

(2016) 11 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

Case No : 262 of 2015

M/S. HAZARIBAGH CO-OPERATIVE COLD STORAGE	APPELLANT
Vs	
UNIVERSAL SOMPO GENERAL INSURANCE CO. LTD. & ORS.	RESPONDENT

Date of Decision : 22-11-2016

Acts Referred:

Consumer Protection Act, 1986, Section 19, Section 21(a)(2) - Appeals - Jurisdiction of the National Commission

Citation : (2016) 11 NCDRC CK 0052

Hon'ble Judges : B.C. Gupta

Advocate : O. P. Bhadani, Rajat Khattry

Final Decision : Appeal Dismissed

Judgement

1. This appeal has been filed under section 19 read with Section 21(a)(ii) of the Consumer Protection Act, 1986, against the impugned order dated 11.03.2015, passed by the Jharkhand State Consumer Disputes Redressal Commission, (hereinafter referred to as "the State Commission"), vide which, the consumer complaint no. 04/2012, filed by the present appellant/complainant, Hazaribagh Cooperative Cold Storage, was ordered to be dismissed.

2. The brief facts of the case are that the complainant Hazaribagh Cooperative Cold Storage is being used for storing the stocks of agriculture produce/fruits of the farmers by charging rent for the same. The present complaint has been made by Subhash Kumar, lessee of the said cold storage. The complainant took a Fire and Special Perils Policy on 30.06.2009, after paying a total premium of Rs. 42,375/- and the said policy was valid from 19.06.2009 to 18.06.2010. The Insurance Company agreed to cover risks towards plant and machinery, furniture and fixtures etc. to the tune of Rs. 20,50,000/- and for the storage premises, including the building and foundation to the tune of Rs. 1,09,50,000/- and further agreed to indemnify the insured for Rs. 75 lakhs for damages and deterioration of stocks of oranges, grapes and apples etc. There was an add-on

cover which included the damage caused in the cold storage due to accidental power failure/the damage caused by fire. It was stated that the Hazaribagh Cooperative Cold Storage had been running since 1995 and it had two chambers of 500 metric tonnes capacity each. On 24.07.2009, there was no fruit in chamber no. 1, whereas as per the record, there were 4347 boxes of oranges and 108 boxes of apples in chamber no. 2. It has been stated that on 24.07.2009 at about 6 pm, an abnormal sound was heard from chamber no. 2 and also from the control panel. It was found that the control panel outside the chamber and starter switch inside the chamber were burnt/charred. It has been stated in the consumer complaint that the damage at both the locations was confined within the control box and switch and that it did not spread out of control box or switch. On the next day i.e. 25.07.2009, the complainant informed the OP Insurance Company about the incident. The said Company deputed a surveyor for inspection of the cold storage and accordingly, a joint inspection was carried out on 26.07.2009, whereupon it was found that the temperature inside the chamber was very high at about 71 F. Due to excessive heat and fire found in the chamber, O the oranges stored in the cold storage were completely damaged. Another surveyor was deputed for conducting joint inspection on 28.07.2009 for verifying the earlier inspection conducted on 26.07.2009 with respect to damage to the electric panel and consequently, damage to the stocks of oranges due to rise in temperature. It was observed during the inspection that oranges were loaded from 14.02.2007 onwards and the last loading was done on 23.04.2007. The surveyor advised the complainant to provide the best possible settlement rate for affected oranges with their owners, particularly in view of the fact that there was no rate/contract between the insured cold storage and owner of the goods. It was also advised by the surveyor that the damaged stocks shall be destroyed to avoid injury to human and animal life after counting of the stocks. After assessment of the damage, a claim form was submitted by the complainant to the OP for completing the formalities to indemnify the loss caused to the complainant. The stock position as on 19.06.2009 was also submitted and the total value of the damage caused was stated to be Rs. 43,23,412/-. All the relevant details and documents demanded by the surveyor were supplied to them. However, the claim was repudiated by the Insurance Company vide letter dated 01.02.2010, taking the plea that as per the finding of the surveyor, the said burning/charring etc. was confined to the points of origin and did not spread, and hence, the cause of said loss/damage was excluded under the policy as per specific exclusion under clause 7 of the General Exclusions of the policy. The complainant filed the consumer complaint in question, seeking directions to the OP Insurance Company for payment of the claim to the tune of Rs. 43,23,412/- alongwith interest @ 12% per annum and a further sum of Rs. 2 lakhs for loss of business and a sum of Rs. 1.5 lakhs as litigation cost.

