

(2011) 04 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

National Insurance Co. Ltd.

APPELLANT

Vs

Venketshwera Distributor

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Citation : 2011 0 CTJ 610 : 2011 0 NCDRC 210 : 2011 2 CPJ 120

Hon'ble Judges : V.R.Kingaonkar , Vinay Kumar J.

Final Decision : Appeal is allowed

Judgement

1. BEING aggrieved by the judgement of the Andhra Pradesh State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission") in complaint case no. 121 / 2001, the insurer has come up in appeal. By the impugned judgement, the State Commission partly allowed the complaint filed by the respondent no. 1 and directed the appellant to pay Rs.6 lakh alongwith interest @9% p.a. from the date of repudiation, i.e., 20.04.2001 till the date of the realisation alongwith cost of Rs.10,000/- within a period of 6 weeks.

2. THE facts relevant for the purpose of the appeal, may be briefly set out in the following way:- THE respondent no. 1 (complainant) deals in business of footwear. THE stock in the shop of the respondent no. 1 was covered under insurance policy issued by the appellant against damages. THE insurance policy was issued in favour of the respondent no. 1 for a sum of Rs. 6 lakh. THE insurance period was between 4.01.2000 to 03.01.2001. THE respondent no. 1 had obtained loan from the respondent no. 2 Bank and, therefore, an insurance cover was obtained as per the norms of financing by the Bank. On 23.07.2000, the respondent no. 1 (complainant) got shifted the business from shop no. 113, new shoe market, Chhattabazar, Hyderabad to another place at H. No. 1-8-726/41, Plot No. 251, Brundavan Colony, Baghlingampally, Hyderabad, where the respondent no. 1 was running a garment stitching unit. The respondent no. 1 (complainant) alleged that due to heavy rains the premises were filled with water and, therefore, the stock of the garments and other

articles was damaged and / or washed away and became useless. He alleged that he informed the loss of the stock to the concerned Bank on 30.08.2000. The Bank informed about such loss to the appellant insurer. A surveyor was appointed by the appellant. The surveyor carried out survey of the stock and noticed that there was substantial loss caused due to the heavy rains and floods. The respondent no. 1, therefore, claimed amount of Rs.6 lacs as compensation from the insurer as per the terms of the insurance policy alongwith interest @18% p.a.

The appellant was the main contesting party before the State Commission. The appellant repudiated the claim of respondent no. 2 mainly on the ground that there was flagrant violation of the terms of the insurance policy. According to the appellant, the respondent no. 1 - insured was under obligation to inform about the date of the intended change of the premises from shop no. 113, new shoe market, Chhattabazar, Hyderabad and to obtain proper endorsement on the insurance policy which could permit continuation of the liability by the insurer. The appellant informed the respondent no. 2 Bank as well as the respondent no. 1 that there was delay in reporting about the loss of property and moreover the address of the business place of the respondent no. 1 was changed at the risk of the insured without compliance with the terms of the Policy. It was on the ground of breach of the terms of the policy that the claim was denied by the appellant.

3. RESPONDENT No. 2 " Bank did not adopt any specific defence. RESPONDENT No. 2 " Bank was not however accountable to compensate the respondent no. 1 " complainant for the loss so caused. The State Commission considered the rival contentions of the parties and the material placed on the record. The State Commission held that the repudiation by the appellant was invalid and improper. Once such defence was negated, the State Commission came to the conclusion that the respondent no. 1 was entitled to the amount of insured sum alongwith due interest and costs. In keeping with such findings the impugned judgement was rendered by the State Commission.

4. WE have heard learned counsel for the parties. It is argued by learned counsel for the appellant that the approval of the appellant was necessary for the purpose of continuation of the insurance policy when the stock was shifted by the respondent no. 1 to the new premises in different locality. It is further argued that the respondent no. 1 failed to comply with the stipulated terms of the insurance policy and as such no liability could be fastened on the appellant. It is further contended that there is considerable delay in informing the appellant about the loss of stock. The learned counsel for the appellant would submit that the State Commission failed to duly appreciate the fact situation and the legal impact of failure of the respondent no. 1 to obtain proper endorsement on the insurance policy, allowing continuation thereof even after shifting of the stock from the insured shop premises to another locality. Ms. Radha Rao, learned counsel strenuously argued on behalf of the respondent no. 1 that the exclusion clause 9 in the insurance policy is properly interpreted by the State Commission

and mere technical defence of the appellant may not be a good ground for the appellant to shed the liability. It is pointed out further that the respondent no. 1 had informed the respondent no. 2 " Bank regarding shifting of the stock of the goods vide letter dated 09.08.2000 and the same was communicated to the appellant, which shows that there was implied consent of the appellant to continue the insurance cover. It is argued therefore that making of proper endorsement of the insurance policy had remained only as a formality because the appellant did not prohibit continuation of the Insurance Policy in spite of knowledge about the shifting of the business activity to another premises. In this view of the matter, Ms. Radha Rao urged to dismiss the appeal. Before we embark upon considering of the rival submissions, it would be proper to notice the relevant exclusion clause shown in the Policy. The relevant exclusion clause 9 reads as under:- "Property insured if removed to any building or place other than in which it is herein stated to be insured except machinery & equipment is temporarily removed for repairs, cleaning renovation or other similar purposes for a period not exceeding 60 days."

