(2017) 08 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

Case No : 1206 of 2017

NATIONAL INSURANCE COMPANY LIMITED — APPELLANT

Vs

KAMLA DEVI RICE MILL PVT. LTD. — RESPONDENT

Date of Decision : 08-08-2017

Acts Referred:

Citation : (2017) 08 NCDRC CK 0019

Hon'ble Judges : V.K. Jain

Advocate : Pradeep Gaur

Judgement

1. The complainant respondent obtained an insurance policy from the petitioner company with respect to its building at Senha in Jharkhand, the plant, machinery and accessories installed therein and the stock stored in the factory. On 30.5.2012 at about 4.00 p.m., the par boiled paddy silo suddenly started shaking and collapsed, before anything could be done about it. When the surveyor inspected the premises of the complainant, the silo was found fallen on the ground with its sides torn portion and its pipeline bent and damaged. The chain conveyor system of the silo was also found damaged, whereas the foundation pillars were uprooted. The complainant informed the surveyor that while the plant was in operation, the silo suddenly collapsed. The cause of the loss was given as ''breaking of iron structure''. The surveyor while assessing the loss to the complainant at Rs.8,60,000/- opined that the loss had occurred due to the failure of the foundation pillars and ceiling structure. Vide letter dated 30.1.2013, the claim was repudiated giving a bald reason that peril/cause of loss was not covered in the policy. The repudiation letter had no indication as to why the peril/ cause of loss was not covered under the insurance policy taken by the complainant. Being aggrieved from the repudiation of the claim, the complainant approached the concerned District Forum by way of a consumer complaint.

2. The complaint was resisted by the insurer on the ground that the loss, if any, was due to failure of foundation pillars and silo structure which was an uninsured peril and, therefore, there was no liability within the scope of the policy. The

District Forum having ruled in favour of the complainant, the petitioner approached the concerned State Commission by way of an appeal. The said appeal also having been dismissed, the insurer is before this Commission by way of this revision petition.

3. Though it is alleged that the loss happened due to failure of the foundation pillar and silo structure there is absolutely no evidence to prove that the silo had fallen down on account of the failure of the foundation pillars and/or the silo structure itself. No opinion from any structural engineer was taken by the surveyor before concluding that the loss was due to failure of the foundation pillars and the silo structure. In the absence of such an evidence, the insurer, in my opinion, is not justified in repudiating the claim.

Clause VIII of the insurance policy on which reliance was placed by the insurer before the State Commission reads as under-

"VIII Subsidence and landslide including Rock Slide.

Loss destruction or damage directly caused by subsidence of part of the site on which the property stands or land slide/Rock slide excluding.

1. The normal cracking, settlement or bedding down of new structures

2. The settlement or movement of made up ground

3. Coastal or river erosion. Defective design or Workmanship or use of defective materials

4. Demolition, construct on, structural alteration or repair of any property of groundwork or excavations."

There is absolutely no evidence of any normal tracking settlement or bedding down of new structures. There is absolutely no evidence of any defective design or workmanship or use of defective material. The report of the surveyor does not bring the cause of the loss within the purview of any of the sub-clauses of clause VIII of the insurance policy as extracted hereinabove.

4. The learned counsel for the petitioner states that the complainant failed to establish before the surveyor that the loss had happened due to breaking of iron structure. The insured can only give what in its opinion was the cause of the loss. If the surveyor was not satisfied with the cause of the loss given by the insured, nothing prevented him from coming to his own conclusion as regards the said cause of loss. In fact one essential purpose behind appointing a surveyor is to verify the cause of the loss. Therefore, the claim could not have been rejected solely on the ground that the insured had failed to establish before the surveyor that the loss happened due to breaking of iron structure. In any case, this was not the ground for repudiating the claim. As noted earlier, the surveyor if he suspected some defect or deficiency in the foundations or the silo structure itself ought to have taken the report of an expert such as a structural engineer. That having not been done, the repudiation of the claim on the basis of an arbitrary

and unjustified opinion of the surveyor cannot be sustained.

5. For the reasons stated hereinabove, I find no merit in the revision petition and it is accordingly dismissed with no order as to costs.

