(2016) 02 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

Case No : 245 of 2009

NATIONAL INSURANCE CO LTD — APPELLANT

Vs

GOLD STONE TECHNOLOGIES LTD — RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Constitution of India, Article 226 - Power of High Courts to Issue certain writs

Citation : (2016) 02 NCDRC CK 0019

Hon'ble Judges : V B Gupta, Prem Narain

Advocate : Yogesh Malhotra, K P Sunder Rao, Nimish Chib

Final Decision : Appeal Allowed

Judgement

1. Aggrieved with the order dated 22-04-2009 of the Andhra Pradesh State Consumer Disputes Redressal Commission (for short, the State Commission) in Consumer Complaint No.55 of 2007, this first appeal has been filed by the National Insurance Co. Ltd..

2. Brief facts of the case are that a Standard Fire & Special Perils policy was taken by the complainant/respondent in the year 2005 which was renewed upto 26-02-2008. Due to gale, thunder storm and lightning on 11-04-2007, the tower erected on the terrace of the office of the complainant got completely damaged and consequently the electronic equipments including five electronic control cards in the networking system also got damaged and became disfunctional showing error in the system. The plant & machinery and computer accessories were insured for Rs.1,50,00,000/- under the policy. The complainant informed the insurance company in writing on 02-05-2007 enclosing the report of the service provider for the loss. The appellant insurance company appointed a surveyor on the same day who visited the premises and submitted his report on 13-06-2007. The appellant repudiated the claim on 18-06-2007 on the following ground: "2. The loss is due to heavy surges that could have been induced in the incoming power supply which in terms affected the electronic components

resulting in their failure/breakdown.

The above said loss falls beyond the scope of the fire insurance policy obtained by you. We therefore express our inability to be of any assistance in this regard."

3. The respondent/complainant filed a consumer complaint before the State Commission which was allowed vide its order dated 22-04-2009 as under: "Accordingly the complaint is allowed directing opposite parties, who represent one and the same institution, namely, the insurance company to pay to the complainant Rs.25,42,772.85/- with 9% interest from the date of complaint till the date of realization as also an amount of Rs.3,000/- by way of costs. This order shall be complied within six weeks from the date of order."

4. Present appeal has been filed against the above order of the State Commission by the opposite party/insurance company.

5. We heard the learned counsel for both the parties and perused the records carefully.

6. The learned counsel for the appellant argued that lightning was directly covered as a peril if the loss can be directly attributed to the lightning. In the present case survey report does not mention lightning as direct cause of loss rather it is mentioned in the survey report that: "2. The loss is due to heavy surges that could have been induced in the incoming power supply which in terms affected the electronic components resulting in their failure/breakdown."

7. The learned counsel drew our attention to the General Exclusion No.1 and 7 which read as follows: "1. This policy does not cover (not applicable to policies covering dwellings)

The first 5% of each and every claim subject to a minimum of Rs.10,000/- in respect of each and every loss arising out of "Act of God perils" such as Lightning, STFI, Subsidence, Landslide and Rockslide covered under the policy.

The first Rs.10,000/- for each and every loss arising out of other perils in respect of which the insured is indemnified by this policy. The Excess shall apply per event per insured.

7. Loss, destruction or damage to any electrical machine, apparatus, fixture, or fitting arising from or occasioned by overrunning, excessive pressure, short circuiting, arcing, self heating or leakage of electricity from whatever cause(lighting included) provided that this exclusion shall apply only to the particular electrical machine, apparatus, fixture or fitting so affected and not to other machines, apparatus, fixtures or fittings which may be destroyed or damaged by fire so set up."

8. The learned counsel stated that the present case is covered under General Exclusion No.7 because the computer and electronic control cards are electrical machines and even if they are destroyed by the effect of lightning, the loss could not be covered under the policy.

9. The learned counsel for respondent stated that lightning is clearly mentioned in the policy at No.II which is covered under the policy and it is mentioned without any qualification. Even if there is voltage fluctuation in the electric supply due to lightning thereby damaging the computer components, it would be deemed to have been caused due to lightning only and the loss would be covered under the policy. The learned counsel also stated that the State Commission has already allowed deduction as per the General Exclusion No.1.