The exclusion clause noted in the insurance policy would make it amply clear that the removal of the property by the insured to any other building or place, other than which it is shown under the policy could be permissible only in respect of machinery and equipments which could be temporarily removed for the purpose of repairs, cleaning, renovation or other similar purposes for a period not exceeding 60 days. In other words, the removal of any other moveable property in the premises of business could not have been effected and if at all it was so required to be done then the renovation of the insurance contract was necessary. The core question involved in the appeal is whether the respondent no. 1 did obtain prior consent of the appellant before shifting the business premises and, therefore, the appellant is not entitled to rely on the exclusion clause 9. Apart from question of the delayed claim put-forth by the appellant, it may be noticed that the respondent no. 1 filed the fire claim form dated 11.09.2000, asking for compensation of Rs.6,28,300/- from the appellant. The recitals of the fire claim form (Annex. D) would make it amply clear that the claim pertained to stock of foot-ware which was allegedly washed away from premises H. No. 1-8-726/41, Plot No. 251, Brundavan Colony, Baghlingampally, Hyderabad. It is obvious that the foot-ware stock was allegedly removed from the place of the business premises of shop no. 113, new shoe market, Chhattabazar, Hyderabad. The appellant never gave written consent prior to the shifting of the stock from the business premises of shop no. 113, new shoe market, Chhattabazar, Hyderabad and continuation of the insurance policy in respect of the new premises. It appears that the respondent no. 1 (insured) informed the respondent no. 2 Bank about the shifting of the business premises vide letter dated 09.08.2000 (Annex. B). This letter itself would speak volumes against the respondent no. 1. The respondent no. 1 asserted that the firm was in the process of winding up of the business because it was unable to run the business profitably and the payments from the parties were not forthcoming. Nobody verified what was the stock that

was shifted from shop no. 113, new shoe market, Chhattabazar, Hyderabad to the H. No. 1-8-726/41, Plot No. 251, Brundavan Colony, Baghlingampally, Hyderabad. It is further significant to notice that when the appointed surveyor of the appellant visited the property H. No. 1-8-726/41, Plot No. 251, Brundavan Colony, Baghlingampally, Hyderabad, it was found that the water level had raised upto height of 5 ft. above the road level. The surveyor noticed that the physical verification indicated availability of stock worth Rs.95,000/-

5. IN "Shri Subhash Chand Jain Vs. United INDia INSurance Co. Ltd. and Bank of Maharashtra" [FA No. 272 of 2010 decided on 13.10.2010], this Commission held that the insurer is liable to indemnify the insured when the shifting of the business to the new location is approved and agreed upon by the insurer. IN "Oriental INSurance Co. Ltd. and Anr. Vs. P.R. Automobiles & Oils and Anr. [1 (2010) CPJ 83 (NC)], it is observed : "assuming that the letter dated 30.10.1998 was sent by the complainant and was received by the INSurance Company before the date of peril, it is an admitted position that the INSurance Company had not made any endorsement in the policy document in regard to the change of address before the date of peril". To make such endorsement in respect of new location is entirely in the discretion of the insurer. IN the case of S. Rathinavelu vs. The New INDia Assurance Co. Ltd. & Ors. II (1995) CPJ 135 (NC), Hon"ble National Commission unambiguously held that "mere receipt of a request for change in address is not sufficient to make the policy applicable to the changed premises. It is required to be incorporated in the policy by way of a separate endorsement and till then, no risk is assumed in respect of the new location. To make such endorsement in respect of new location is entirely in the discretion of the insurer" That decision was made applicable by Hon"ble National Commission in the aforesaid case of P.R. automobile (supra) and it was observed that the insurer was not liable. Hon"ble Supreme Court in the case of Deokar Exports Pvt. Ltd. vs. New INDia Assurance Co. Ltd. I (2009) CPJ 6 (SC) in paragraph No. 11 has observed that "a policy of insurance is a contract based on an offer (proposal) and an acceptance."

6. THE foregoing discussion would make it amply clear that the respondent no. 1 gave mere intimation to the respondent no. 2 " Bank and may be to the appellant while shifting of the business of foot-ware to the place of his another business. THERE was no valid acceptance of such offer by the appellant. THERE was no opportunity for the appellant to examine whether the business place in H. No. 1-8-726/41, Plot No. 251, Brundavan Colony, Baghlingampally, Hyderabad was safe enough to continue the insurance cover. THE respondent no. 1 could not have assumed acceptance of his proposal without obtaining the necessary endorsement allowing change of the premises by the appellant. In other words, there was no renovation of the contract of insurance policy. THE respondent no. 1 also was facing financial difficulties and was in the process of winding up of the foot-ware business. Under these circumstances, the compensation ought not to have been granted to the respondent no. 1 when there was no valid contract subsisting between the appellant and him and moreover the change of the

premises and shifting of the stock from shop no. 113, new shoe market, Chhattabazar, Hyderabad was done without prior consent of the appellant as well amounted to violation of the terms of the Insurance Policy. We are of the opinion that the State Commission committed error while interpreting the exclusion clause " 9 and also while appreciating the relevant attending circumstances. The claim of the respondent no. 1 could not have been accepted without sufficient proof about shifting of the stock from shop no. 113, new shoe market, Chhattabazar, Hyderabad and existence of valid insurance cover. In this view of the matter, the impugned judgement is unsustainable. Hence, the appeal is allowed and the impugned judgement and order is set aside. The complaint stands dismissed. The parties to bear their own costs.