(2015) 05 NCDRC CK 0172

In the National Consumer Disputes Redressal Commission

Case No : 2567 of 2014

NATIONAL INSURANCE CO. LTD. — APPELLANT

Vs

M/S. PATI BELL J.V. COMPANY — RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21, Section 19, Section 15, Section 17 - Jurisdiction of the National Commission - Appeals - Appeal - Jurisdiction

Citation : (2015) 05 NCDRC CK 0172

Hon'ble Judges : V.K. Jain, B.C. Gupta

Advocate : Meenakshi Midha, Jyoti Nagpal, Rohit Chaudhary

Judgement

1. The respondent had taken an insurance policy from the petitioner-National Insurance Co. Ltd. in respect of a hydraulic excavator, for the period from 16-10-2007 to 15-10-2008 for the sum of Rs.18,00,000/-. The case of the complainant is that on 23-01-2008, when the excavator was excavating stones in a mine in Gwalior, a heavy boulder fell on the bucket as a result of which its boom broke down. The complainant submitted a claim with the insurance company and a surveyor was duly appointed to assess the damage. The machine was got repaired by the

complainant at the cost of Rs.11, 46,768/-. However, claim was not paid by the insurance company despite necessary details having been submitted to it. Being aggrieved from the failure of the insurance company to pay its dues, the respondent/complainant filed a complaint before the District Consumer Disputes Redressal Forum, Gwalior (for short, the District Forum).

2. The insurance company, inter alia, claimed, before the District Forum that the machine was being used by a third party M/s. Emerald Industries who had not insured the machine and it was found being used in Sumerpada, Gwalior whereas it was insured at Anant Ram, Auraiya, Uttar Pradesh. In other words the

contention is that the machine was being used by a third party and at a location different from the place at which the insurance policy was taken, therefore, the insurance company was not liable to the insured. On merits, it was claimed by the insurance company that the damage occurred due to failure of a welding crack in the machine which was not covered under the policy.

3. Vide order dated 06-02-2010, the District Forum directed the insurance company to pay a sum of Rs.8,75,940/- to the complainant along with interest @8% p.a. with effect from two months after the filing of the claim. Cost amounting to Rs.1,200/- was also awarded to the complainant. Being aggrieved from the order of the District Forum, the appellant filed an appeal before the State Commission Disputes Redressal Commission, Madhya Pradesh (for short, the State Commission). Vide impugned order dated 03-03-2014, the State Commission dismissed the appeal filed by the insurance company. Being aggrieved from the order passed by the District Forum and the State Commission, the insurance company is before us by way of this revision petition.

4. In view of the plea taken by the petitioner, Insurance Company in the reply filed before the District Forum, that the machine was being used at a location different from the place for which the policy was taken, vide our order dated 23.04.2015, we directed the complainant to produce the original policy issued to it alongwith all its annexures. The Insurance Company was also directed to place the office copy of the insurance policy issued to the complainant on record. However, neither the complainant filed the original insurance policy nor did the Insurance Company file its office copy by 29.04.2015, which was the next date of hearing in the matter. Therefore, vide our order dated 29.04.2015, we again directed the complainant to produce the original policy alongwith all its annexures. We also direct the Insurance Company to produce the office copy of the insurance policy issued to the complainant. The complainant has not filed the original insurance policy issued to it by the petitioner Company and the learned counsel appearing for the complainant/respondent states that since it was a 5 year old policy having been taken in the year 2009, it is not traceable. However, the Insurance Company has placed on record an office copy of the insurance policy issued to the complainant.

5. A perusal of the terms and conditions annexed to the office copy of the insurance policy would show that the scope of the policy was restricted to the location mentioned on the policy. The relevant clause in this regard reads as under:- "NOW THIS POLICY OF INSURANCE WITNESSETH THAT subject to the terms, exceptions, exclusions, provisions and conditions contained herein or endorsed hereon, the Company will at its own option by payment or reinstatement or repair indemnify the insured against unforeseen and sudden physical damage by any cause not hereinafter excluded to any insured property specified in the attached Schedule(s) whilst at the location mentioned therein necessitating its immediate repair or replacement. This policy shall apply to the insured items whether they are at work or at rest or being dismantled for the

purpose of

cleaning or overhauling or in the course of the aforesaid operations themselves or when being shifted within the premises or during subsequent re-erection, but in any case only after successful commissioning. The liability of the Company for any one item of the insured property shall not exceed in the aggregate in any one Period of Insurance the Sum Insured set against such item in the attached Schedule(s). However the Sum Insured under such item can be reinstated after occurrence of a claim for a balance period." A perusal of the office copy of the insurance policy would show that the said policy was taken at the address Camp Office, Anantram Aureya, District Aureya, Uttar Pradesh. It is thus seen that the insurance policy covered the damage to the vehicle in question only so long as it was used at the location stated in the insurance policy. As noted earlier, the location recorded in the insurance policy was a place in Auraiya. This is complainant''s own case that the vehicle in question was at Sumerpada in Gwalior where it was being used by a third party, M/s. Emerald Industries, when it met with an accident. It is settled legal proposition that a contract of insurance is required to be strictly construed and it is not permissible for a Court or a Consumer Forum to add or subtract from the terms on which the insurance policy is issued. The Insurance Company can be made liable for the loss suffered by the insured only if the said loss falls within the scope of the insurance policy issued by it.

6. The learned counsel for the complainant has drawn our attention to para 11 of the order of the State Commission, wherein the said Commission noted that the terms and conditions shown to them at the time of arguments by the learned counsel for the Insurance Company were different from the terms and conditions, which were filed on record. The State Commission, therefore, presumed that the conditions which were shown to it were the amended conditions, forming part of the later policies. However, considering the fact that despite opportunities given by us the complainant did not produce the original insurance policy issued to it alongwith all its annexures, whereas the Insurance Company has placed on record an office copy of the said policy alongwith the terms and conditions annexed to it, there is no escape from the conclusion that the insurance policy issued to the complainant before us covered the vehicle only if it was damaged at the location recorded in the insurance policy. In fact, an adverse inference needs to be drawn against the complainant for not producing the original insurance policy alongwith its annexures, that had the said document been produced, it would not have support the case of the complainant, but would rather have support the case of the Insurance Company. It was, in fact, the duty of the complainant to place on record of the District Forum a true and complete copy of the insurance policy including all its annexures. That apparently was not done by the complainant.

7. For the reasons stated hereinabove, we are of the view that since the vehicle in question was deployed at a place other than the place recorded in the

insurance policy, at the time it allegedly got damaged, the petitioner Company is not liable to reimburse the complainant. Consequently, the impugned orders are set aside and the complaint is dismissed with no order as to costs. The Revision Petition stands disposed of.

