(2004) 02 NCDRC CK 0088

In the National Consumer Disputes Redressal Commission

National Insurance Co. Ltd. APPELLANT

Vs

tRESIA LILLY RESPONDENT

Date of Decision : 03-02-2004

Acts Referred:

Citation : 2006 2 CPJ 241

Hon'ble Judges : M.B.Shah , B.K.Taimni J.

Final Decision : Appeal dismissed

Judgement

1. COMPLAINANT was the owner of a fishing trawler which was with the appellant National Insurance Company Ltd. covering the period between 5.2.1993 and 4.5.1993 for which Rs. 9,800 were paid as premium. It was renewed for another period of three months i.e. upto 4th August. 1993, by paying premium of Rs. 7,200. Again it was renewed on 4. 8. 1993 for a further period of three months by paying premium of Rs. 7,200. It is contended that on 21st July, 1993, while the traler had gone into the deep sea for fishing. Suddenly the sea became rough and the trawler along with several boats were capsized causing injury to several fishermen. It is contended that in all four vessels sunk and the said accident was widely reported in the Press.

2. THE crew-members of the vessel were rescued and given treatment in the hospital at Kollam. FIR was lodged at the Police Station, Ochira, regarding the incident on 22nd July, 1993, information was sent to the Insurance Company and the Port Officer. According to the Surveyor''s report, the vessel was purchased in October, 1992 and was registered at Neendakare on 11.11.1992. In conclusion they have recommended that the claim may be processed basing on the final report issued by the Police after completing their investigations. No doubt, it has also recommended that, if necessary, thorough investigation may be made by a professional investigator. Thereafter, the Insurance Company appointed an investigator who submitted his report and doubted the version given by the complainant with regard to sinking of the boat. On the basis of some inconsistencies in timings of the incident in the statements made by the crew

members. But the investigator as well as the Surveyors have not doubted the sinking of the boat.

On the basis of the said report, Insurance Company repudiated the claim by letter dated 10th October, 1994 on the below mentioned grounds- (a)the survey and investigation revealed that loss of vessel as stated was not genuine. (b)the crew of the vessel was not competent to operate the vessel; and (c)the circumstances of the loss was highly suspicious.

3. HENCE, Original Complaint No. 13 of 1995 was filed by the respondent before the Kerala State Consumer Disputes Redressal Commission. After appreciating the evidence in detail, the State Commission allowed the complaint by order dated 21.11.1996 and directed the Insurance Company to pay Rs. 5 lakh, even though the Surveyor has assessed the market value of the fishing boat at Rs 7.5 lakh on the ground that the Insurance Policy was only for a sum of Rs. 5 lakh. The State Commission also directed to pay the amount with interest at the rate of 15% p.a. from 21.7.1993 and awarded costs of Rs. 1,000.

4. AGAINST that judgment the Insurance Company has filed this appeal. At the time of hearing of this matter, Mr. Vishnu Mehra, learned Counsel for the Insurance Company, submitted that- (a)there was no proper evidence on record for establishing sinking of the vessel; (b)the driver was not having certificate from the competent authority. (c)vessel was not registered for fishing.

In our view there is no substance in the aforesaid submission for the reasons enumerated below.

5. IT is also undisputed that the boat was purchased in October, 1992 and no reason is pointed out by the Insurance Company to indicate that complainant was interested in sinking the boat within one year of its purchase.

6. FURTHER, it has come out in evidence that with regard to the other 2 boats, Insurance Company has given compensation without raising any such dispute. Next, there is evidence on record that members of the crew namely, Justin Jophn Thankachan and Robert were given medical treatment in the hospital. They were admitted on 21.7.1993 and were discharged on 22.7.1993 and that they had sustained injuries on account of the boat accident.

Police report submitted by the Sub-Inspector, Police Station Ochira indicates that with regard to the missing fishing boat inquiry was held but could not be traced.

7. AFTER the accident, the complainant had surrendered her licence and got it cancelled, as the boat was lost in the sea on 21.7.1993. There is a weather certificate issued by the Port Officer that weather condition in the area on 21.7.1993 was moderate and there was no more weather warning. Therefore, it cannot be held that despite the weather warning, the complainant permitted her boat to go in the high seas. Undisputedly, the boat was built in the year, 1992 and was in good condition.

8. THE contention that driver of the boat was unqualified or incompetent is also without any substance in view of the certificate issued by the Director of Fisheries, Department of Fisheries, Government of Kerala stating that Sri Justin K.K. has undergone a course of training in Principles of Navigation, Operation of Fishing, Gears and Motor Boat Management for a period of 38 weeks at the Fishermen Training Centre. Neendakare, Quilon and had passed in the year 1975. All the aforesaid aspects and evidence are discussed by the State Commission in its order in detail. In our view, the finding recorded by the State Commission cannot be said to be in any way erroneous. As per the Surveyor''s report, market value of the fishing boat was Rs. 7.5 lakh, the State Commission awarded Rs. 5.00 lakh on the basis of insurance policy. That finding also cannot be said to be in any way unjustified.

9. IN the result appeal is dismissed. The INsurance Company to pay Rs. 10,000 as costs to the respondent. INterim order passed by this Commission stands vacated. Appeal dismissed.