10. We have carefully considered the arguments advanced by both the parties and have gone through the records. First of all, we find that complainant has informed the insurance company in writing on 02-05-2007 whereas the incident happened on 11-04-2007. Though the complainant in his complaint has mentioned that he informed the insurance company on next day and the insurance company asked him to get the loss assessed by the service provider. The first written letter was only sent on 02-05-2007 which does not mention any previous communication (either telephonically or written) with the insurance company. We also find that one of the General Conditions mentioned in the policy at Point No.6 is as follows; "6. (i) On the happening of any loss or damage the Insured shall forthwith give notice thereof to the Company and shall within 15 days after the loss or damage, or such further time as the Company may in writing allow in that behalf, deliver to the Company;

a) A claim in writing for the loss or damage containing as particular an account as may be reasonably practicable of all the several articles or items or property damaged or destroyed, and of the amount of the loss or damage thereto respectively, having regard to their value at the time of the loss or damage not including profit of any kind.

No claim under this policy shall be payable unless the terms of this condition have been complied with"

11. From the above it is clear that notice of incident was to be given to the insurance company forthwith and the claim was to be submitted within 15 days in the normal course and if the time was extended by the insurance company in writing, the claim was to be preferred within that period. In the present case, no notice has been given in writing by the complainant, however, it has been mentioned in para 4 of the complaint that he informed the insurance company the next day and the insurance company asked him to get the loss assessed by the service provider. The claim along with report of service provider has been sent only on 02-05-2007 which is beyond 15 days of the incident which had happened on 11-04-2007. There is no record on file to show that the period of 15 days was extended by the insurance company in writing. In the reply the opposite parties/insurance company has stated that "in reply to para 1 to 8 the respondent is not aware of the fact that the petitioner firm is registered firm for want of knowledge. It is true that the head office of the respondent is situated in Kolkata." The receipt of information has not been denied by the insurance company. If the insurance company had received the information of incident on

12-04-2007, and they had not extended in writing the period of submission of claim beyond 15 days, they should have taken this ground also for repudiating the claim but this has not been done. The insurance company has quietly entertained the claim submitted beyond 15 days of the incident. The complainant has not submitted his claim within 15 days of the incident and insurance company has entertained claim submitted beyond 15 days of the incident. Thus, both the complainant and the insurance company are at fault in respect of above referred point No.6 of the General Conditions of the policy.

12. The complainant in his complaint had clearly written that the gale and accompanying storm with thunder had damaged the tower erected on the terrace of the building. The same was informed vide his letter dated 02-05-207 while submitting the claim along with the report of the service provider. However, it is surprising that the surveyor''s report is silent on this aspect and at no place his visit to the terrace or damage caused to tower erected on the terrace or his inspection of the tower at terrace has been mentioned in his report. It is further surprising that the representative of the respondent company was also present during the visit of the surveyor and even then there is nothing mentioned in the report about the loss to tower at the terrace which was the main subject and cause of damage as per the complaint. Thus, it seems that neither the surveyor inspected the terrace or took any steps to assess the cause of loss due to damage in tower at terrace, nor the complainant took any pro-active steps to get the terrace inspected by the surveyor.

13. The "lightning" as a peril is covered under the policy. The meaning of "lightning" as given in the Concise Oxford English Dictionary is "occurrence of a brief natural high voltage electrical discharge between a cloud and the ground or within a cloud, accompanied by a bright flash or thunder". In the present case there is no evidence on the record that lightning struck the building. Surveyor report only mentions that due to reported weather conditions such as lightning, thunder storm and heavy gale winds prevailing during the evening hours of 11-04-2007, heavy surges could have been induced in the supply lines which could have affected the sophisticated and delicate electronic components mounted on cards resulting in the failure of the same. The common understanding of lightning as a peril is the electric discharge between cloud and the ground. As there is no qualification mentioned with the peril of "lightning" in the policy, we are of the opinion that the extended view in respect of peril of lightning may be taken even to cover electrical discharge within the clouds.. From this point of view, damage caused by "lightning" as a discharge between cloud to cloud may also be treated as covered under the policy. The surveyor in his report has mentioned the following: "Occurrence:

