**(2009) 02 NCDRC CK 0065**

**In the National Consumer Disputes Redressal Commission**

National Insurance Co. Ltd. APPELLANT

Vs

SRI VENKATESHWARA TRADERS RESPONDENT

**Date of Decision :** 02-02-2009

**Acts Referred:**

**Citation :** 2009 0 NCDRC 17

**Hon'ble Judges :** Ashok Bhan , B.K.Taimni J.

**Final Decision :** Revision Petition is accepted

## Judgement

1. AGGRIEVED by the Order dated 31.08.2004 passed by the A.P. State Consumer Disputes Redressal Commission (hereinafter referred to as the State Commission for short) in Appeal No. 214 of 2002, Opposite Party No.1-National Insurance Company Limited-petitioner herein, has filed this Revision Petition. By the impugned Order, the State Commission has affirmed the Order passed by the District Consumer Disputes Redressal Forum, Nellore (hereinafter referred to as the District Forum for short).

2. IN short, the facts of the case are: - Complainant-respondent no.1 (hereinafter referred to as Complainant for short) is doing business in paddy, rice, bran broken and packing material under the name and style of Sri Venkateswara Traders. Complainant took M/s Shaffi Raw and Boiled Rice Mill on lease for milling of paddy. The Complainant had taken loan from Opposite Party No. 2 by hypothecating the paddy stock. He got the paddy stock and other materials insured for a sum of Rs.30,00,000/- under Policy No. 1999/3100913 through Opposite Party No. 2. The Policy was in operation from 29.03.2000 to 28.03.2001. On 10.03.2001, when the Complainant was processing paddy in the above said M/s Shaffi Raw and Boiled Rice Mill, all of a sudden, the boiler of the said mill stopped working and the paddy that was in the boiler was damaged and became unfit for consumption. Damage to the paddy was valued at Rs.4,00,000/-. Complainant informed the said incident and the damage caused to the petitioner as well as to Opposite Party No. 2 and requested them to inspect the material and pay compensation. Petitioner inspected the said

premises and the damaged paddy on 12.03.2001 and sent a letter to the Complainant repudiating the claim. Complainant, thereafter, filed a complaint before the District Forum seeking appropriate relief.

Petitioner filed its counter affidavit accepting the factum of insurance under Fire Policy for one year. It was also admitted that one Shri L.C. Rami Reddy was appointed as Surveyor who inspected the Rice Mill and submitted his Report on 15.03.2001 stating that the subject paddy was damaged due to deterioration consequent to disruption of a supply of steam following failure of boiler and its controlling panels and, as per Fire Policy issued to the Complainant, the loss was not covered under the Policy and, consequently, the petitioner was not liable to compensate the Complainant for the same.

3. OPPOSITE Party No. 2 filed a counter stating that there was no deficiency in service on its part and it was for the petitioner-Insurance Company to settle the claim. The District Forum allowed the complaint and directed the petitioner to pay a sum of Rs.4,00,000/- to the Complainant with interest @ 18% p.a. from 12.03.2001 till date of its realization. Complaint against Opposite Party No. 2 was dismissed.

4. AGGRIEVED by the Order passed by the District Forum, petitioner filed an Appeal before the State Commission. The State Commission affirmed the Order passed by the District Forum except that it reduced the interest from 18% to 9% p.a. Learned Counsel appearing for the petitioner contends that the Fire Policy did not cover the risk of the Complainant since there was no accidental fire. That under the Fire Policy, the risk was covered only if any damage was caused to the paddy or any other material due to fire, lightning or explosion. Since, the damage was not due to fire, lightning or explosion, the Foras below have erred in directing the petitioner to compensate the Complainant for the loss caused. As against this, learned Counsel for the respondent has supported the Order passed by the Foras below. Counsel for the parties have been heard at length.

5. THE Surveyor in his Report stated that one Shri J. Srinivasulu, proprietor of M/s Sri Venkateswara Traders, appeared before him on 10.03.2001 and as per his version, at about 02.00 P.M., the boiler suddenly stopped functioning due to failure of automatically controlled panel board as a result of which the paddy in the bunkers in semi finished state got deteriorated. THE Surveyor on the facts put before him, recorded the following findings: - FINDINGS: THE undersigned thoroughly inspected the boiler, the stock-in-process on 12.03.2001 at about 4.30 P.M. THE attributable cause of loss is a sudden failure of panel board, which controls the parameters of the steam generating boiler like husk falling, water circulating system, steam pressure, temperature etc. Due to failure of the panel board, the water circulation system stopped, as a result the boiler temperature suddenly went up and at one particular stage the boiler sheet metal layers were distorted. Because of panel board and boiler failure, no steam was generated, which is required for paddy already filled in the bunkers and in the semi state. Hence the paddy in process has got deteriorated due to non-availability of steam

 

under pressure before completion of cycle time.

6. IN Para 6 of the complaint filed by the Complainant, the Complainant has made following averment: - While on 10.03.2001 what (sic), the complainant is processing paddy in the above said M/s Shaffi Raw & Boiled Rice Mill, Naraeithpuram, Nellore, all of sudden the boiler of the said mill failed to work and paddy was got damaged and became useless for consumption. The worth of paddy that was damaged is Rs.1,00,000/-. From the case pleaded by the Complainant, it is evident that the paddy did not get burnt or spoiled due to any fire. There was no ignition of fire. There was neither any explosion nor lightning. The relevant portion of the Fire Policy reads as under: - In consideration of the insured named in the schedule hereto having paid to THE NATIONAL INSURANCE COMPANY LIMITED (hereinafter called the Company) the premium mentioned in the said schedule, THE COMPANY AGREES (subject to the conditions and exclusions contained herein or endorsed or otherwise expressed hereon) that if after payment of the premium the property insured described in the said schedule or any part of such property, be destroyed or damaged by:- 1. Fire 2. Lightning 3. Explosion/Implosion but excluding loss of or damage (a) to boilers, (other than domestic boilers) economizers or other vessels, machinery or apparatus in which steam is generated or their contents resulting from their own explosion/implosion, (b) Caused by centrifugal forces. (Emphasis supplied)

It is evident from the reading of the said Clause that the petitioner covered the loss for the property insured described in the Schedule or any part of such property if the same was destroyed or damaged by fire, lightning or explosion/ implosion excluding the loss or damage to the boiler. In this case, the loss was not due to fire, lightning or explosion but was due to damage to the boiler. As the boiler had suddenly stopped functioning due to failure of automatically controlled panel board, the District Forum, by an involved reasoning, came to the conclusion that the damage was caused to the paddy due to fire. The State Commission affirmed the said Order. We find that the findings recorded by the District Forum as affirmed by the State Commission run contrary to the case pleaded by the Complainant. The case of the Complainant was that the damage to the paddy was caused because the boiler failed to work and the paddy got damaged and became useless/unfit for consumption. There was no allegation that the damage was caused due to fire, lightning or explosion.

7. SINCE the findings recorded by the District Forum and the State Commission runs contrary to the case pleaded by the Complainant/respondent no.1, the same cannot be sustained and are, accordingly, set aside. For the reasons stated above, the Revision Petition is accepted, the Orders of the Foras below are set aside and the complaint is ordered to be dismissed. The parties shall bear their own costs.

 