(2016) 03 NCDRC CK 0069

In the National Consumer Disputes Redressal Commission

Case No : 99 of 2010

M/S. RAUNAQ ICE & COLD STORAGE — APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. & ANR — RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Citation : 2016 2 CPR 188

Hon'ble Judges : V.B. Gupta, Prem Narain

Advocate : Arun Khosla, Ramesh Kumar

Judgement

1. This complaint has been filed by M/s. Rauniq Ice & Cold Storage, complainants against opposite parties, New India Assurance Co. Ltd. &Anr.

2. Brief facts mentioned in the complaint are that the complainant firm is carrying on the business of processing, marketing and exporting all kinds of fish, frozen fish, sea foods, etc. at its facilities situated at Mangrol, District Junagadh, Gujarat, ever since the year 1995.At the behest of its bankers, namely the State Bank of India, the complainant has insured its factory building, plants/machinery, fittings and fixtures and stock-in-trade under the following Standard Fire and Special Peril Policies taken from the Opposite Party No.1:

Sr. No. Policy No. Period Description of Property and sum Insured as detailed below (in crores)

1. 211304/11/09/11/00000284 09.06.2009 to 08.06.2010 1.Building- Rs.2.00 crore 2.Plants/Machinery-Rs.1.50 crore

3. Furniture, fittings, fixtures- Rs.0.10 crore

4. Stocks- Rs.5.00 crore

Total-Rs.8.60 crore

2. 211304/11/08/11/00000420 26.11.2008 to 25.11.2009 1. Stocks of fresh frozen fish- Rs.3,06,45,161.00

3. That on 14.07.2009 the city of Mangrol, among other towns in the District, began receiving heavy rainfall which continued non-stop for almost 3 days. Water from the adjoining flooded villages also started flowing towards the low lying areas of Mangrol town and inundating them to a depth of more than 3 feet. The complainant''s factory was also flooded resulting in extensive damage to the entire stock-in-trade, the machinery/equipment/back-up generators and the building. The electricity from the Gujarat State Electricity Board''s mains was disrupted for over 36 hours between the 15 and th 16 July, 2009 and the Complainant''s back-up generators, covered up to almost 5 feet in water, could th not be switched on in order to make electricity available to the 3 Nos. cold storages where the fish was stocked. By the time Technical Service Providers reached the site and got the generators running on 17.07.2009, immense damage had been caused but best efforts were still made towards salvaging as much of the fish as was possible.

4. The cause of action for filing the present complaint has arisen on 15.7.2009 when the damage/loss resulting from flooding in the complainant''s factory began taking place. The cause of action further arose on 02.09.2009 when the Opposite Party No.2 submitted a survey Report that mechanically rejected the loss to the building. The cause of action also arose on 13.11.2009 when the opposite party No.1 repudiated the claim. The cause of action is continuing and subsisting.

5. Opposite parties in the reply have averred that they appointed the surveyor immediately after getting the information from the complainant. The surveyor visited on 17.7.2009and found that there were no signs of flood or inundation inside three cold storages. The loss in the building has occurred due to seepage from the roofs as well as cracks from the walls. The plinth of the building was 3.5 feet higher than the surrounding grounds. The generators were installed within the factory at a height of 1.5 feet which means from the ground level, the generators were installed at a height of 5 feet. The surveyor has given a clear finding that the rain water did not enter the cold storages and the generators were not submerged in the water. In fact the Gujarat State Electricity Supply broke down after heavy rains and the generators also did not work due to moisture. Whatever loss has occurred to the stock of fish has occurred due to non-functioning of the air-conditioner on account of failure of electric supply from Gujarat Electricity Board and non-functioning of the generators installed in the factory. No peril admissible in the policy is attracted in the case and hence no claim is admissible.

6. We heard the learned counsel for both the parties and perused the documents carefully.

7. Learned counsel for the complainant stated that there was torrential rains on 15.7.2009 onwards in Mangrol and whole submerging area was flooded due to non-evacuation of water from the area. The water had entered the factory premises and cold storages where the stocks were kept. There has been a

damage to the building and certificate of the valuer has been given wherein he has valued the damage to the building for Rs.18,96,000/-. The damage to the machinery to the tune of Rs.3,79,905/- has been indicated. The total stocks damaged due to flood and inundation has been to the tune of 115 MT with valuation of Rs.1,87,25,000/-. The total loss has been claimed as Rs.3,10,00,905/- including provisional damage of Rs.1,00,00,000/-. After deducting the salvage value of Rs.3,73,750/- at the rate of Rs.3.25 kg. The total loss comes to Rs.3,06,27,155/-.

