(2007) 07 NCDRC CK 0080

In the National Consumer Disputes Redressal Commission

National Insurance Co. Ltd.	APPELLANT
Vs	
JEET ENGINEERING WORKS	RESPONDENT

Date of Decision : 03-07-2007

Acts Referred:

Citation : 2007 3 CPJ 400

Hon'ble Judges : K.S.Gupta , P.D.Shenoy J.

Final Decision : Revision Petition allowed

Judgement

1. THE respondent proprietor, M/s. Jeet Engineering Works was the complainant before the District Forum. He had taken comprehensive insurance, for his company with the National Insurance Company for Rs. 2,00,000 valid from 2.9.1996 to 1.9.1997. It is his say that due to heavy rainfall on the intervening night of 31.8.1997 and 1.9.1997 his workshop was flooded and accordingly he informed Insurance Company about flood on 3.9.2007 and requested them to send a Surveyor. THE complainant spent Rs. 36,000 for repairing the damaged machinery which was not paid by the Insurance Company. Accordingly, he filed a complaint before the District Forum to direct the respondent - Insurance Company to refund Rs. 36,000 towards expenses incurred on repair of motors, Rs. 20,000 towards mental and physical harassment as compensation and Rs. 200 as costs making a total of Rs. 56,200 with 18% interest since the date of incident along with costs.

2. THE Insurance Company appointed Mr. K.K. Agarwal as Surveyor. Though the complainant has stated in his affidavit that he has insured his industry under fire policy "A", the Insurance Company stated that only the fire police "C" was issued. It is the contention of the complainant that as his is a small scale industry the Insurance Company should have issued fire policy "A" without exclusion clause for flood etc. THE District Forum after going through the record and hearing the parties directed the Insurance Company to pay Rs. 32,400 towards repairs of the machinery within 30 days of its decision along with Rs. 200 as costs. Aggrieved by the order of the District Forum the National Insurance

Company has filed an appeal. The State Commission after hearing the Counsel for the parties held that "the question which type of policy for Small Scale Industry ought to have been issued was considered by this Commission in National Insurance Co. Ltd. v. Kiran Plastic Works, Appeal No. 1122/98, decided on 14.2.2001". In the above cited case the State Commission held that the Tariff Advisory Committee instructions are binding on the Insurance Company. According to the State Commission a bare look at the Tariff Advisory Committee it is clear that only fire policy "A" had to be issued under Section 2 of the Tariffs even if the insured insisted for taking a wider policy "C", as former covers various risks including the flood.

The State Commission confirmed the decision of the District Forum holding that the risk of flood was covered by the policy and further held that the Surveyor''s assessment of the value of the machinery at Rs. 5,00,000 was arbitrary and illegal.

3. DISSATISFIED by the order of the State Commission, Insurance Company has filed this revision petition. Findings : In this case no proposal form was collected. Without collecting the proposal form a cover note was issued. The cover note dated 2.9.1996 indicates that fire policy "C" was issued. On 2.9.1996 detailed fire policy "C" was issued for Rs. 2,00,000 covering machinery and accessories. The Execution Clause (h)(ii) reads as follows : "Typhoon, Hurricane, Tornado, Cyclone or other atmospheric disturbance, Flood and Inundation."

4. A perusal of the complaint indicates that the damage to the machinery was caused due to flood. It is the contention of the learned Counsel for the respondent that the complaint clearly mentions that the complainant is proprietor of M/s. Jeet Engineering a small scale industry. Even in the affidavit it has been mentioned that M/s. Jeet Engineering is a small scale industry. Hence, as per the Tariff Committee Regulations the Insurance Company should have issued fire policy "A" which does not have exclusion clause for ''flood'' and this has rightly been pointed out by the State Commission. As there is no proposal form, we are guided by the cover note, and the policy along with its annexures. Both these documents indicate that this is a fire policy ''C'' and the exclusion clauses attached to the policy clearly excludes ''flood'' from the policy. The judgment relied upon by the State Commission (supra) it is clearly mentioned that the cover note does not specify the category of the policy. But in this case cover note does specify the category of the policy. Further, the policy document itself along with annexures has been issued. The policy document was issued on 2.9.1996 and the peril has occurred on the night of 31.8.1997. There were more than 11 months available to the insured to seek amendment of the policy document from fire policy ''C'' to ''A'' which was not done by them.

5. THE Apex Court in Oriental Insurance Company Ltd. v. Sony Cheriyan, II (1999) CPJ 13 (SC)=VI (1999) SLT 565=(1999) 6 SCC 451 has held that "the insurance policy between the insurer and the insured represents a contract between the parties. Since the insurer undertakes to compensate the loss

suffered by the insured, on account of risks covered by the insurance policy, the terms of the agreement have to be strictly construed to determine the extent of liability of the insurer. THE insured cannot claim anything more than what is covered by the insurance policy. That being so, the insured has also to act strictly in accordance with the statutory limitations or terms of the policy expressly set out therein."

6. THE ratio of this case is squarely applicable to the case under consideration. The learned Counsel for the respondent contended that the Surveyor has wrongly valued the present market value of the damaged machinery @ Rs. 5,00,000. His evaluation report reads as follows : "The undersigned checked and verified all the machines and tools found available in the premises and worked out the present market value of the same after verifying the model, make and capacity and the present costs and also considering depreciation etc. The present market value of all the machineries available as on date of loss, thus worked out is Rs. 5,00,000."

Hence we do not agree with his contention.

7. AS the sum insured was Rs. 2,00,000 the Surveyor rightly found that the machineries were not adequately covered and under insurance factor was attracted. Keeping in view of this factor, Rs. 11,400 has been deducted in his assessment and he has arrived at net assessment of loss @ Rs. 7,600. Under any set of circumstances, this analysis cannot be questioned. Therefore, we hereby allow the revision petition and set aside the order of the State Commission and dismiss the complaint. There shall be no order as to costs. Revision Petition allowed.

