(2009) 01 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE CO. LTD. APPELLANT

Vs

Sajan Kumar Agarwal RESPONDENT

Date of Decision : 05-01-2009

Acts Referred:

Citation : 2009 1 CPJ 175

Hon'ble Judges : B.N.P.SINGH , P.D.SHENOY J.

Advocate : SAKSHI MITTAL , VISHNU MEHRA , R.K.KOHLI

Judgement

1. AGGRIEVED and dissatisfied by the order of the Chhattisgarh Consumer Disputes Redressal Commission, Raipur dated 28.10.2004, in Complaint Case No. 6 of 2003, the National Insurance Company Ltd. has filed this appeal. The State Commission had allowed the complaint and directed the opposite party -the Insurance Company to pay to the complainant Rs. 6,78,650 (Rupees Six lakh seventy eight thousand and six hundred fifty only) as compensation with interest @ 9% per annum from the date of the complaint along with Rs. 5,000 as cost.

2. COMPLAINAN T Mr. S.K. Agarwal, proprietor of M/s. Sanjay Enterprises is purchasing Bidi leaves from Government of Maharashtra. He had obtained a contract through tender for collection of Bidi leaves for the year 1996 -97 which were to be collected from the forest units of Murmuri and Kadsi in Gadchiroli forest division. He had obtained special declaration insurance policy on 27.3.1997 covering risk of all types of Bidi leaves for a total value of Rs. 2 crores for the period 16.5.1996 to 15.5.1997. In the proposal form he had mentioned that Bidi leaves were to be collected from the interior forest area of Maharashtra, generally known in common parlance as fudh and they were to be brought to main godown at Village Sonadarh via various transhipment centres and then were to be despatched to various places all over India. On the intervening night of 30th and 31st May, 1996, while 150 bags of Bidi leaves were loaded in truck at Potegaon depot for transportation to complainant''s godown at Sonadarh, some 6 -7 miscreants (Naxalites) armed with deadly weapons arrived at the depot and forcibly got the Bidi leaves unloaded from the truck and poured diesel over the

bags of Bidi leaves and set them on fire, in the result, 360 gunny bags were destroyed. The matter was reported by the complainant''s agent at Gadchiroli Police Station, on 1st June, 1998, upon which an offence was registered by the police. Complainant also informed the Insurance Company. The Insurance Company appointed Mr. Ashok Motiani, Surveyor, who assessed the loss at Rs. 6,70,656. Complainant submitted the claim, but the claim was repudiated by the Insurance Company vide their letter dated 13.7.1999 on untenable grounds. Accordingly, he prayed that compensation for the loss assessed by the Surveyor be awarded along with interest thereon.

3. THE complaint was resisted by the Insurance Company. The main contention raised by the Insurance Company was that the incident of arson when the bags were lying in the open field at the godown of the complainant and not during transit and, therefore, it is not covered by the Insurance Policy. The Insurance Company also raised the contention that the risk was covered by the policy subject to Clauses 18, 21 and 24 of the policy. Accordingly, the Insurance Company was not liable to pay any compensation. The State Commission after hearing the parties and going through the records of the case awarded compensation with interest and cost as stated above. Learned Counsel for the appellant - Insurance Company Ms. Sakshi Mittal drew our attention, that according Clause 7.3 of the Insurance Policy which relates to exclusion clause that reads as under: "caused by any terrorist or any person acting from a political motive."

4. AS in this case, the loss was caused by the Naxalites who were being terrorist, the Insurance Company is not liable to pay any compensation. Further, she invited our attention to Clause 8.1 relating to the duration of the policy which reads as under: "This insurance attaches from the time the goods leave the warehouse or place of storage at the place named herein for the commencement of the transit, continues, during the ordinary course of transit and terminates either."

