(2002) 02 NCDRC CK 0057

In the National Consumer Disputes Redressal Commission

New India Assurance Co. Ltd. APPELLANT

Vs

K.S.BHANTIA RESPONDENT

Date of Decision : 08-02-2002

Acts Referred:

Citation : 2002 3 CPJ 42

Hon'ble Judges : D.P.Wadhwa , J.K.Mehra , B.K.Taimni J.

Final Decision : Revision Petition disposed of

Judgement

1. THIS revision petition arises out of the order passed by the State Commission dismissing the appeal of the petitioner.

2. BRIEF facts of the case are that the respondent after holding discussion with the petitioner Company proposed on 21.12.1992 to have a Contractor - All Risk (CAR) Policy for which premium amounting to Rs. 80,839/- was paid for which a cover note was issued on 18.1.1993. Sometime on 31.3.1993, the respondent/ complainant requested to include testing works; after following internal procedures the petitioner Company issued on 8.12.1993 an Erection All Risks (EAR) Policy. There arises a dispute about payment of three premiums but the contention of the respondent/complainant was that they had asked for a "CAR" policy and what they have got is a "EAR" policy, no contract exists and seeking refund of the premium policy. The respondent/complainant moved the District Forum for refund of premium with interest, who after hearing both the parties ordered refund of premium paid. Against this, both the parties preferred appeal before the State Commission while the appeal filed by the petitioner was dismissed, the appeal filed by the respondent/complainant was allowed and interest @ 18% was directed to be paid on the refunded premium amount from 1.2.1994 to the date of actual payment. It is against this order that revision petition has been filed. It is argued by the learned Counsel for the petitioner, Mr. P.K. Seth that Maharashtra State Sewerage and Water Board who was the other party having insurable interest along with the respondent/complainant had required the said "Erection All Risk Policy" but the respondent suppressed this

fact and asked for "CAR" policy. It was admitted by him that policy was issued late but the fact of premiums to be paid had been told to the officials of the Company. There was no provision for issuing "CAR" Policy including of Testing Risk, hence "EAR" Policy was issued which met the respondent''s requirement of Testing Risk. Both the lower Forums went wrong in appreciating the material before them. The orders are not based on facts of the case hence bad in law and need to be set aside.

The other party remained absent in spite of notice - Hence it was decided to proceed ex-parte.

3. AFTER perusal of material on record and hearing of arguments what we see is that it is undisputed that the proposal form speaks of a "CAR" Policy, the cover note speaks of "CAR" Policy. In between, if the respondent asked for an additional facility i.e. "Testing Risk" then the correct thing to do was to start the dialogue afresh rather their arbitrarily issuing a "EAR" Policy contrary to the proposal form and that too without telling him the due date of payments of premium. We see two ways failure on the part of the petitioner, both amounting to deficiency in service. Firstly they take one year to issue a policy and secondly issue a policy not sought by the party i.e. complainant in this case. It is on these grounds that the State Commission and the District Forum held the petitioner deficient in service and awarded refund of premium with interest @ 18% p.a. However, we agree with the argument advanced by the Counsel for the petitioner that interest awarded is on high side and we modify the order of the State Commission only to the extent, that rate of interest payable shall be 12% p.a. Petition is only allowed to this extent. No orders on costs. Revision Petition disposed of.