

(2004) 10 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

National Insurance Co. Ltd.

APPELLANT

Vs

JANARDAN GOVEKAR

RESPONDENT

Date of Decision : 05-10-2004

Acts Referred:

Citation : 2005 3 CPJ 676

Hon'ble Judges : J.N.Prabhudessai , Sandra Vaz E.Correia J.

Final Decision : Appeal dismissed

Judgement

1. THE appellants are aggrieved by the order dated 11.10.1999 made by District Forum, North Goa in Complaint No. 19/1996.

2. THE appellants are the opposite parties and the respondent is the complainant before the Trial Court. For convenience, the parties to this appeal shall be referred to as arrayed before the District Forum.

At the time of hearing Mr. U.R. Timble appeared on behalf of the appellants and Mr. R. Narvekar appeared on behalf of the respondents. Counsel filed written arguments.

3. IN a nutshell, it is the case of the complainant that he owned a fishing vessel name "UPKAR" registered with the Directorate of Fisheries and insured with the opposite parties. The said vessel sunk on 3.8.1994 at Bogmolo, Vasco da Gama. The complainant immediately filed claim with the opposite parties and furnished all relevant documents. A letter was also sent to Directorate of Fisheries with request to cancel the registration of the vessel. The Directorate of Fisheries requested the INSurance Company to furnish survey report vide letter dated 25.8.1994 and 5.5.1995. No reply was issued by the opposite parties INSurance Company. In July 1995 the opposite parties requested the complainant to approach Surveyor M/s. J.B. Boda and obtained diesel bills and fish catch receipts/bills submitted to the said Surveyor. However, the complainant was referred to the Bombay office of the said firm, which he was unable to do due to his financial and health problems. This fact was brought to the notice of the

opposite parties by letter dated 31.7.1995. Thereafter, the complainant issued two letters to the opposite parties in August 1995 and January 1996 requesting them to settle his claim. The said letters did not elicit any response from the opposite parties. Thereafter, the complainant issued a legal notice through his Advocate on 22.1.1996 to settle his claim within eight days time. The opposite parties neither complied with nor replied to the said legal notice. Hence the complaint.

4. THE complainant prayed for a direction to the opposite parties to pay the claim amount of Rs. 2,50,000/- along with interest @ 21% from the date of filing the claim till actual payment. THE complainant also claimed an amount of Rs. 500/- per day against loss of business and further sum of Rs. 10,000/- on account of mental agony. Per contra, it was contended by the opposite parties that as per report of its investigators the complainants claim was fraudulent and manipulated and could not have sunk in the manner mentioned in the claim form. The complainant deliberately and intentionally failed to produce necessary documents and hence the delay in disposal of the claim. The District Forum considered the pleadings of the parties as well as the evidence on record and came to a finding that there was deficiency in service on the part of the opposite parties and allowed the complaint.

5. THE only issue that arises for consideration is whether the opposite parties prove that the ill-fated vessel was sunk deliberately by the complainant.

6. THE complainant was cross-examined by the opposite parties. THERE is nothing in the deposition that suggests the case of the opposite parties that the vessel was sunk deliberately. THE allegation of the opposite parties that the vessel was mortgaged to Corporation Bank, Chapora is contradicted by the said Bank's letter dated 6.7.1999 which states that the vessel was not mortgaged to the Bank. THE affidavits filed by the crew of the vessel before the opposite parties Surveyors corroborates the complainant's version of events that lead to the sinking of the vessel. The opposite parties - Insurance Company has taken shelter under a report of Shri I.S. Daniels of M/s. Sattelite Investigators, Pune, to substantiate their claim of fraud. We have also perused the affidavit of Shri I.S. Daniels, Investigator of the opposite parties. The conclusions drawn by the said investigator are based on hypothesis and surmises and not based on facts.

The impugned order is well reasoned and has considered all aspects of the matter.

7. NOTHING survives in this appeal, and the same stands dismissed. In the circumstances parties are left to bear their own costs. Appeal dismissed.