8. Learned counsel mentioned that the surveyor report has been submitted on 2.9.2009 wherein he has assessed nil loss for the building and a loss of Rs.19,89,020/- for the stocks, but has not considered this loss due to any of the perils mentioned in the policy. The surveyor has wrongly calculated the loss and has wrongly recommended in denial of the claim on the basis that the loss of stocks has occurred due to non-functioning of the air-conditionung due to failure of electricity supply on account of closer of electricity supply by Gujarat Electricity Board and on account of non-functioning of the generators installed. Learned counsel alleged that there was flood water inside the factory over the generators and therefore, generators did not start due to moisture for which the main cause was flooding. Learned counsel has drawn our attention towards some pictures of the factory and cold storages in support of his assertion.

9. Learned counsel for the opposite parties stated that the loss of stocks has occurred due to non-supply of electricity by the Gujarat Electricity Board and the complainant could not start the generators allegedly due to moisture. The surveyor in his report has clearly stated that no flood water actually entered the factory and the cold storages and there was no inundation seen when he visited site on 17.7.2009.The surveyor has also submitted some photographs which clearly show that there was no water inside the building or in the cold storages. The surveyor''s report also shows that there were cracks in the roof of the building and the walls of the building giving way to some rain water, but this type of seepage of rain water is not covered under the policy. The cold storages were at a plinth 3.5 feet above the submerging ground and the generators were installed at a height of 1.5 feet above the plinth level. Thus, the generators were at a height of 5 feet above the surrounding ground. So, there was no question of flooding inside the building and there was further no occasion that the generators would have submerged in the water. The surveyor has clearly stated that water did not touch any of

the electric panels. From the surveyor report, it is quite clear that none of the perils mentioned in the policy was responsible for the loss of stocks or loss to the building. Hence, the claim was rightly repudiated by the insurance company.

10. We have carefully considered the arguments advanced by both the parties and have thoroughly gone through the documents. The surveyor was immediately appointed by the Insurance Company and he immediately visited the factory on 17.7.2009 and again on 27.7.2009. His report dated 02.09.2009

mentions as follows:-

"3.1.5 The entry window of the cold Storage is found approx.. 3'' higher than that plinth of insured''s factory. All the three cold storages were found side by side on the same level of the factory plinth. The size of Cold Storage was found approx..60'' x 30'' x 20'' height having RCC roof and well applied insulation.

3.1.6 The complete D.G. set was found installed on a single M.S. frame at a height 1.5'' from the plinth level of factory. Thus the D.G. set was found installed at a height of approx..5'' from the surrounding ground level of the factory compound. Hence the contact of flood water was not possible to the insured''s D.G.set.

3.1.7 The damages to the electric Motors of compressors, Cooling Tower, etc. or any Plant-Machinery were not shown to us and was found in working condition during our first visit on dt.17/07/2009 i.e. immediately after the claimed incident.

3.1.8 The insured purchases the Fishes from the local fisherman, segregates the same, stores in the frozen condition in their own cold storage and sales the same.

3.1.9 During the said incident, it was an Off Season of the Fishing Business.

3.2 Details of Occurance

3.2.1There was a very heavy rainfall in Veraval on dt.15/07/2009 &onwards and most of parts of Veraval, Mangrol and Saurashtra Region were flooded.

3.2.2 Because of this continuous heavy rainfall, the level of the rain water was started to increase very fastly all over the Veraval&Mangrol.

3.2.3 Due to this heavy rainfall, the accumulated rain water could not be discharged out from the Mangrol.

3.2.4 Hence the overflooded rain water was accumulated surrounding the insured''s factory on dt.15/07/2009 but the same was not inundated inside the factory building &/or cold storage as the plinth level of the insured''s factory building is approx..3'' to 3.5'' higher than the outside ground level.

3.2.5 The level of window bottom (entry) of the cold storage was found approx. 3'' higher than the factory plinth level i.e. approx..6'' higher than the surrounding ground level of the factory compound. Hence there is no any possibility of inundation of the flood water from outside into the insured''s cold storage.

3.2.6 The D.G. sets were found installed at a approx..5'' (3.5'' + 1.5'') higher than the surrounding ground level of the insured''s factory compound.Hence there is no any possibility of damages due to flood water to the insured''s D.G. sets.

