(1992) 04 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

MURALIDHAR SARANGI APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 09-04-1992

Acts Referred:

Citation : 1993 1 CPJ 281 : 1993 2 CPR 269

Hon'ble Judges : S.C.Mohapatra , J.Patnaik J.

Final Decision : Complaint allowed

Judgement

1. DEFICIENCY in insurance service is the subject- matter of this complaint under the Consumer Protection Act (for short ''the Act'').

2. COMPLAINANT is the owner of two trucks having registration numbers AMA 8761 and OAC 7123. While the trucks were on their way carrying goods to the State of Assam, on 23.3.89 at about 9.00 a.m. these trucks alongwith other vehicles loaded with goods, were attacked by Bodo terrorists. As a result, both the trucks were destroyed by fire added to it driver of one of the trucks lost his life being shot dead COMPLAINANT preferred a claim with Opposite Party under the terms of policies covering damage to the vehicle. On submission of claims, surveyor was appointed who submitted the reports in respect of both the vehicles on 29.5.89 and 30.5.89. Correspondences went on and ultimately on 30th of July, 1991, claims of the complainant were repudiated. Alleging deficiency in service complaint has been filed on 22.8.1991. Some of the documents along with the copy of the policy have been produced .before us. One of the policies filed as Annexure-1 contained the term. "1. The company will indemnify the insured against loss of or damage to the Motor Vehicle and/or its accessories whilst thereon. (a) by accidental external means. (b) by fire external explosion self-ignition lighting or burglary house breaking or theft (c) by malicious act (d) whilst in transit by road rail inland water- way lift elevator or air. There is no specific term in the policy brought to our notice whereunder property insured which is damaged by terrorists would not be covered under the policy. Neither any provision of law nor has been brought to our notice to this

effect,

In absence of any law or other term in the policy to take away the effect of the aforesaid term, damage to the vehicle is covered by insurance if such damage is on account of any of the conditions as specified in the aforesaid clauses. Clauses (a) & (b) are not applicable to this type of damage by terrorists. Such terrorists have damaged vehicles obviously by malicious act as there is no right of any individual to destroy properties of another for expressing grievances either against the person whose property is damaged or against the State. This would not come under vis majeure or force majeure. Accordingly, act of damaging the vehicle by a group of terrorists or individual terrorist is a malicious act. A malicious act is one which is an act prohibited by law and is done with intention to cause loss to another. This is such an act. This malicious act in the aforesaid clause does not restrict it to any act of the parties to the contract. It also includes the act of others. Insurance which is a beneficial provision and is to be liberally construed in favour of the insured would be defeated in case any other inter- pretation is given this is a deficiency in service.

Added to it in one of the letters produced before us which is said to have been written by the Divisional Manager at the request of the complainant for enabling him to discuss the matter in the head office, it is clearly written that he offered an amount of Rs. 1,43,000/- for settlement of the claim in respect of truck bearing registration number AMA 8761. In case the complainant would have agreed to such settlement the opposite party would have been liable to pay the same since the Divisional Manager is an agent of the insurer who offered the amount. No document has also been brought to our notice where the insured has pointed out that he would not be entitled to the claim amount because of the damage to the vehicles by Bodo activists.

3. IN the circumstances, repudiation of the claim by the insurer is unjustified and is a deficiency in service - Surveyor of the insurer has assessed the claim and he made a report. We direct that the amount assessed by the surveyor in respect of both the trucks be paid to the insured within two months from today. The complainant is also entitled to damages of Rs. 5,000/- in respect of both the vehicles for delaying the settlement of the claim unjustifiable. In the result the complaint is allowed with the aforesaid direction. In case the amount as per the surveyor reports are not paid within two months, interest @ 18% on the aforesaid amounts shall be paid till payment after stipulated time. After receiving payment, complainant may require the insurer to appoint an arbitrator to settle the quantum of loss and on that basis an arbitrator would be appointed as per the terms of the policy to settle that dispute. Complaint allowed.