5. AS the loss occurred when the goods were in the possession of the insured and not in transit, hence, the Insurance Company is not liable to indemnify the loss. This is clarified in the repudiation letter dated 13th July, 1998 as the goods come under the control of the assured for allocation, redistribution, processing, etc. Further, the journey terminates when the goods reach at transhipment centre under possession of the insured. Accordingly, the Insurance Company is justified in repudiating the claim of the respondent/complainant.

6. LEARNED Counsel for the respondent / complainant brought to our notice the Strikes Riots and Civil Commotions Clause (SRCC), according to which the following risks are covered: "Subject otherwise to the terms and conditions and warranties of the policy on goods against transit risks, this insurance covers, except as provided in Clause 2 below loss of or damage to the subject matter insured caused by: Strikes, locked -out workmen, or persons taking part in labour disturbances, riots or civil commotions: Any terrorist or any person acting

from a political motive. Persons acting maliciously."

7. SO this risk is clearly covered by the policy. Secondly, the learned Counsel for the respondent mentioned that there are three stages for which the insurance policy is covered. The first stage is the collection points to the transhipment point, 2nd stage is transhipment point to Sonadarh depot and the third stage is from Sonadarh depot to any where in India. Hence, the policy covers all the places and no place is excluded unless it is specifically mentioned in the policy. The policy document clearly shows that the place of incident took place at Poetgaon. He also brought to our notice the proposal form. The insured had clearly mentioned the procedure to be followed, transhipment details are given in the proposal form, hence, nothing was hidden from the Insurance Company.

8. LET us see the proposal form in which the following details are given: "We are contractor of Bidi leaves and want to take open policy for the products as under: We are taking forest lease/royalty to collect the Bidi leaves, after collecting it we give the natural process to Bidi leaves at various open field known as Fudh and after this process finally we are bagging the goods (packing in bags) to send to our main godown. The open fudh are located at various interior Forest hence, the vehicle cannot reach there, therefore we brought all the packed goods through our own arrangements to the nearest point i.e. called transhipment centre arranged by us and from this point the goods brought to our main go -down through vehicle. Rs. 2,50,00,000. From various interior forest of Maharahstra State known as Fudh to main godown at Village Sondarah (M.S.) and Bhandara (M.S.) via various transhipment centres. By Bullock -cart, and/or tractor and/or truck. Covered by tarpolin. All risk with SRCC risk".

9. THIS proposal form clearly indicates about SRCC risk is covered. SRCC is the abbreviation for Strikes Riots and Civil Commotions Clause. "The Inland transit (Rail or Road) Clause - A" covered by the policy. The duration of the policy mentioned above clearly gives the details: This insurance attached from the time the goods leave the warehouse and/ or the store at the place named in the policy for the commencement of transit and continues during the ordinary course of transit including customary transhipment, if any."

The policy document, clearly shows that this is subject to Clauses 18, 21 and 24. Clause 18 refers to Inland Transit (Rail or Road) A -All Risks Clause 21 refers to Inland SRCC Clause Clause 24 refers to Important Notice. -Please refer to original policy for proceeding in the event of loss or damage for which the company may be liable and for claims against.

10. THE incident happened at Potegaon before the goods had reached the Village Sonadarh.

11. IN this connection, it is worthwhile to refer to the decision of the National Commission in National Insurance Co. Ltd. v. Bhilwara Processors Ltd., II (2003) CPJ 74 (NC), wherein it was held that the complainant despatched the goods through carrier and during the course of the transit of the goods they were

stored in a go -down at Bhiwandi to facilitate the transportation of the goods to Mumbai. Fire broke down at Bhiwandi and destroyed the goods. The Commission held that the goods were in transit. Accordingly, the insurance company had not justifiably repudiated the claim of the insured.

12. THE ratio of this case is squarely applicable to the case on hand. Therefore, we dismiss the appeal and confirm the order of the State Commission. The appellant -Insurance Company shall pay Rs. 10,000 as cost to the respondent within a period of four weeks from the date of this order. Appeal dismissed.