As informed by the insured in written, there was a power failure from the GEB. The insured also tried to start the D.G. sets but as the moisture was absorbed by the D.G. sets the same could not be started and hence may be required any servicing/minor repairs. Please refer insured''s letter dtd. 17/07/2009 as an Annx.B1 and the photo on Annex. C1

During our visit on dt. 17/07/2009, all the Electric Panels were found in on/ working condition. Only one electric motor of the compressor (out of four compressor motors) was not found on it''s placement. There were no any effect of inundated water on the electric panel board which was in working condition during our visit dtd. 17/07/2009. Please refer photo on Annx. C1 & C2

3.2.7 The stocks of various types of fishes were found affected in Cold Storage No.1 & 2 due to stoppage of the GEB power supply as well as insured''s D.G. sets &/or Air conditioning Plant. The cold Storage No.3 was empty during the claimed incident. After the claimed incident, the insured had shifted all the undamaged stocks in Cold Storage No.3 from the cold Storage No.1 & 2 with information to us before our visit dtd. 17/07/2009. Please refer insured''s letter dtd. 17/07/2009 & 19/07/2009 as annxs.B1 & B2 for the cause of damages and the Qty. of the damaged stocks due to remaining at undesired high temperature for 3 to 4 days.

3.2.8 The insured also informed to their insurers for the damages took place.

Stocks

Cold Storage-1 280 Cartoons x 20 Kgs. 5600 Kgs. mixed fishes

Cold Storage-2 100 Crates x 80 Kgs. 8000 Kgs. mixed fishes

Loose Stocks in GoodsCarraige 75 crates x 80 Kgs. 6000 Kgs. mixed fishes

All the above stocks were damaged due to failure of GEB Power Supply & not working of the D.G. sets. Hence stocks were remained at undesirable high temperature resulting in above damages.

3.4 Cause of Loss/damages

3.4.1 As informed by the insured, there was a heavy rainfall @ 15'''' in Mangrol Region on dt. 15/07/2009 and continued then after.

3.4.2 The power supply of the PGVCL was failed from 16/07/2009 and at the same time, the D.G.sets were failure to start due to heavy moisture in the atmosphere and hence also the Air conditioning plants were found stopped for 3 to 4 days.

3.4.3 Thus the stocks stored in cold Storage No.1 & 2 were remained at undersired high temperature for 3 to 4 days. Hence the stored stocks were damaged in cold storage No.1 & 2.

3.4.4 No any peril incl. flood insured under the Std. Fire & special Perils Policy was found active for the claimed loss/damages during the said incident.

3.4.5 Thus the cause of loss/damages does not fall within the scope of the Std.

Fire & Special Perils Policy.

6.0. ADMISSIBILITY OF THE CLAIM

6.1. This claim is not admissible under the terms & conditions of the involved Std. Fire & Special Perils policy as no any insured peril covered under the caption policy was found active causing the claimed loss/damages.

The claimed loss/damages to the Plant-machineries were took place only due to moisture because of Humid Atmosphere during very heavy rainfall.

The claimed loss/damages to the stocks were took place only due to failure of GEB Power Supply &/or not working of the D.G. sets. Due to failure of GEB Power Supply and not working of the D.G.sets, the stocks were damaged because of remaining at undesirable high Temperature for 3 to 4 days as the Air Conditioning Plant could not be started."

11. So far as the damage to the building is concerned, the surveyor has submitted another report dated 2.9.2009 based on his survey on 26.7.2009 which mentions the following:

"We had visited at insured''s site on dt. 26/07/2009 and discussed in details regarding the status of their claim. During our visit at site, we observed that the ceiling were found leakage at many places. The cracks were also developed at many places near the ceiling area. The Plaster of the ceiling was falled down at many places and the corroded M.S. materials were also found seen in the ceiling.

Please also refer Photos Nos.08 showing damages as Annx. C1 to C3.

3.3. After minute checking the damages and inspecting the existing building, we had not found any damages related to the flood water &/or lightening &/or inundation of water &/or any other peril covered under the Std. Fire & Special Perils Policy.

3.4 Looking to the size, height & type of construction of the Building as well as type of damages on the terrace & walls, the existing cracks- hair line to big sizes were found developed because of influence of very heavy rainfall and /or condition of the building.

