
(2000) 04 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

National Insurance Co. Ltd.

APPELLANT

Vs

MARTHI CRYSTAL SALT CO. LTD.

RESPONDENT

Date of Decision : 03-04-2000

Acts Referred:

Citation : 2000 1 CPC 583 : 2000 1 CPJ 55 : 2000 2 CLT 178 : 2000 2 CPR 1

Hon'ble Judges : S.C.Sen , C.L.Chaudhry , Rajyalakshmi Rao J.

Final Decision : Appeal dismissed with costs

Judgement

1. THE complainant, M/s. Marthi Crystal Salt Co. Ltd., carries on business of manufacture and sale of salt at Thiruporur. It took an insurance policy from the National Insurance Co. Ltd. to cover, (i) earth work/mud work and (ii) stocks of salt. THE risk covered were : "(i) Storm, cyclone, typhoon, tempest, hurricane, tornado, flood and inundation; and (ii) unseasonal rainfall which is defined as rainfall occurring before or after the official monsoon period as declared by Meteorological Department, Government of India."

2. DUE to abnormal rainfall on 4/5.6.1991, heavy damages took place in the earth work/mud and also stocks of salt at Thiruporur. The complainants were unable to get proper relief from the Insurance Company for the loss suffered by it. Thereupon, it made an application before the State Commission which after hearing the case in extenso passed the following order : "In the result, we order as follows : (1) The opposite party shall pay to the complainant Rs. 7,59,990/- with interest thereon @ 18% p.a. from 28.9.1991 till payment. (2) The opposite party shall also pay costs of Rs. 3,000/- to the complainant."

The Insurance Company has come up in appeal against the order of the State Commission. Mr. Vishnu Mehra, Advocate, appearing for the Insurance Company has contended that the complainant's right to come to Court stands forfeited due to delay in lodging the complaint. Our attention was drawn to the judgment delivered by the Supreme Court in the case of National Insurance Company Ltd. v. Sujir Ganesh Nayak and Co. & Anr., reported in AIR 1997 SC 2049. According to Mr. Mehra, this case is an authority for the proposition that if the complaint

was not lodged before expiration of 12 months from the happening of the loss or damage the right to compensation under the policy stood forfeited. The relevant dates for determination of this question are 4/5th June, 1991 when exceptional rains took place which led to the inundation; 18.6.1991 the date in which the claim form was lodged by the complainant, 7.10.1992 when the claim was repudiated by the Insurance Company; and 6.10.1993 when this complaint was filed in the Consumer Court. That there was exceptional rainfall in Tamil Nadu leading to inundation is not disputed. But, the case of the Insurance Company is that the inundation took place on 4/5.6.1991 but no legal action was taken upto 4.6.1992 as a result of which the claimant forfeited his right to claim compensation from his Insurance Company in terms of Condition No. 16 of the insurance policy which is as under : "16. In no case whatsoever shall the Company be liable for any loss or damage after the expiration of 12 months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration; It being expressly agreed and declared that if the Company shall disclaim liability for any claim hereunder and such claim shall not within 12 calendar months from the date of the disclaimer have been made the subject matter of a suit in a Court of Law then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder."

Now, this Condition No. 16 sets out two circumstances in which the Company's liability for any loss or damage will stand extinguished. The first one is after the expiration of 12 months from the happening of the loss or damage, unless the claim was the subject of pending action or arbitration. In this case, clearly, within 12 months of the happening of the event, i.e. 4-5th June, 1991 a claim was lodged by the insured which was investigated by the Insurance Company. There is no dispute on this aspect of the matter. Condition 16 contains another Clause that if the Insurance Company disclaims its liability for any claim and if the disclaimer was not challenged for 12 calendar months in Court the claim shall be deemed to have been abandoned and shall not thereafter be recoverable. In other words, a legal fiction has been introduced by which the insured is deemed to have abandoned his claim if he sleeps over his right to challenge any disclaimer made by the Insurance Company for 12 calendar months from the date of the disclaimer. In the instant case, the complaint has been lodged on 6.10.1993, within 12 months from the date of repudiation of the claim by the Insurance Company on 7.10.1992. We fail to see how Mr. Mehra can seriously contend that in the facts of this case the right of the insured to claim compensation stood forfeited. Condition No. 16 envisages two situations. One is a claim in respect of loss or damage from the date of happening of the event. In such a situation the claim has to be lodged within 12 months. If it is not pending action or arbitration, the right to get compensation is lost after the lapse of a period of 12 months from the date of loss. "Action" according to Black's Law Dictionary - Sixth Edition, means, inter alia, the legal and formal demand of one's right from another person or party made and insisted on in a Court of justice." In the context of the insurance policy "action" would mean the legal and

