not have granted the policy. Money is the biggest seed of strife in the world. For the sake of few rupees, the concerned officials either cause loss to the insured or the insurer. Such like persons can be treated by the Department itself, because these persons are like double-edged swords, which can cut both the sides. In the result, we allow the revision petition, set aside the order of the State Commission and restore the order of the District Forum, with no order as to further costs.