

(2011) 04 NCDRC CK 0038

In the National Consumer Disputes Redressal Commission

National Insurance Co. Ltd.

APPELLANT

Vs

Rajnarayan Pulse Mills

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Citation : 2011 0 NCDRC 231 : 2011 2 CPJ 156 : 2011 2 CPR 305

Hon'ble Judges : V.R.Kingaonkar J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal by National Insurance Company Ltd. (referred to as "insurance company") against the judgement and order rendered by the Gujarat State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission") in complaint case no. 136 / 1997. By the impugned judgement and order, the State Commission partly allowed the claim of the respondent to the tune of Rs.6,37,128/-, alongwith interest @6% and also directed payment of compensation of Rs.10,000/- alongwith cost of Rs.2,500/- to him.

2. THE respondent is a partnership firm. Admittedly, the respondent was dealing in business of pulses in the name and style as "Raj Narayan Pulse Mills" at Visnagar, i.e., a small scale unit. THE respondent initially took policy from the appellant for period 24.05.1990 to 23.05.1991. That was type "A" policy which covered the loss caused by the fire or flood etc. THE similar type of policy was renewed from time to time for each year till 27.05.1996. The respondent's contention before the State Commission was that due to heavy rainfall the factory premises were under the water logging between 24 & 25.06.1997 with the result, the machinery and the building, alongwith the stock in the unit received heavy damages. The respondent (complainant) gave immediate information to the local police and the Mamlatdar. A panchnama of the shop was drawn on 28.06.1997 by the Police. The partner of the respondent visited office of the Insurance Company on 2.07.1997 and sought survey of the damages. The cereals and the pulses were damaged / spoiled and hence foul smell was

emanated therefrom. The municipality of Visnagar served a notice on the respondent to get the survey done or to remove the stock which was likely to cause epidemic diseases. Though the respondent put-forth his claim yet the appellant (insurer) repudiated the same on the ground that at the relevant time, the factory unit of the respondent was covered under Policy "C" which did not include risk on account of flood. The respondent alleged that the claim was repudiated without any substantial reason.

The defence of the appellant was that the claim was not maintainable under the provisions of the Consumer Protection Act, 1986 because there was no deficiency in service on its part. It is the chief plank of the defence that the risk was not covered in respect of the loss caused due to such an accident insurance was under "C" type fire policy. The respondent was not entitled to, therefore, seek any compensation due to the nature of the policy and the terms of the policy agreement. Hence, the appellant sought dismissal of the complaint.

3. AFTER considering the relevant material and having heard learned counsel for both the parties, the State Commission came to the conclusion that the defence of the appellant was unacceptable. The State Commission held that small unit of the respondent was covered by the Insurance Policy of type "A" and there was no exclusion clause which could relieve the appellant from the burden of the liability to compensate the respondent. Consequently, the impugned judgement and order came to be rendered in keeping in view with the defence noted above. We have heard learned counsel for the parties. We have perused the relevant record and the impugned judgement.

4. THE short question involved in the appeal is whether the respondent obtained policy "C" type instead of A type. THE learned counsel for the appellant would submit that the proposal of the policy is self-speaking. She seeks to rely upon a copy of the proposal form (P-54). She would submit that the insurance company did not accept the liability to indemnify the respondent on account of loss caused due to flood and inundation. We have examined the Xerox copy of the proposal form (P-54). It is evident that the same is not signed by the respondent's partner or any authorised person. THE columns in the proposal are also not filled in the hands of any authorised person or the partner of the respondent. It is pertinent to notice that the Branch Manager of the appellant, namely, Shri Y.N. Patel categorically admitted that since 1993, the respondent (complainant) used to obtain the insurance policy from Palanpur Branch Office. It appears that till 1996 the respondent had obtained policy of "A" type. It does not stand to reason that all of a sudden after 1996, the respondent changed the policy covering from type "A" to type "C" without any substantial reason. In fact, the insurance premium for type "C" policy is more than that of type "A" policy. It is difficult to see why the respondent would pay more premium to exclude the benefit of cover in respect of the damages likely to be caused due to the floods or inundation, particularly, when it has come on record that there was no incident of fire on any earlier occasion and such kind of accident was a remote possibility. There is

presumption regarding continuity of the same thing and, therefore, it is difficult to countenance the argument that after 1996, the respondent changed the type of insurance policy from "A" to "C". The manager of the appellant admitted unequivocally that the respondent did not give any oral or written declaration for the change in the terms of the insurance policy. It appears from the record that without any such declaration and without any written communication from the respondent, the appellant got changed the terms of the policy from type "A" to type "C". The testimony of the appellant's witness, i.e., Branch Manager, Y.N. Patel gives set back to the defence put forth before the State Commission. In absence of any mutual contract for the change of the policy, it will have to be said that the appellant unilaterally changed the terms of the policy without written or oral instructions of the respondent. Considering this aspect of the matter, we are in general agreement with the reasons recorded by the State Commission. Under the circumstances, we do not find any merit in the present appeal. In the result the appeal fails and is dismissed with cost of Rs. 2,000/-, payable to the respondent.