3. The complaint was resisted by the OP Insurance Company by filing a written statement before the State Commission, saying that the alleged short-circuiting did not lead to fire, as the surge was confined within the electric system like

wire, control panel, switch etc. The coincidental short circuit resulted in alleged change in temperature, leading to the deterioration of stocks. The Insurance Company stated that the short-circuiting was a specific exclusion under clause 7 of the General Exclusions of the policy. Regarding damage to the stocks, the OP Insurance Company stated that the loss was not payable because the oranges had already outlived their shelf life and were unfit for human consumption as brought out in the survey report. The Insurance Company also stated that the damage due to alleged short-circuiting could have been repaired at short notice, but efforts were not made by the insured to do so. The Insurance Company stated that the complainant had instituted similar claims against the other Insurance Companies as well. The State Commission, after taking into account the averments made by the parties, dismissed the complaint vide impugned order. Being aggrieved against the said order, the complainant is before this Commission by way of the present first appeal.

4. During arguments, it was contended by the learned counsel for the appellant/complainant that since fire had occurred during the operation of the insurance policy and the said fact had been proved from the joint inspection made by the surveyors, the Insurance Company is liable to pay the claim. Moreover, since the add-on cover had been taken for deterioration of stocks by making premium of additional payment, the Insurance Company was liable to pay for the damage to the stocks as well. The learned counsel further stated that the report made by the surveyor did indicate that temperature had increased due to the fire incident due to short-circuiting and hence, the fruits got damaged. The learned counsel has drawn attention to the repudiation letter dated 01.02.2010 from the Insurance Company, in which it is stated that the surveyors were not given any opportunity to verify the operations of the cold storage machinery and other operational parameters. This contention of the surveyor was not correct. Moreover, since the add-on cover had been taken, compensation should have been given for damage to the stocks as well.

5. Per contra, the learned counsel appearing for the Insurance Company stated that stocks in question were already rotten when the complainant took the insurance policy in question. As brought out in the final survey report dated 30.12.2009, the shelf life of the stocks kept in the cold storage was only 9 to 13 weeks. The dates of receipt of the oranges in the cold storage indicated that the stocks had already outlived their shelf life as on the date of the incident. The complete information about the dates of receipts of all 12614 boxes had been given in the report of the surveyor which makes it clear that the entire stock had outlived its shelf life as on the date of reported loss. The learned counsel further stated that oranges would have become rotten even prior to mishap. Moreover, the shelf life of 9 to 13 weeks was valid only if the temperature was maintained between 40 to 42 F. The insured had not been able to provide any evidence to prove that they had taken reasonable care of the stocks in question and hence, it was clear that they were not liable for the said indemnification. The learned counsel further stated that the damage due to short-circuiting was

confined to the control panel only and there had been no fire at all. The learned counsel further argued that the contract of insurance was a contract of good faith and hence, the insured should not have taken the policy, once it was within their knowledge that the stocks had outlived their shelf lives.

6. The learned counsel for the appellant has, however, drawn attention to an order passed by the Hon'ble Supreme Court in *New India Insurance Co. Ltd. vs. Zuari Industries Ltd. & Ors.*, (2009) 9 SCC 70, saying that the damage caused due to electrical short-circuiting was payable, even if there was a flashover due to fire. The written submissions filed on behalf of the appellant are also on record, in which it had been clearly stated that all the required documents had been submitted to the surveyor, but still the Insurance Company did not settle the claim in their favour.

7. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me.

8. The main issue that arises for consideration is whether the claim in question was payable due to the alleged incident of short-circuiting etc. In this regard, it is mentioned that as stated in the complaint itself, the control panel outside the chamber and starter switch inside the chamber were burnt, but the damage at both the locations were confined within the control board and switch and it did not spread out of the control board or switch. As per the version of the Insurance Company, the short-circuit did not lead to fire and thus, the cause of damage is not attributable to an insured peril. The Insurance Company has also taken the stand that any damage on account of "short circuit" is a specific exclusion under clause 7 of the General Exclusions of the Standard Fire and Special Perils Policy and as such, any claim on the basis of the same was not maintainable. The complainants have not been able to advance any reason for controverting the said version of the Insurance Company. The judgment cited by the complainant in *New India Insurance Co. Ltd.* is also not applicable in the present case, *vs. Zuari Industries Ltd.* (supra) because there has been no incident of any flashover etc. It is made out, therefore, that the Insurance Company has rightly repudiated the claim of the complainants based on the exclusion clause. Further, in so far as the add-on cover towards the deterioration of the stocks is concerned, it has been amply made clear in the report of the surveyor that the shelf lives of the stocks in question were only 9 to 13 weeks and that also, when the temperatures were maintained between 40 o to 42 o F. In the present case, specific details about the receipt of stocks in the cold storage have been given and the entire information has been made a part of the surveyor's report. It is clear from a perusal of the said report that on the date of the incident, the entire stock had outlived its entire life. It is obvious, therefore, that the Insurance Company is not liable to indemnify the damage to the stock as it had already outlived its shelf life and had already become unfit for human consumption. The complainant has not provided any explanation to the version given by the OP that the stock had outlived their shelf life on the date of the incident. Based on the discussion

above, it is held that there is no merit in this appeal and the order passed by the State Commission reflects a true appreciation of the facts and legal issues on record. The appeal is ordered to be dismissed, therefore, and the order passed by the State Commission is upheld, with no order as to costs.