As informed Shri V.K.K. Varma, Mngr-IT of M/s. Gold Stone Technologies Ltd., the Hyderabad city experienced heavy gale winds followed by thunder storm at around 1800 hrs on Wednesday the 11th April 2007. The power also failed for about 02 hrs in and around the surrounding areas. Due to external surge from lightning, the Nortel passport 7480 and Nortel Meridian 61C broke down. On inspection by the Service Engineer, the following cards were found damaged and beyond repairs.

1. Controller Card on PBX : 02 Nos.

2. Processor Card on Passport : 02 Nos.

3. Two parts 100 base Ethernet card : 01 No.

Cause of Loss:

The panel was connected to the incoming power supply from the APSEB sources. Most of these electronic components work on 24V DC supply. To achieve this, the incoming AC supply has to be converted to DC. Due to reported weather conditions such as lightning, thunder storm and heavy gale winds prevailing during the evening hours of 11-04-2007, heavy surges could have been induced in the supply lines which could have affected the sophisticated and delicate electronic components mounted on cards resulting in the failure of the same. There were no evidences of any fire occurring inside the panel and/or on the affected cards and/or on power supply/control cables. Hence in our opinion, it is a breakdown of components on the cards due to heavy surge in the power supply and the damages to the cards could not be attributed to any fire."

14. It seems that the surveyor has based his findings on the facts narrated by the representatives of the respondent company and has not tried to corroborate with other evidence or his independent investigation. The surveyors are appointed by the insurance company under the Insurance Act, 1938 to assess loss or damage. The surveyor in his report has mentioned that due to reported whether conditions such as lightning, thunder storm and heavy gale winds prevailing during the evening hours of 11-04-2007, heavy surges could have been induced in the supply lines which could have affected the sophisticated and delicate electronic components mounted on cards resulting in the failure of the same. The insurance company has also accepted this cause of loss. However, the insurance company has claimed benefit of General Exclusion Clause No.7. According to this clause, the loss, destruction or damage to any electrical machine, apparatus, fixture or fitting arising from or occasioned by overrunning, excessive pressure, short-circuiting, arcing, self-heating or leakage of electricity from whatever cause (lightning included) could not be covered under the policy provided that this exclusion shall apply only to the particular electrical machine and not to other machines which may be destroyed or damaged by fire so setup. This clause is not directly applicable in the present case because there is no leakage of electricity as lightning has not struck the machine and there was no fire.

15. From the above examination, we have reached to the conclusion that the cause of loss as assessed by the surveyor is covered under the policy. However, we feel that there have been lapses on the part of the complainant as well as the

insurance company. As per General Condition No.6, the claim of the complainant should have been submitted within 15 days of the incident because no time was extended by the insurance company in writing. On the other hand the insurance company has entertained the claim which was not within 15 days of the incident without extending the time period in writing and appointed the surveyor. Moreover, this ground has not been taken for repudiating the claim. The surveyor also did not give any finding on the loss to the tower at terrace which was the main subject and cause of damage as per the complaint. In the circumstances of the case, we are of the view that the balance of justice would be achieved if 50% of the claim is allowed. After examination the State Commission has allowed the claim of Rs.25,42,772.85/-. We allow the claim of Rs.12,71,386/- only which is 50% of the claim allowed by the State Commission.

16. Based on the above discussion, the appeal is partly allowed and appellant/ opposite party is directed to pay Rs.12,71,386/- (Rupees twelve lacks seventy one thousand three hundred eighty six only) to the complainant with interest at the rate of 7% per annum from the date of order of the State Commission i.e. 22-04-2009 till realisation. Order of the State Commission stands modified accordingly.

17. No order as to costs.

