(2003) 12 NCDRC CK 0112

In the National Consumer Disputes Redressal Commission

New India Assurance Co. Ltd. APPELLANT

Vs

DALMIA CEMENT (BHARATH) LTD. RESPONDENT

Date of Decision : 09-12-2003

Acts Referred:

Citation : 2004 1 CPJ 34

Hon'ble Judges : M.B.Shah , B.K.Taimni J.

Final Decision : Appeal dismissed

Judgement

1. APPELLANT was the opposite party before the State Commission.

2. UNDISPUTED facts of the case are that the respondent No. 1, M/s. Dalmia Cement (Bharath) Ltd., Trichi, had obtained a Fire Policy ''C'' from the appellant bearing number 01816, valid from 1.3.1991 to 29.2.1992 for Rs. 7,00,000/- covering risk of the materials supplied to the respondent No. 2, M/s. Perfect Packaging Company, by the respondent No. 1 for weaving HDPE woven bags as also the machinery belonging to the respondent No. 2, M/s. Perfect Packaging Company, Madras. It so transpired that two new policies bearing Nos. 01966 and 01968 were taken by the respondent No. 2, valid from 30.8.1991 to 29.8.1992 which showed an overlap for the period 30.8.1991 to 29.2.1992. It is the case of the appellant that the subsequent two policies were cancelled on 25.11.1991 on request from the respondent No. 2 and premium was refunded. There was fire incident on 10.3.1992 which was reported to the police as also to the appellant Company. The claim was not settled on the ground that there was no valid policy on the date of incident, as the earlier policy had expired on 29.2.1992 and subsequent two policies had been cancelled on the request of respondent No. 2 on 25.11.1991. It is in these circumstances that a complaint was filed by the respondents before the State Commission who after hearing the parties and examining the material on record, passed the order in following terms : "(1) The opposite party shall pay a sum of Rs. 4,00,000/- to the first complainant with interest thereon @ 18% p.a. from the date of the Surveyor''s report, viz., 10.6.1993 till payment. (2) The opposite party shall also pay a sum of Rs.

2,000/- as costs to the first complainant. (3) The other claims of the complainant are rejected."

Aggrieved by this order the appellant has filed this appeal before this Commission.

We heard the parties at length and perused the material on record. The case of the appellant is that based on the letter dated 15.11.1991 from the respondent No. 1 to respondent No. 2, respondent Nos. 2 had returned the policies bearing Nos. 01966 and 01968 covering risk for the period 30.8.1991 to 29.8.1992 as a result of which the letter was sent on 8.1.1992 to the respondent No. 2 alongwith refund vouchers for their signatures and stamping it, to enable the appellant to issue the cheque for the said amount which was not received back. Be that as it may, since the policy had been returned by the respondent No. 2 and there is no dispute about it, hence there was no valid policy to cover the loss by fire on 10.3.1992.

3. WE have seen the material on record and found that the above two letters are not disputed. But it is the misreading to these two letter which perhaps led the appellant to not to settle the claim to the respondent No. 1/ appellant. There is no disputing the fact that the policy No. 01966 was issued in the name of M/s. Dalmia Cement (Bharath) Ltd. Condition No. 5 of the policy reads as under : "5. This insurance may be terminated at any time at the request of the insured, in which case the Company will retain the premium at Customary short period rate for the time the policy has been in force. This insurance may also at any time be terminated at the option of the Company, on 15th days'' notice to that effect being given to the insured, in which case the Company shall be liable to repay on demand a rateable proportion of the premium for the unexpired term from the date of the cancellation."

Simple and plain reading of the above condition clarifies the situation that the insurance could be ''terminated'' at the request of the insured or the cover could be ''cancelled'' by the Insurance Company on giving 15 days notice. It is an admitted position that the policy was never cancelled. We also see that this insurance cover was not terminated at the request of the insured. (Emphasis supplied)

4. WE have seen the Fire Policy, in question, and there is no disputing the fact that in the column of the ''name of the insured and address'', what appears is "M/s. Dalmia Cement (Bharath) Ltd., Dalmiapuram & A/c., M/s. Perfect Packaging Co., No. 1-B, Arcot Road, Saligram, Madras-600093". This leave us in no doubt that it was "M/s. Dalmia Cement (Bharath) Ltd." who was the ''Insured'', and there is not an iota of evidence brought on record that at any stage the insured wrote to the appellant for terminating the insurance policy. Undoubtedly, as per proposal form, it was the respondent No. 2 who had applied for cover but against the name of proposer what appears is "M/s. Dalmia Cement (Bharath) Ltd., Dalmiapuram & A/c., M/s. Perfect Packaging Co., No. 1-B, Arcot Road, Saligram,

Madras-600093". It does not impress us that the proposal form in respect of Policy No. 01966 is signed by M/s. Perfect Packaging Co. It also does not matter that the premium was paid by the respondent No. 2. What is material is the contract between the parties, the terms and conditions and law on the subject. It cannot be disputed that the insurance policy is the contract recognised by law between the parties. It cannot be questioned that the ''Insured'' was M/s. Dalmia Cement (Bharath) Ltd. As per the terms of the policy, it could be terminated by the ''insured'', which in this case has not happened. Hence, it can clearly be deducted that the two policies covering the period of risk from 30.8.1991 to 29.8.1992 were valid instruments. No amount of cancellation by any other party will have any effect on the legal rights of the insured. We are further strengthened in the view of ours by the material on record we have the report of the ''Surveyor'', who was appointed by the appellant to assess the loss of the premises of the respondent No. 2, where the goods of the insured M/s. Dalmia Cement (Bharath) Ltd. was kept and relating to the policies in question. If as stated by the Insurance Company there was no valid policy then where was the need to appoint the Surveyor to assess the loss relating to these policies ? Furthermore, there is a letter from the appellant as late as 11th August, 1992 which deals with the policies taken by the respondent, relevant portion is reproduced. "In the usual procedure the above mentioned two policies have been renewed vide policy Nos. 11 710203 01966 and 01968, dated 30.8.1991 for the period from 30.8.1991 to 29.8.1992."

5. IN whole of this letter as late as 11.8.1992 there is not a word by the appellant about these two policies having been cancelled.

6. IN our view the appellant has failed to satisfy us by bringing any material on record as to when the Policy, in question, was cancelled and amount refunded which in fact was never done. On a pure point of law, the respondent No. 2 has no locus standi to cancel the Policy, where he is not the insured and as per the terms it is only the insured which in this case was M/s. Dalmia Cement (Bharath) Ltd. who could have terminated the policy which in this case was not done, thus leaving the Policy No. 01960 covering the risk valid till 29.8.1992. This fire incidence took place on 10.3.1992 which is very much covered under the live policy bearing No. 01966. Policy bearing No. 01968 had been taken by the respondent No. 2 and had been returned. We are not concerning ourselves with this policy. State Commission has in our view rightly dealt with the case and limited the award to the limit of Policy No. 01966. The order of the State Commission is as per law and facts of the case and does not call for any interference. This appeal is dismissed with cost which we fix at Rs. 5,000/- payable by the appellant to the respondent. Appeal dismissed.