The insured''s claim for the loss/damages to their building due to heavy rainfall was found correct. The similar cracks were also found at other various places on the wall plasters of east,

west, south & north, it''s inter corners & ceilings. The valuer himself had taken photos of the various walls located in the various directions having only the similar cracks.

The copy of valuer''s certificate is attached herewith as Annx. D1 to D3.

3.6 The valuer had rightly stated in his certificate that the claimed loss/damages is also due to heavy rainfall continued for couple of days. We justified this cause of loss/damages as rainfall (rainfall is excluded peril under the Std. Fire & Special Perils Policy) &/or due to direct consequence of the continual influence of heavy rainfall because of ageing problem &/or improper maintained condition of the building.

4.0 Cause of Loss/damages

4.1 During our visit at site, we had minutely observed all the cracks, damaged ceilings leakages from the ceiling, damages to wall plaster, etc.

4.2. As stated by the insured in their intimation letter dtd. 24/07/2009, the damages were took place to the insured''s factory Building due to very heavy rainfall. Please refer intimation letter as an Annx. B.

The such damages may be occurred during the heavy rainfall dtd. 16/07/2009 & onwards because of conditions of the Building and the same damages may be increased due to very heavy rainfall dtd. 24/07/2009 & onwards.

4.3 No any peril incl. flood/lightening insured under the Std. Fire & Special Perils Policy was found active causing the claimed loss/damages.

4.4 Hence cause of loss/damages does not fall within the scope of Std. Fire & Special Perils Policy but the same were found due to any perils excluded under the Std. Fire & Special Perils Policy."

12. We have also perused the photographs submitted by the complainant as well as by the surveyor. The surveyor has given cogent reasons for his finding that the flood water has not entered the factory building and the cold storages. The photographs support the claim of the surveyor. There has been loss to the stock due to increased temperature in the cold storages because of non-supply of electricity and due to non-functioning of the generators for which the complainant was responsible. We find no reason to disbelieve the report of the surveyor. From the surveyor''s report, it is clear that no peril mentioned in the policy was found active in the present case. The complainant has not alleged that he had any enmity with the surveyor and that he submitted a false report on this account. If there has been any water inside the cold storages and factory building, that may be due to seepage as asserted by the surveyor. Following two judgements of the Hon''ble Apex Court support the view that the surveyor report is an important document for consideration of the claim and must be given due weightage and accordingly, we have placed our reliance on the report of the surveyor.

(i) The Hon''ble Supreme Court, in Sikka Papers Limited Vs. National Insurance Company Limited and Ors., (2009) 7 SCC 777, has held that:-

A . " Insurance- Terms and conditions specified in insurance policy- Binding effect- Insurance policy not covering parts of machinery which were required to be replaced due to normal wear and tear-Held, Insurance Company while assessing claim, rightly excluded those parts

B. Insurance Act, 1938,- S. 64-UM- Surveyor/Loss assessor''s report- Weightage to be given- Held, Though not the last word, yet there must be legitimate reason for departing from report- No infirmity found in surveyor''s report and therefore held, Insurance Company rightly admitted claim as per the report."

(ii) Similarly, Hon''ble Supreme Court in the case of Sri Venkateswara Syndicate vs. Oriental Insurance Company Limited & Anr., (2009) 8 SCC 507, has observed the following:-

"31. The assessment of loss, claim settlement and relevance of survey report depends on various factors. Whenever a loss is reported by insured, a loss adjuster, popularly known as loss surveyor, is deputed who assesses the loss and issues report known as surveyor report which forms the basis for consideration or otherwise of the claim. Surveyors are appointed under the statutory provisions and they are the link between the insurer and the insured when the question of settlement of loss or damage arises. The report of the surveyor could become the basis for settlement of a claim by the insurer in respect of the loss suffered by the insured.

32. There is no disputing the fact that the surveyor/surveyors are appointed by the insurance company under the provisions of the Insurance Act and their reports are to be given due importance and one should have sufficient grounds not to agree with the assessment made by them. We also add, that, under this Section the insurance company cannot go on appointing surveyors one after another so as to get a tailor-made report to the satisfaction of the officer concerned of the insurance company; if for any reason, the report of the surveyors is not acceptable, the insurer has to give valid reason for not accepting the report."

13. From the above discussion, we find that the loss to the complainant has not occurred due to any perils mentioned in the policy particularly the flood and inundation. Accordingly, the complaint is found without merit and is dismissed herewith.

14. No order as to costs.

