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In the National Consumer Disputes Redressal Commission

Case No : 239 of 2010

NAWAL KISHORE CHOUDHARY APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. & ANR. RESPONDENT

Date of Decision : 25-04-2016

Acts Referred:

Citation : 2016 2 CPR 465

Hon'ble Judges : V.K. Jain

Advocate : Bharat Swaroop Sharma, Vishnu Mehra, Sakshi Gupta

Judgement

1. The complainant, who is running a cold store under the name and style of M/s. Jai Durga Cold Storage, obtained an insurance policy from the opposite party No.1 New India Assurance Co. Ltd., with respect to the building, plants and machinery of the said cold storage as well as the stock kept therein. The building, plants and machines etc. were got insured to the extent of Rs.1,64,00,000/- whereas the stock was got insured to the extent of Rs.1,19,99,000/-. The case of the complainant is that due to heavy rains in the last week of July and first week of August, 2007, heavy rains took place in the entire Muzaffarpur area where the cold store was situated and in the

night intervening 01/02.08.2007, the flood water entered the cold storage upto the level of 8 ft., whereas it outer walls were dipped upto 6 ft. Intimation having been givent o the insurer, through opposite party No.2 State Bank of India, from which credit facility had been obtained by the complainant, a surveyor was appointed to inspect the site and assess the loss. The insurer, however, repudiated the claim on the ground that the loss had occurred due to seepage through basement and side walls of the cold storage and therefore, was not covered under the insurance policy. Another ground taken by the insurer for repudiating the claim was that the building plan of the cold storage had not been approved by MRDA. The case of the complainant is that the loss of the stock was to the extent of Rs.1,20,00,000/- whereas the cost of the plant and machinery along with the electrical equipment was Rs.28,00,000/- though the complainant was restricting the claim for repair of plant and machinery to Rs.25,00,000/-. The complainant also alleges damage to the building to the extent of Rs.20,00,000/-.

Being aggrieved from the repudiation of the claim, the complainant is before this Commission, seeking the following reliefs:

1. Pass an order / award of Rs.1,20,000/- (Rupees one crore twenty lakh) in favour of complainant and against the respondents on account of damage / loss caused to stock of potatoes (the total sum assured);

2. To pass an order / award of Rs.25,00,000/- (Rupees twenty five lakhs) in favour of complainant and against the respondents on account of damages / loss caused / expenses incurred on account of repairing of plant and machinery along with electrical equipment.

3. To pass an order / award of Rs.20,00,000/- (Rupees Twenty lakhs only) in favour of complainant and against the respondents on account of damages / loss caused / expenses incurred on account of repairing of floor, building walls and boundary wall towards reconstruction of said cold storage;

4. To pass an order / award of Rs.55,00,000/- (Rupees fifty lakh only) in favour of complainant and against the respondents on account of damages / loss caused / expenses incurred on account of bank interest which complainant paid / has to pay to respondent No.2 Bank;

5. To pass an order / award of Rs.50,00,000/- (Rupees fifty lakhs only) in favour of complainant and against the respondents on account of damages / loss caused / expenses incurred on account of compensation for sufferings, mental agony, loss of reputation and goodwill and business losses due to non-settlement of insurance claim;

6. Pass an order for Rs.5,00,000/- (Rupees five lakhs only) towards legal expenses incurred by complainant.

2. The complaint has been resisted by the insurer on several grounds, including that it is barred by limitation, the basement in which the cold-storage was being run, was an unauthorized construction and the loss, if any, occurred due to seepage through basement and side wall of the cold storage which was not an insured peril and therefore not covered under the insurance policy, taken by the complainant. It is also pointed out in the reply filed by the insurer that when Shri Ashok Kumar, spot surveyor went to the spot, he found that some bags filled with potatoes had been opened by cutting them and the potatoes were being sold to the traders and general public. It is stated in the written version filed by the insurer that nearly 90% of the stock of potatoes was saved and the surveyor had assessed the salvage value of the stock to be 80%, assessing the loss to the complainant at Rs.15,30,000/-. It is further stated that there was gross underinsurance since the value of the stock kept in the cold storage was more than Rs.3.00 crores whereas it had been got insured only for Rs.1,20,00,000/-.

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3. In its reply opposite party No.2 State Bank of India has inter-alia stated that it was only a formal party since the dispute is between the insurer and the insured.

4. As noted earlier, the first ground for repudiating the claim was that the map (building plan) of the cold storage was not approved by MRDA. No evidence has been filed by the complainant to prove that the construction of the basement in which the cold storage was being run had been duly approved by MRDA. Therefore, it would be difficult to dispute that the said construction was unauthorized. During the course of arguments, I asked the learned counsel for the insurer to point out any clause in the insurance policy which would entitle the insurer to repudiate the claim if the building in which the cold storage is being run is found to be illegally constructed. No such clause however, could be pointed out by the learned counsel for the insurer. In the absence of such an Exclusion / Exception clause in the insurance policy, it would be difficult to uphold the repudiation of the claim on the aforesaid ground.

5. The survey report, to the extent it is relevant to decide whether the loss sustained by the complainant is covered under the insurance policy or not, reads as under: 2. Incident : The incident reported when the area was almost in process of restoration to its natural existence but there was sufficient sign which were witnessing the maximum level of inundation water. The Cause & Nature of loss seems consistent and true but it is not covered under the said policy.

