(1996) 04 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO LTD — APPELLANT

Vs

Kolsite Machine Febrik Ltd — RESPONDENT

Date of Decision : 26-04-1996

Acts Referred:

Citation : 1996 2 CLT 650 : 1996 2 CPC 229 : 1996 2 CPJ 24 : 1996 2 CPR 97

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

Judgement

1. THIS is an appeal filed against the Order dated 8th June, 1993 passed by the State Consumer Disputes Redressal Commission, Maharashtra State at Bombay in Complaint No. 310/91. By the impugned order, the State Commission allowed the complaint filed by the present respondent, M/s. Kolsite Machine Fabrik Ltd. against the New India Assurance Co. Ltd. and directed the opposite party, to settle the claim of the complainant at Rs. 4,22,939.44 ps. with 18% per annum from 20th September, 1991 till realisation. It was further ordered that the payment be made within 30 days from the date of receipt of the copy of the order. The opposite party has challenged that order before this Commission by way of this appeal.

2. IT appears that the opposite party i.e. the Insurance Company, did not contest the factum of the claim before the State Commission. Therefore, it is unnecessary to give in detail the facts of the case. Suffice it to say that the complainant had obtained two Marine Policies from the opposite parties for import of consignments containing components of a plastic machinery. According to the complainant the consignment was cleared on 13th February, 1990 by the Customs Department and when it was inspected it was found that the components were in damaged condition. The complainant informed the Insurance Company and also contacted Mr. V.V. Deshpande of M/s. V.V. Deshpande & Co., the Surveying Agencies for conducting the necessary survey of the damage. Mr. Deshpande assessed the damage at Rs. 4,22,939.44. The complainant lodged a claim for that amount with the opposite party and later on also submitted some additional documents on 16th April, 1990. Despite his

repeated efforts he was informed by the opposite party that the claim has been repudiated for non -compliance of Section 64 -VB of the Insurance Act, 1938. The re -upon, the complainant filed the complaint before the State Commission alleging deficiency in service of the opposite party in settlement of his claim for the above amount. The opposite party opposed the complaint on the sole ground that the policies of the complainant were prejudiced by virtue of Section 64 -VB of the Insurance Act.

3. THE only point which arose for consideration by the State Commission was that whether the complainants policies were prejudiced by Section 64 -VB of the Insurance Act. The State Commission held that under Section 64 -VB of the Insurance Act there is a provision as regards payment of premium on the basis of a guarantee to be furnished by the insurer in such manner and within such time as may be prescribed. Rule 58 of the Insurance Rules, 1939 provides for advance payment of premium for the purpose of Section 64 -VB of the Insurance Act to cover the risk in respect of the policy premium to be payable. Clause 1 of that Rule reads as follows : ''58. Advance payment of premiums : For the purpose of Sub -section (1) of Section 64 -VB of the Act, a risk in respect of a policy may be assumed before the premium payable in respect thereof is received : (i) If the entire amount of the premium is guaranteed to be paid by a Banking Company before the end of the calendar month next succeeding to the month in which the risk is assumed, if the premium due is not paid by the insured before that date.''

The State Commission held that in view of Rule 58 if the premium is guaranteed by a Banking Company in the manner provided under that rule, then risk is assumed on the basis of the guarantee for the payment of the premium and it is an admitted fact in the present case that the complainant had submitted a Bank guarantee for a sum of Rs. 10,000/ - on 6th July, 1988 which was renewed from time to time and which was in force when the policies in question dated 30th January, 1990 were issued. The State Commission, therefore, held that in view of the said Bank guarantee submitted in compliance of Rule 58 the policies were not prejudiced by Section''64 - VB which lays down that no insurer shall assume risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such payment as may be prescribed is made in advance in the prescribed manner. The State Commission, further, held that the repudiation of the complainants claim under the guise of non -payment of premium was not correct as Bank guarantee had been provided for the payment of the premium under the rule. It has further remarked that the opposite party issued the necessary insurance cover to the complainant on the basis of the said Bank guarantee and it was now legally estopped from disclaiming its liability towards the complainant in terms of the insurance policies in question. The State Commission also held that the opposite party has taken unreasonable and unexplained time to inform the complainant to repudiate the claim under the policy on unreasonable and unacceptable grounds. In view of the said findings the State Commission passed the impugned order.

4. FEELING aggrieved the Insurance Company has filed the above titled appeal. We have heard the parties and also gone through the records of the case. The only contention raised by the appellant before us is that merely because the complainant had furnished the Bank guarantee as required by the Insurance Act it cannot be said that there was no violation of Section 64 -VB which must be complied within letter and spirit of the law. According to the learned Counsel for the appellant the main thrust and the intention of the Parliament while enacting Section 64 -VB was to ensure that the insuring public pays the premium in advance of the assumption of the risk and thus the duty is cast on to pay the insurance premium the insured before tine appointed time as laid down in Rule 58 of the Insurance Rules viz., before the end of the calender month next succeeding the month in which the risk is assumed. It is further urged that no duty is cast on the insurer to invoke the Bank guarantee if the insured fails to pay premium as promised and Rule 58 was not introduced to give protection to such errant insureds who do not keep promise to pay the premium within the prescribed extension of time limit as per rule.

5. WE are unable to appreciate the arguments of the learned Counsel for the appellant. The very purpose of furnishing Bank guarantee is that if the insured fails to pay the premium as promised within the extended period the Insurance Company can invoke the Bank guarantee. The Insurance Company cannot shirk its responsibility and lay the blame at the door of the insured for non -payment of the premium within the extended period.

6. IT was further urged by the learned Counsel for the appellant that the Bank guarantee in the present case had lapsed. No such plea has been taken in the memorandum of appeal. The State Commission has held that the Bank guarantee had been renewed from time to time and it was in force when the policies in question were taken. The complainant -respondent has filed documents before this Commission about the renewal of the Bank guarantee which are at pages 100 to 102 of the supplementary paperbook filed by the respondent. It was also urged on behalf of the appellant that the wording of the Bank guarantee as furnished by the Bank does not answer the requirements laid down in Rule 58. After accepting the Bank guarantee it does not lie in the mouth of the opposite party to say that the wording of the Bank guarantee is not proper and that it had lapsed before issuance of the policy.

7. FOR the foregoing reasons we do not find any force in the present appeal and dismiss the same with costs which we assess at Rs. 2,000/ -. Appeal dismissed.

