(2013) 02 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE CO. LTD. — APPELLANT

Vs

Parivar Construction and Anr. — RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Citation : 2013 2 CPJ 154

Hon'ble Judges : B.C.Gupta J.

Judgement

1. THIS appeal has been filed by the National Insurance Co. Ltd. under Section 19 of the Consumer Protection Act, 1986 against the order dated 21.11.2008 passed by the Andhra Pradesh State Consumer Disputes Redressal Commission, (hereinafter referred to as ''State Commission'') by which order the State Commission partly allowed the complaint filed by respondent No. 1/complainant, M/s. Parivar Constructions, Secunderabad and ordered the appellant Insurance Company to pay a sum of Rs. 19,20,605 with interest @ 9% p.a. from 29.11.2005 till the date of realization with cost of Rs. 10,000. The complaint against the respondent No. 2/Indian Overseas Bank, Hyderabad was ordered to be dismissed. There was a delay of 42 days in filing the present appeal but the same was condoned vide order dated 8.4.2009.

2. THE facts, in brief, are that the complainant/respondent No. 1 obtained a term loan from respondent No. 2 Bank for purchase of Adj. Telescopic Span and Adj. Telescopic Prop equipment in order to use it for centering work of building construction. The said equipment was covered under an insurance policy dated 2.8.2004 for a sum of Rs. 56,81,000, covering the period from 2.8.2004 to 1.8.2005. The said instrument was shifted to Banjara Hills in Hyderabad, where it was badly damaged due to heavy gale and wind on 29.6.2005. The complainant lodged a claim with the appellant Insurance Company for a sum of Rs. 21,12,705. A Surveyor was appointed by the Insurance Company who assessed the loss at Rs. 19,20,605, but the claim was repudiated by the Insurance Company on the ground that the insured property was not situated at the place mentioned in the policy schedule at the time of accident/loss and hence it was

not covered under the terms of the policy. The complainant filed a complaint before the State Commission for the recovery of Rs. 19,20,605 with interest @ 18% p.a. besides compensation of Rs. 5 lakh and cost of Rs. 25,000. The State Commission vide impugned order dated 21.11.2008 partly allowed the complaint directing the Insurance Company to pay a sum of Rs. 19,20,605 with interest @ 9% p.a. from 21.11.2005 till the date of realization with cost of Rs. 10,000. The State Commission dismissed the complaint against the respondent No. 2 bank. Aggrieved by this order, the appellant Insurance Company has preferred the present appeal. We have heard learned Counsel for the appellant and respondent No. 1. No one is present on behalf of the respondent No. 2. Hence, respondent No. 2 is proceeded against ex parte.

3. IT has been contended by the learned Counsel for the appellant Insurance Company that the complainant had changed the location of the insured equipment without giving any intimation to the appellant. As per the terms and conditions of the policy, whenever there is any change in the premises, an endorsement to this effect has to be got made by the insured party from the Insurance Company, but it was not done in this case. The alleged letter dated 15.9.2004, which is stated to have been written by the complainant to the Insurance Company, is a fabricated document. The stamp mark on the document dated 15.9.2004, which is alleged to have been made by the Insurance Company is also a fake document. In view of these facts, the Insurance Company was not liable to make any payment to the loss suffered by the complainant. Learned Counsel for the appellant also invited our attention to a ruling given by this Commission in the case of National Insurance Co, Ltd. v. Venketshwera Distributor & Anr., : II (2011) CPJ 120 (NC), saying that when the material is shifted to the new premises, the approval of the Insurance Company is necessary and mere intimation, even if given to the Insurance Company, is of no avail.

4. ON the other hand, Counsel for the complainant/respondent No. 1 vehemently argued that the complainant had duly informed the Insurance Company about the change in premises and fact was also acknowledged by the Insurance Company. He has drawn our attention to the counter affidavit dated 5.9.2009 filed by respondent No. 1, wherein it has been stated that the letter dated 15.9.2004 regarding shifting of the insured property was duly given to tile Insurance Company, but the said company did not raise any further objections in the matter, meaning thereby that they had accepted the factum of the shifting of the insured material. We have examined the material brought on record and given a thoughtful consideration to the arguments advanced before us. It is an admitted fact that the insurance policy was issued by the appellant in favour of the complainant/respondent No. 1 for the stocks of building centering material and the location of the property was mentioned as "NCC -MAYTAS (JV), Project Office, Singapore Class Township Procharam (Warangal Highway) R.R. District -500011. It is also mentioned that the premium was paid to the Insurance Company by respondent No. 2 Bank on behalf of the complainant and a sum of Rs. 9,391 was further paid as enhanced premium. The basic issue involved in the

present case is that the complainant claims that letter dated 15.9.2004 was duly sent to the Insurance Company and it was received in their office. The material on record before us also indicates that a stamp of the Insurance Company has been marked on a copy of this letter, indicating that the same was received in the office of the Insurance Company. Beyond this, it was the duty of the Insurance Company to take necessary action for making endorsement on the Policy, in accordance with rules, etc. on the subject. In case, they have not taken any action after receiving this letter, it can be presumed that the endorsement on the policy was made. In view of these facts, we do not find any irregularity or illegality in the impugned order passed by the State Commission. The same is, therefore, ordered to be upheld and the First Appeal is ordered to be dismissed.