4. Hit of Inundation water: As the water level logged in the ditch areas in the surroundings under road as well as plinth level and entered in the said premise upto 8''0? through seepage and it is remarkable that the Inundatior, as well as Flood Water continued till long time. It has been observed that neither any water proofing was made in basement area nor from outside. The construction has been found un-authorized without considering the disaster scale hence water entered inside the basement area upto 8''0? ht that is why those materials which were physically placed over this height may be influenced and it have been included in my Inventory Account.

6. The Occurrence : This occurrence took place on 01/02.8.2007 as informed by insured to the insurer, the rain water logged all around the surrounding areas and it entered inside the said premises by seepage through floor and basement wall and affected the bags which were placed under such height and damaged. Opinion: Under above facts, points, evidence oral and documentary, it is hereby concluded that the heavy rain fall caused accumulation of water in the said area due to continuous rain in the night and they could not visualize the actual hazardous condition because such type of water logging in basement upto such height.

It would thus be seen that the flood water had entered the cold storage through its flooring as well as the side walls and the accumulated water was upto the height of 8 ft. The water had remained in the basement for quite some time as was noted by the surveyor. The insurance policy taken by the complainant inter-

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alia insured the stock in a cause of damage due to flood and inundation. The terms ''flood'' and ''inundation'' have not been defined in the insurance policy and therefore, one has to look for Dictionary meaning of the said terms. As per Oxford Advanced Learner''s Dictionary, ''flood'' means a large amount of water covering an area that is usually dry. The term ''inundation'' is defined to mean to cover an area of land with large amount of water. As per Vocabulary. Com, a flood is an enormous amount of water. Primarily flood is rising of a body water and its over-flowing onto normally dry land. As per Merriam Webster Dictionary, flood is a large amount of water covering an area of land that is usually dry. As per Black''s Law Dictionary, inundation means overflowing or overwhelming or flooding with water. A similar meaning is given to this term in Merriam Webster Dictionary. Therefore, if a place which by its nature is expected to remain dry, receives an overwhelming amount of water which it is not expected to receive that would amount to inundation.

6. In a case where the overwhelming water that enters a building is rainy water, it is not necessary that it should enter the building directly through the gates and doors, in order to qualify as flood or inundation. Even if the rain water enters through flooring and the walls which are unable to withstand its pressure, that, in my opinion would also be covered under the term ''inundation''. In the absence of any qualification or limitation to the contrary in the insurance policy, such an inundation would give rise to a valid claim under the said policy.

7. As noted earlier, according to the surveyor, the accumulation of water in the cold storage was upto 8 ft. and the water had remained there for quite some time. Though, the surveyor took the view that such inundation was not covered under the policy, he has not given any justification for taking such a view. It appears form his report that had proper waterproofing been done in the walls and floor of the basement, the inundation could have been prevented but the learned counsel for the insurer has failed to draw my attention to any clause in the policy where under the insurer can repudiate the claim on such a ground. Therefore, altogether repudiation of the claim cannot be sustained.

8. Coming to the quantum of the claim, the report of the surveyor shows that 54182 bags containing potatoes were found intact by him. The value of the said stock was found to be Rs.2,30,27,735/-. The value of the damaged stock of potatoes was Rs.76,50,000/-. The surveyor valued the salvage of the said damaged stock to be worth Rs.61,20,000/-. The actual loss to the complainant therefore, was estimated by him at Rs.15,30,000/-. Admittedly, the stock was got insured by the complainant only to the extent of Rs.1,20,00,000/- as against that the stock at risk was worth Rs.3,06,77,735/-. Thus, the insurance taken by the complainant for the stock was only to the extent of 39% of the value of the actual stock kept in the cold storage. Applying the said under insurance the loss due to damage of stock comes to Rs.5,96,700/-. However, since the stock kept in the cold storage belonged to farmers and not to the complainant he can get reimbursement from the insurer only subject to his proving that he has paid the

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farmer to the extent of Rs.15,30,000/- or more. If a lesser amount has been paid by him to the farmer, he will be entitled to receive only 39% of that amount form the insurer.

9. Since the insurer has unjustifiably repudiated the claim and used the money which it ought to have paid to the complainant, it must pay appropriate interest to the complainant on the principal amount found payable to him. The loss to the complainant took place on 02.8.2007. Giving a reasonable time of six months, as per the guidelines issued by IRDA, to the insurer to settle the claim, the insurer must pay interest to the complainant with effect from 02.2.2008.

10. Though the complainant has also claimed reimbursement for the alleged damage to the building as well as the plant and machinery of the cold storage, the intimation sent to the insurer and the report of the surveyor shows that the claim lodged by him was confined to the damage to the stock which had been kept in the cold storage. In the absence of any intimation and claim with respect to the alleged damage to the building, plant and machinery, no assessment in this regard could be made by the surveyor. Therefore, the opposite party cannot be stated to be deficient in rendering services to the complainant as far as the alleged damage to the building plant and machinery of the cold storage is concerned and consequently no complaint for reimbursement on account of such damage would be maintainable.

11. For the reasons stated hereinabove, the complaint is disposed of with the following directions: (a) Within six weeks from today, the complainant shall submit requisite evidence of having paid / reimbursed the farmers whose potatoes was stored in his cold storage and had got damaged in the night intervening 01/02.8.2007;

(b) On being satisfied of the payment as mentioned at (a) above, the opposite party shall pay 39% of the said amount, subject to a maximum of Rs.5,96,700/- to the complainant within eight weeks thereafter;

(c) The opposite party shall also pay interest to the complainant @ 9% per annum on the principal amount found payable to him in terms of this order.

(d) In the facts and circumstances of the case, there shall be no order as to costs. The complaint stands disposed of accordingly.

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