(2005) 09 NCDRC CK 0111

In the National Consumer Disputes Redressal Commission

National Insurance Company Ltd. APPELLANT

Vs

BHOLANATH SAHOO RESPONDENT

Date of Decision : 01-09-2005

Acts Referred:

Citation : 2005 3 CPR 591 : 2005 4 CPJ 168 : 2006 1 CLT 700 : 2006 1 CPC 70

Hon'ble Judges : S.N.Kapoor , Rajyalakshmi Rao J.

Advocate : K.C.Bhatt , Karan Mehra

Final Decision : Allowed

Judgement

1. THIS order shall dispose of two appeals arising out of the same order passed in C.D. Case No. 87 of 2000 by the learned State Consumer Disputes Redressal Commission, Orissa, Cuttack.

2. THE learned State Commission allowed the complaint and awarded a sum of Rs. 3,43,317/- for the loss of vessel with interest @ 9% p.a. from the date of repudiation till payment. The complainant Bholanath Sahoo has filed the appeal for enhancement of the compensation while the Insurance Company has filed the appeal for dismissal of the complaint.

The complainant''s fishing vessel "Maa Arundhati" was allegedly insured with the opposite party till 26th April, 1999. The vessel was insured for a sum of Rs. 6.00 lakhs along with loss within the terms and conditions of policy "Institute Fishing Vessel Clauses".

3. ON 9.8.1998, the fishing vessel as per complainant''s met with an accident in high sea near the new fishing Harbour at Paradip and broke into pieces. The crew members could somehow escape and the vessel got grounded. The appellant appointed M/s. Murray Fenton (India) Surveyors Ltd., Surveyors submitted their report on 15.1.1999. Relying upon this report, the Insurance Company repudiated the claim of the appellant on the ground that the loss was due to age, wear, tear, and non-maintenance of the boat, besides alleging that the appellant was also a privy to the loss. The complainant represented against the Surveyor''s

Report but the Insurance Company appointed the same Surveyor. The complainant filed the complaint. Learned State Commission as has been mentioned hereinabove assessed the loss on the basis of the report of the second Surveyor.

4. THE complainant assailed the said order of the learned State Commission on the ground that the learned State Commission erroneously relied upon the Surveyor''s report for the loss suffered without considering that the vessel was valued at Rs. 6.00 lakhs by the valuer. Sh. B.P.S. Narayanan, the valuer assessed the value of vessel as Rs. 4.00 lakhs only. THE learned State Commission awarded the claim after deducting Rs. 96,683/- towards cost of the salvageable item. On the other hand, the Insurance Company/O.P. in their appeal assailed the judgment of the learned State Commission on the ground that the complainants has not led any evidence in support of his case. The Surveyor''s report had not been considered as a whole but the selected part has been picked up and wrongly assessed the loss. The learned Counsel referred to a number of facts in the Surveyor''s report in support of his contention that in this matter the complainant had utterly failed to prove the accident as they alleged. Rather the case of the opposite party/insurer had been proved in the light of the report. He referred to several parts of the report including the following observations about cause of loss: Cause of Loss In our opinion the cause of loss was not accidental. There is loss when property is lost or damaged involuntarily and accidentally as far as Insurance is concerned - not otherwise - except in case of Malicious Act which insured himself denies. We tend to believe what the local inquiries reveal (that the insured boat was seen deliberately going west by other boats and refused assistance by boats in the vicinity, etc. already explained. (Emphasis supplied)

5. THE master of the vessel and the crew members had not been produced. THE local inquiries made by the Surveyor, have gone against the complainant. No report was filed to prove that weather was bad. On 9.8.2005, the boat had reached the middle of the Mahanadhi river mouth quite close to their destination which was Paradeep Fishing Harbour at the Southern end of the river mouth when boat''s rudder allegedly broke. Gear of the boat also gave trouble, the engine was stopped and at about 3 p.m. on 9.8.1998 both anchors were dropped. THEy did not hold the boat which started drifting to north. THE crew cast the fishing gear into the sea from the raft but this also did not hold the boat nor stop if from drifting for nearly 7 kms. to the north after which it ran on ground. THE insured claimed that the sea was rough. He stated that he was not aware of the names of his crew excepting three viz., Sobardas, S. Malik and Pratap Behra. None of these crew members were examined by filing affidavit. THE local inquiries as per report were all against him. On 30.6.1998, the value was only Rs. 3.00 lakhs and without there being any reason whatsoever as per the Surveyor''s report, the value was suddenly raised to Rs. 6.00 lakhs. THE renovation of the boat would have taken much more time. According to the Surveyor the complainant had four claims one in every year since 1995 and the

insured/complainant had not acted in good faith. On 30.6.1998 he just purchased 50% share of his partner. THE Surveyor could not find any answer to the question why party had paid Rs. 3.00 lakhs in place of Rs. 1.5 lakhs and another Rs. 1.5 lakhs by money receipt on same day. No Income Tax return has ever been filed. According to Surveyor the money receipt was brought up document to justify the value of the vessel. THE entire report has pointed out numerous loopholes in the case of the complainant, particularly, the way the vehicle moved in opposite direction and when the crew of the vessel refused to take the assistance of the crew of other boats, which were shipping, in the neighbourhood.

6. IN the aforementioned circumstances in the absence of any evidence from the side of the complainant, we find it difficult to sustain the findings of the learned State Commission. Insofar as the appeal of the insured is concerned, it has been established that the complainant has failed to prove his case that it was a case of accident and further that there was any deficiency in service on the part of the insurer in repudiating the claim of complainant. There is no reason to ignore the report of the Surveyor particularly in absence of any reliable and cogent evidence from the side of the complainant. Accordingly, insofar as the appeal of the complainant is concerned, the question of enhancement would not arise in the aforementioned circumstances.

In view of the aforementioned discussion since there was no deficiency in rendering service on the partof the insurer and the insurer was justified in repudiating the claim, the appeal of the insurance is allowed and the complaint is dismissed. Parties are left to bear their own cost. Ordered accordingly.