formal demand made by the insured for compensation from the Insurance Company. If a claim is formally lodged with the Insurance Company within a period of 12 months from the date of occurrence of the loss, it must be held that an action was commenced and was pending till a decision was taken by the Insurance Company on the claim. This condition cannot be construed to mean that while a claim was lodged in time and the Insurance Company took more than 12 calendar months to decide the claim, the right to get compensation of the insured was lost by the time taken by the Insurance Company.

3. THE second part of Condition 12 provides if the claim has been lodged with the Insurance Company within a period of twelve months and thereafter is repudiated by the Insurance Company then if the repudiation is not challenged within twelve months, the right to get compensation under the Insurance Policy will be lost. Any other construction will lead to absurdity. If Mr. Mehra's contention is to be accepted then even if a claim is promptly lodged but Insurance Company takes time to consider the claim for more than twelve months, the insured will be without any remedy in a Court of Law. THE insured will lose his right to get compensation even before his claim is repudiated by the Insurance Company. This construction is not logical and is contrary to the clear words of Condition No. 16 of the policy. Strong reliance was placed on the judgment of Supreme Court, *National Insurance Company Ltd. v. Ganesh Nayak and Co. & Anr.*, AIR 1997 SC 2047, wherein condition 19 was : "Condition No. 19- In no case whatever shall the Company be liable for any loss or damage after the expiration of 12 months from the happening of loss or the damage unless the claim is the subject of pending action or arbitration."

In that case by a letter dated 10.5.1977 the Insurance Company had repudiated the claim of the insured. There was some correspondence between the parties. Ultimately on 25.10.1978 he served a legal notice on the Insurance Company. Thereafter, on 2.6.1980 a suit for recovery of a claim was filed with the Insurance Company. The Insurance Company took shelter behind Condition No. 19 of the policy and contended that the right of the insured to claim compensation under the policy stood extinguished by the fact that the suit had been filed after expiration of 12 months from the happening of the loss or damage. There was no controversy about the dates before the Supreme Court. The Supreme Court held that, "Curtailment of the period of limitation is not permissible in view of Section 28 but extinction of the right itself unless exercised within a specified time is permissible and can be enforced. If the policy of insurance provides that if a claim is made and rejected and no action is commenced within the time stated in the policy, the benefits flowing from the policy shall stand extinguished and any subsequent action would be time-barred, such a clause would fall outside the scope of Section 28 of the Contract Act."

4. IN the case before us there was torrential rain on 4/5.6.1991 resulting in flood and inundation. On 18.6.1991, the complainant lodged a claim in the claim form of the INSurance Company for extensive damage to the earth work/mud work

and stocks of salt which means there was no extinguishment of the right to get compensation under the first clause of Condition 16. A Surveyor was appointed by the Insurance Company to investigate the claim who gave its report on 28.7.1991. Finally on 7.10.1992, Insurance Company repudiated the claim on the ground that the rainfall which occurred on 4/5.6.1991 could not be said to be "unseasonal". On 6.10.1993 i.e. within 12 calendar months from the date of repudiation this complaint was made. IN the facts of this case, it cannot be said that the complainant lost his right to go to Court due to inaction for more than 12 months as contemplated by Condition 16 of the Insurance Policy. Therefore, the first contention of Mr. Mehra fails. The second point urged by Mr. Mehra is that there was no unseasonal inundation. The flood on 4-5th June due to heavy down-pour was in the monsoon season. Therefore, the Insurance Company was justified in repudiating this liability. The insurance policy provides cover for such properties which are destroyed or damaged by : "(i) Storm, cyclone, typhoon, tempest, hurricane, tornado, flood and inundation; and (ii) unseasonal rainfall which is defined as rainfall occurring before or after the official monsoon period as declared by Meteorological Department, Government of India."

