

(2013) 08 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE CO. LTD.

APPELLANT

Vs

M/S. Richardson And Cruddas (1997) Ltd.

RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Citation : (2013) 08 NCDRC CK 0004

Hon'ble Judges : J.

Final Decision : Petition allowed

Judgement

1. ALL these revision petitions arise out of common order dated 3.10.2012 passed by learned State Commission in appeals; hence, all these revision petitions are disposed of by common order. These revision petitions have been filed by the petitioner/OP against the order dated 03.10.2012 passed by the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Nagpur (in short, "the State Commission") in Appeal Nos. A/08/591, A/08/709 to A/08/720 -National Ins. Co. Ltd. Vs. M/s. Richardson & Cruddas (1997) Ltd. by which, while dismissing all the appeals, separate orders of District Forum allowing complaints were upheld.

Brief facts of the case are that complainant/respondent obtained contract to erect 400 K.V. of transmission line from Durgapur to Jamshedpur covering distance of 159 Km in the year 1988. Complainant obtained insurance coverage from OP/petitioner for different articles, electrical appliances and materials for the period commencing from 29.12.1988 to 28.07.1991. During subsistence of the policy, different insured articles; namely, ACSR "Moose" conductors were stolen away. Complainant informed OP and also lodged report with the police. Complainant submitted claim before OP. OP deputed surveyor and, though, surveyor submitted report showing loss of articles due to theft, the claim was not settled by OP for about 4 years. Alleging deficiency on the part of OP, complainant filed separate complaints before State Commission which were later on transferred to District Forum on account of change of pecuniary jurisdiction. OP/Petitioner resisted complaints and submitted that complainants did not accept

amount offered by OP and, as such, there was no deficiency and prayed for dismissal of complaints. Learned District forum after hearing both the parties allowed complaints and awarded amount as shown in Schedule "A" of the impugned order against which, these revision petitions have been filed.

2. HEARD learned Counsel for the parties at admission stage finally and perused record. Learned Counsel for the petitioner submitted that learned State Commission has not considered grounds of appeal in the impugned order; hence, revision petitions be accepted and impugned order be set aside and matter may be remanded back to learned State Commission. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law; hence, revision petitions be dismissed.

3. LEARNED Counsel for the petitioner submitted that there was similar exclusion clause in the policies except in Complaint No. 35 of 2008 (R.P. No. 1565 of 2013) in which there was separate exclusion clause, but learned State Commission has committed error in not considering exclusion clause and further submitted that learned State Commission has not considered grounds taken in memo of appeal, but has decided appeals on other grounds which were not raised before learned State Commission.

4. PERUSAL of memo of appeal filed before State Commission in R.P. No. 1554 of 2013 reveals that petitioner took following grounds in memo of appeal: C. The Learned Forum manifestly erred in not appreciating that the second report sought by the appellants was only restricted to ascertain the reasons for collapse of the structure giving rise to the claim. The Learned Forum failed to appreciate the recorded findings that the towers with FOS for 1.5 as in the case of the respondents had inherent defect and were not designed for any impact load, which may result due theft/snapping;

D. The Learned Forum manifestly erred not appreciating the documents on record and their contents. The learned Forum failed to apply its mind to the very fact that despite their being inherent defect in the towers the appellants offered to indemnify the respondents by paying an amount of Rs. 03,13,796/- as per the calculations made available to the respondents as well as filed on record. The Ld. Forum also failed to appreciate that the respondent was only entitled to the said amount and that; it was the respondent, who refused the said amount. Hence, the findings recorded in the Ld. Forum and directing the appellants to pay an amount of Rs. 5,50,711/- along with interest @ 9% p.a. from 05.02.2008 to the respondent is per se bad in law and is therefore required to be quashed and set aside.

Similar ground taken in paragraph "D" of this memo of appeal had been taken in other appeals before State Commission except change of figure of amount awarded by District Forum. In memo of appeals, no grounds have been taken regarding maintainability of the complaint, non -joinder of necessary parties and jurisdiction of the District Forum, but State Commission has dealt with all these

grounds in memo of appeal which were not called for. These grounds were taken by the petitioner in written statement filed before District Forum, but learned District Forum rejected all these objections and allowed complaints and petitioner did not choose to assail order of District Forum on these grounds. In such circumstances, State Commission should not have considered all these grounds in the impugned order and should have decided appeals on the grounds mentioned in memo of appeal which have not been considered and in such circumstances, matters are to be remanded back to the State Commission for deciding appeals on the grounds taken in memo of appeal.

5. CONSEQUENTLY , revision petitions are allowed and impugned order dated 03.10.2012 passed by learned State Commission in Appeal Nos. A/08/591, A/08/709 to A/08/720 -National Ins. Co. Ltd. Vs. M/s. Richardson & Cruddas (1997) Ltd. is set aside and appeals are remanded back to learned State Commission to confine its order only to the extent of grounds taken in memo of appeal and to consider all the grounds raised in memo of appeal. Parties are directed to appear before the learned State Commission on 23.9.2013.