(2003) 07 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Nasim Ahsan And Co APPELLANT

Vs

Branch Manager Oriental Insurance Co Ltd RESPONDENT

Date of Decision : 09-07-2003

Acts Referred:

Citation : 2003 3 CPJ 103

Hon'ble Judges : K.S.GUPTA , RAJYALAKSHMI RAO , B.K.TAIMNI J.

Judgement

1. COMPLAINT was filed, inter alia, alleging that the complainant took contract work from Indian Oil Corporation Limited (Marketing Division No. 2), Calcutta for providing Sandpad Foundation and fabrication of vertical (CR/RR storage tanks at the proposed new depot at Nagoan near Kolagur Railway Station, Assam vide order No. HNG/92 -93/PT/20/185 2045/91 dated 12.10.1993 for a sum of Rs. 73,73,050/ - and the work order was issued on 12.10.1993. Prior to start of construction work, a Contractors All Risk Insurance Policy for a sum of Rs. 73,73,050/ - was taken by the complainant from Oriental Insurance Company Ltd. -opposite party. It is alleged that on 6.5.1994 at 8.45 p.m. in a very strong cyclone, three tanks which were on the verge of completion, completely collapsed. On being intimated on 9.5.1994 about the damage, the Surveyor and special staff deputed by the Insurance Company visited the site on 12 and 13.5.1994 and on their advice an FIR was lodged by the complainant at the nearest police station. On 2.6.1994, the complainant sent a revised estimate of loss for a sum of Rs. 23,25,692/ - to the Insurance Company. Another revised estimate dated 12.7.1994 for a sum of Rs. 31,60,629.80 was again sent on 22.7.1994 to the Insurance Company by the complainant. It is further alleged that by the letter dated 7.3.1995, the Insurance Company agreed to consider all the three estimates sent by the complainant but it wanted the complainant to furnish a detailed schedule of the work indicating quantity and rates against each item as also the books of accounts showing the actual loss incurred by the complainant. Demand for this information by the Insurance Company was totally uncalled for. Complainant is entitled to get Rs. 31,60,629.80 from the Insurance Company. Direction was sought to be made for payment of this amount by the

Insurance Company to the complainant.

2. IN the written version taking of Contractors All Risk Insurance Policy for Rs. 73,73,050/ - was not disputed. However, it was alleged that initially the amount claimed by complainant was Rs. 16,45,360/ -. Second revised claim submitted by it was for Rs. 23,25,692/ - yet another revised claim was for an amount of Rs. 31,60,629/ -. Amount claimed was not genuine. It was further alleged that to determine the loss, the complainant did not supply copy of FIR, weather forecast details received from Guwahati Meteorological Department, detail schedule of work indicating the quality and rates against each item for Rs. 73,73,050/ - as mentioned in the work order dated 12.10.1993 and books of accounts showing the estimated loss of Rs. 23,25,892/ - on 2.8.1994 and Rs. 31,60,629/ - on 12.7.1994. It was further alleged that D.K. Mukherjee, Surveyor in his report dated 30.8.1994 assessed the loss at Rs. 12,74,692/ -. In the corrigendum report submitted by the Surveyor on 22.11.1992, the net liability was assessed at Rs. 9,77,829/ - and in the alternative at Rs. 7,85,375/ -. It was denied that there was any deficiency on the part of Insurance Company. It was due to non - cooperation of the complainant that the claim could not be either repudiated or accepted before the complaint was filed. We have heard Mr. Ranjan Mukherjee for complainant and Mr. R.C. Mishra for Insurance Company -opposite party.

3. IT is admitted that complainant filed 3 estimates of loss - one on 9.5.1994 for Rs. 16,45,360/ -, other on 2.6.1994 for Rs. 23,25,692/ - and yet another on 12.7.1992/22.7.1994 for 31,60,629.80. The Surveyor deputed by Insurance Company visited the site on 12 and 13.5.1994 and in his report dated 30.8.1994, he assessed the loss at Rs. 12,34,692/ -. In continuation of this report, corrigendum report dated 22.11.1994 was submitted by the Surveyor wherein the loss assessed is shown as 9,77,859/ - and, in the alternative, at Rs. 7,85,375/ -. To be noted that in the corrigendum report, the Surveyor has pointed out inadvertent errors in the assessment of loss as made in the report dated 30.8.1994 on following counts : (1) Debris clearance is not covered by the policy whereby assessment of loss vide page 16, items (I) and (V) becomes void. (2) Vide page, para 17 of the report, the insured has taken no insurance cover for construction machinery, plants and equipments. Hence assessment of loss vide items (viii) and (ix) on page 17 of the survey report becomes void. (3) In the exercise for obtaining 25% reusable materials vide item (ii) of the assessment, heavier liability in the form of labour cost for retrieving the reusable materials was cast on the underwriters. Hence, the same is abandoned and the loss of M.S. Plates involving 82,565.30 kgs. is treated as total loss subject to adjustment of salvage/scrap value. Thus, item (ii) of the assessment becomes void.

4. AFTER allowing adjustment on said counts, the amount of loss was assessed at Rs. 9,77,829/ -. Alternative assessment of loss at Rs. 7,85,375/ - need not be taken note of as it is based on the hypothesis that the insured did not have insurable interest in the materials i.e. MS plates. Both these reports were filed

along with the written version by the Insurance Company. To be noted that by the order dated 26.2.2002, the complainant was ordered to file rejoinder to the written version but on 10.10.2002, statement was made by Counsel on its behalf that it was not necessary to file the rejoinder. Affidavit of Nasim Ahsan, one of the partners of complainant filed by way of evidence, is the reproduction of the complaint. Basis for increase in the loss claimed from Rs. 16,45,360/ - to Rs. 23,25,692/ - and again to Rs. 31,60,629/ - has not been explained either in the complaint or in the affidavit of the said partner. Further, in the affidavit of said Nasim Ahsan it has not even been remotely pointed out as to how the survey report dated 30.8.1994 as amended by corrigendum report dated 22.11.1994 is faulty. Obviously, both these survey reports were prepared after due application of mind in good faith by the Insurance Companys Surveyor and in the absence of any error being pointed out by the complainant, there is no reason not to accept the amount of loss as noted in the report dated 30.8.1994 minus the amount as rightly shown in corrigendum report dated 22.11.1994. The complaint, thus, deserves to be disposed of with the direction to the Insurance Company to pay Rs. 9,77,859/ - with interest @ 9% per annum beyond two months of the survey report dated 30.8.1994. Accordingly, while partly allowing complaint, the Insurance Company is directed to pay Rs. 9,77,859/ - with interest @ 9% per annum w.e.f. 1.11.1994 to the complainant. No order as to costs. Complaint disposed of.