Mr. Mehra's contention is that the Clause (i) is controlled by Clause (ii). In other words, according to Mr. Mehra, if the insurance cover operates only in case of unseasonal storm, cyclone, typhoon, tempest etc. but, if a storm or typhoon or hurricane or tornado or flood or inundation takes place during the monsoon season, the insurance cover will not be available to the insured. We fail to see the rationale behind this argument. The insurance cover is explicit. Damage caused by storm, cyclone, typhoon, etc. and also unseasonal rainfall comes under the insurance cover. Clause (i) does not lay down a pre-condition that the storm, cyclone, tempest, etc. will have to take place in an unseasonal period. Unseasonal rainfall causing loss or damage to the insured property is separately protected by Clause (ii) in which unseasonal rainfall is defined as rainfall before or after official monsoon period. In other words, if loss or damage is caused by unseasonal rainfall, the insured will have a right to claim compensation even if there was no cyclone, typhoon or tempest etc. But, if during the monsoon there is any storm, cyclone, typhoon, hurricane, tornado or flood and inundation, then, the insured will be entitled to get compensation for loss suffered by any of these events. Any loss or damage caused by normal rainfall during the monsoon is not covered by the policy. But there is nothing in the wording of the insurance policy to suggest that storm, cyclone etc. which takes place during the monsoon will be outside the insurance cover. There is no warrant for the proposition that Clause (i) is controlled by Clause (ii) of the policy. We are of the opinion that the State Commission has rightly held that the inundation which took place in this case due to heavy rainfall on 4/5th June, 1991 clearly falls within Clause (i) of the cover and the Insurance Company cannot make use of Clause (ii) to repudiate the claim of the insured.

5. LASTLY, Mr. Mehra contended on the basis of Clause 18 of the policy that the claim of Rs. 9,90,000/- should not have been allowed by the State Commission,

but adjustments shall have been made on the ground of policy excess as contained in Clause 18 of the policy. He has drawn our attention to Clause 18 of the policy which is as under : "Policy Excess : "It is understood and agreed that in respect of any of the insured perils the Company shall only be liable under this policy for loss or damage if the ascertained loss or damage sustained by the insured in respect of the earth work/mud work hereby insured exceeds 20% of the sum insured on the property insured affected by the insured peril and/or in respect of the stocks of salt 10% of the sum insured on the platform affected by the insured peril."

6. THE Clause means that the Insurance Company's liability to pay will arise only if "the ascertained loss or damage sustained by the insured in respect of earth work/mud work ...exceeds 20% of the sum insured and/or in respect of the stocks of salt 10% of the sum insured....". THE Insurance Company will be liable under this clause only if the loss or damage sustained by the insured exceeds the specified percentage of the sum insured. In the instant case, the stock of salt was insured for Rs. 30 lakhs. 10% of the sum insured is Rs. 3 lakhs. THE loss estimated was at Rs. 9,90,000/-. THE loss exceeds 10% of the sum insured. In such a situation the Insurance Company is not entitled to deduct any amount on account of policy excess and pay the balance to the claimant. It is difficult to understand why the insured who has taken out a policy for loss and damage to the extent of Rs. 30 lakhs and paid premium accordingly will not be able to get compensation for a loss of Rs. 9 lakhs and odd. THE clear wording of Clause 18 does not support the construction canvassed by Mr. Mehra. In the premises, we sustain the order passed by the State Commission in this regard. In the result, the appeal fails and is dismissed. THE Insurance Company will pay costs assessed at Rs. 2,000/- to the respondent. Appeal dismissed with costs.