(1996) 04 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO LTD — APPELLANT

Vs

John Fernandes — RESPONDENT

Date of Decision : 24-04-1996

Acts Referred:

Citation : 1996 2 CPC 185 : 1996 2 CPJ 83 : 1996 2 CPR 166 : 1997 1 CLT 193

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA J.

Judgement

1. THIS first appeal is directed against the order dated 14.7.94 passed by the Goa State Commission allowing the complaint and directing New India Assurance Co. Ltd., appellant herein to settle the complainants claim for Rs. 10.00 lakhs and pay it within 30 days to the complainant alongwith interest at the rate of 18% from 10.6.92 till realisation.

2. THE facts may briefly be noticed. Late Manuel A. Fernandes, father of the complainant was the owner of the fishing trawler Aureliana which was registered under the Directorate of Fisheries under Registration No. MPR -744 -DF (GOA)/1988. The trawler was insured for a sum of Rs. 10.00 lakhs for the period 9.4.91 to 8.7.91 and was further renewed for a period from 7.7.91 to 8.10.91. The Marine Policy Bearing No. 2211150420259/91 was issued by the appellant herein in respect of the said vessel for the terms and conditions contained therein. As per the Weather Warranty attached to the said policy, it was stipulated ''Trading Warranty -warranted vessel engaged in fishing and operations connected therewith on the coasts of Gujarat, Maharashtra and Goa with leave to proceed upto Karwar and not beyond 50 Nautical miles into the sea from shore. Warranted vessel laid - up from 15th June to 15th August (b.d.i.) with leave to operate on the coasts of Saurashtra and Kutch during this period''. According to the complainant Vijaya Bank issued a letter dated 1.8.91 relating to Monsoon period warranty towards the said policy and enclosed a P.O. No. 405/91 dated 1.8.91 for Rs. 10,735/ - towards the monsoon period warranty of the above policy and requested to issue the necessary insurance policy at an early date. This letter was received according to the appellant herein on 2nd August, 1991.

Vijaya Bank by its letter dated 5.8.92 informed the appellant herein as reported the said vessel went for fishing from Cutbone Jetty on 3.8.91 at 6.00 a.m. and met with an accident between 8 a.m. and 9 a.m. on the same date itself at Agonda., Vijaya Bank called upon the appellant herein to register its claim as the vessel is hypothecated to them and to make the necessary insurance claim amount directly to the Bank on account of Mr. M. A. Fernandes. The insured also independently informed the appellant herein that his vessel met with an accident at Agonda on 3rd August, 1991 between 8 a.m. and 9 a.m. and that the vessel went for fishing from Cutbone Jetty on 3rd August, 1991 at 6.00 a.m. The Insurance Company got the claim investigated. The report of Investigation Bureau of India says that as per enquiries of their Investigators in the localities of Agonda, Palolem and Calomba revealed that the accident took place on 1.8.91 between 10.00 a.m. and 11.00 a.m. and not on 3.8.91 between 8.00 a.m. and 9.00 a.m. as reported by the insured. Further it was reported that the accident to the trawler took place at Palolem and not at Agonda, when it hit a rock while fishing and water started entering the engine, that thereafter the trawler moved towards a hill (island) where the engine came to a hault and that the trawler started sinking at the same spot. There has been lot of correspondence on the subject but it is unnecessary to refer to it. As the claim was not paid by the Insurance Company the complaint was filed. The appellant pleaded that the loss had occurred on 1.8.91 and not 3.8.91, that the alleged loss had taken place at Palolem and not at Agonda and that the insured made false report and statements to defraud Insurer, Bankers antedated letters etc. It was pleaded that the vessel had undertook a voyage and was employed in breach of the afore - said warranty and accordingly it suffered a loss but in view of the breach of warranty the Insurance Company was not liable for the loss.

3. THE State Commission referred to the letter dated 1.8.91 issued by the Vijaya Bank as well as the pay order, the receipt of the premium issued by the Insurance Company and the acceptance of the additional premium of Rs.10,735/ -. It came to the conclusion that the warranty clause prohibiting the use of trawler during the month of June to August was thus revoked on the acceptance of additional premium. The State Commission also came to the finding that the incident occurred on 3rd of August, 1991. The State Commission directed the appellant herein to settle the claim for Rs. 10.00 lakhs with interest at the rate of 18% per annum from 10.6.92 till realisation.

4. WE have gone though the records with the help of the Counsel for the parties and also considered the submissions made by the Counsel for the parties. There is no dispute that warranty clause is attached to the said policy which prohibits the venturing of the vessel from 15th of June to 15th of August. It requires ''warranty vessel laid -up from 15th June to 15 August (b.d.i.)''. The crucial question is as to the date and time the said trawler sank. The amount of the additional premium of Rs. 10,735/ - was received by the appellant herein on 2nd of August, 1991, forwarded to it by Vijaya Bank in its Pay Order No. 405/91 dated 1.8.91. This was for deletion of foul season/monsoon lay off warranty from

the aforesaid policy. The appellant herein prepared a receipt but no deletion of the foul season/ monsoon lay off warranty was issued for the period 2.8.91 toj.5.8.91. The appellant herein got the investigation done through Investigation Bureau of India. The investigation disclosed that the casualty occurred on 1.8.91 at Palolem and not on 3.8.91 as reported by the insured. The fact of casualty on 1.8.91 was reported in the Marathi and English dailies and the clippings of the dailies are also on the record. A police report was lodged on 2.8.91 at Canacona Police Station. The date of casualty is given as on 2.8.91 between 8.00 a.m. to 9.00 a.m. as declared by the owner and crew members on the basis of which the F.I.R. was lodged. The complainant in his complaint has also mentioned that ''on 2.8.91 off Agonda/ Canacona coast the F.T. AURELIANA sank after developing trouble. The crew managed to reach the beach by dingee and empty diesel cans due to strong sea current the boat with pursein net had to be abandoned.'' It is also stated in the complaint that immediately after a report was filed at the Canacona Police Station. The copy of the Police report shows that the vessel ventured on 2.8.91 at 6.00 a.m. in the Betul sea shore and while fishing the trawler reached near the sea shore at Palolem one big wave suddenly came and dashed against the trawler thereby the plank was damaged and the water started entering in the trawler and ultimately sank. With this set of material on the record it is not possible to come to a conclusion without a regular trial in a suit as to whether the accident occurred on 1.8.91 or 2.8.91 or 3.8.91 and whether the claim made by the complainant is fraudulent with the connivance of the officials of the Vijaya Bank or it is a genuine claim. Such questions can be properly determined only in a civil suit after affording an opportunity to the parties to substantiate their claims and versions. It is not possible to investigate such claims in the summary jurisdiction of the Consumer Forums. We, therefore, allow this appeal and set aside the order of the State Commission dated 14.7.94 and leave the complainant to pursue his alternative remedies by way of civil suit or other appropriate proceedings before the competent Court. The parties will bear their own costs.

