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(2005) 08 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

National Insurance Company Ltd. APPELLANT

Vs

NACHHATTAR SINGH RESPONDENT

Date of Decision : 22-08-2005

Acts Referred:

Citation : 2006 2 CLT 288 : 2006 2 CPC 61 : 2006 2 CPJ 120

Hon'ble Judges : M.B.Shah , P.D.Shenoy J.

Final Decision : Revision Petition dismissed

Judgement

1. SINCE notice could not be served on the respondent, petitioner was permitted to effect substituted service on the respondent by way of publication in the newspaper. Even then, respondent did not remain present nor engaged any Counsel to represent his case.

2. THE only question that requires consideration in this Revision Petition filed by the Insurance Company-Petitioner, is whether the complainant is entitled to get compensation for the loss of fish due to insufficient availability of dissolved oxygen in water because of cloudy weather which had prevailed for more than a week in the area in question. It is the contention of the Insurance Company that there is a specific exclusion clause which provides that the Insurance Company shall not be liable in respect of loss arising from or through ''asphyxia''.

The complaint was filed by the insured alleging that he was the owner of two fish ponds measuring 6.5 acre and 1 acre situated at village Randhawa, District Fatehgarh Sahib. For these ponds he had taken an insurance policy from the petitioner for the period from 1.1.1998 to 31.12.1998. The respondent suffered loss of fish in the ponds in the month of January, 1998 itself. The matter was reported to the Insurance Company who deputed the surveyor. After visiting the spot on 9.1.1998, the surveyor submitted his report to the Insurance Company. The Insurance Company did not pay the amount to the respondent. Hence he filed complaint No. 121 on 17.12.1998, before the District Consumer Disputes Redressal Forum, Fatehgarh Sahib. By order dated 22.2.1998, the District Forum allowed the complaint and directed the Insurance Company to pay a sum of Rs.

1,04,000 with interest @ 18% w.e.f. 1.4.1998 till date of payment.

3. THE said order was confirmed by the State Commission, Punjab, with the modification with regard to the rate of interest (18% to 12%.) Learned Counsel for the Insurance Company submitted that there is no dispute with regard to the cause of death of fish, which is stated by Surveyor, as under: Due to continuous cloudy weather for over a week''s time the dissolved oxygen level depleted in the pond, which normally increases during day time due to photosynthesis activity. It reached lethal level because of continuous cloudy weather which resulted in the death of the fish in the pond. There was no negligence on the part of fish farmer. No disease was found. Water level was upto the mark6 feet Fish stock was healthy.

Accordingly, in the opinion of the Surveyor, the loss was due to insufficient availability of dissolved oxygen in the water and the loss was total in 6.5 acres of fish pond. Learned Counsel, therefore, submitted that the cause of death of the fish in the ponds was ''asphyxia'' and, therefore, Insurance Company is not liable to pay as per the exclusion clause.

4. FOR appreciating this contention we would refer to the terms of the insurance policy. The insurance policy provides that: "The Company hereby agrees subject to the terms, conditions and exceptions contained herein or endorsed or otherwise expressed hereon that if the fish hereinafter described as totally lost or dead resulting from Accident or Disease or other perils specified in the schedule herein during the period of insurance stated herein or any subsequent period in respect of which the Insured shall have paid the company and the company shall have accepted the premium required for the renewal thereof, the company will pay to the insured 80% of value of the fish as on the date of loss as per valuation mentioned herein.

Other Perils Specified: Riot and strike, malicious act by third parties, poisoning, earthquake, explosion, damage by aircraft and aerial devices, impact by any road vehicle, flood, cyclone, storm tempest, tornado and similar natural calamities, pollution and summer kill due to raise of temperature to 40C and above. Exclusions

Relevant exclusion clauses are reproduced hereinbelow: The Company shall not be liable in respect of loss arising from or through: (h) Asphyxia; (r) Any loss or damage caused by fluctuations of temperature, undergrowth, warm infection such as monodgemitic trematodes, digenetic tremodes, cested parasites, nematode parasites, fish laches, etc. and (s) Flood, cyclone, storm, tempest, inundation and allied risks unless specifically covered on payment of additional premium.

From these clauses it is apparent that Insurance Company is liable for the loss of fish resulting from the accident or disease or the perils specified in the schedule. The other perils which are specified above are not applicable in the present case. There is no question of riot and strike, malicious act by third parties, poisoning,

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earthquake, explosion, damage by aircraft and aerial devices, impact by any road vehicle, flood, cyclone, storm, tempest and tornado. The only question is, whether it is similar natural calamity? Both the Fora have arrived at the conclusion that there was a natural calamity. It cannot be disputed that cloudy weather for weeks together had been a natural calamity at least for the fish in the ponds. However, the learned Counsel for the Insurance Company submitted that before the phrase ''natural calamity'' there is an addition of word ''similar''. He contended that natural calamity should be similar to that of flood, cyclone, storm, tempest, tornado and not simplicitor ''cloudy weather''. In our view, the District Forum rightly considered the exclusion clause which specifically provides that peril due to flood, cyclone, storm, tempest, inundation and allied risk is excluded unless payment of additional premium is made by the complainant. In the present case, there is no doubt that the complainant has paid premium for such peril. That is why, in the schedule it is included. Flood, cyclone, storm, tempest, inundation are, as such, natural calamities. It is also to be noted that there is no further explanation under the contract of insurance as to what perils would be covered by ''similar natural calamity'' and in our view, it is a vague expression. For the fish cloudy weather had become a natural calamity. Further, the cause for peril of fish was cloudy weather which resulted in depletion of oxygen in the pond. Consequence of the natural calamity was the death of the fish and not asphyxia because of shortage of water in the tank or water being dirty. The cause of death was natural calamity. May be that ultimately death was because of asphyxia. But, the cause was cloudy weather which is the natural calamity and that peril is covered by the insurance policy. Hence, the Insurance Company cannot refuse to reimburse the complainant.

5. IN any case, it is a settled law that where there is any vagueness in the contract of insurance or where two interpretations are reasonably possible one which favours the policy holders is to be accepted as the same advances the purpose for which the policy is taken LIC v. Raj Kumar Rajgarhia & Anr., II (1999) SLT 362=(1999) 3 SCC 465. Further, in case of ambiguity or doubt in terms of the policy it should be interpreted in favour of the insured and against the Company. IN the case of General Assurance Society Ltd. v. Chandumul Jain & Anr., AIR 1966 SC 1644, the Court held that the contract is likely to be construed ''contra proferentem'' that is against the company in case of ambiguity or doubt. Therefore, it cannot be said that the order passed by the District Forum is in any way erroneous.

6. IN this view of the matter, the orders passed by the District Forum and the State Commission are upheld. The Revision Petition is dismissed. There shall be no order as to costs. Revision petition dismissed.

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