(2005) 01 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

New India Assurance Co. Ltd. APPELLANT

Vs

LAKSHMI TRADING COMPANY RESPONDENT

Date of Decision : 17-01-2005

Acts Referred:

Citation : 2005 1 CPC 521 : 2005 1 CPR 119 : 2005 2 CPJ 7

Hon'ble Judges : M.B.Shah , Rajyalakshmi Rao J.

Final Decision : Appeal partly allowed

Judgement

1. THIS appeal is filed against the judgment and order dated 3th August, 1996 passed by the Andhra Pradesh State Consumer Disputes Redressal Commission, in C.D. No. 10 of 1999. By the impugned order the State Commission directed the Insurance Company to pay a sum of Rs. 1,11,000/- with interest at the rate of 18% p.a. from 15.4.1999 (taking 3 months period from the date of claim, i.e., 14.1.1989 as reasonable period for settlement by the Insurance Company) till the date of payment with costs of Rs. 1,000/-. The loss suffered by the complainant was assessed on the basis of Surveyors report.

2. THE complainant has taken a shop keepers policy for the period 20.9.1988 and 19.9.1989 for a sum of Rs. 4 lakhs and the insured suffered loss because of arson and looting by the mob on 26.12.1998 for which an FIR was lodged at the Police Station and the premises was inspected by the Revenue Officer, who estimated the loss suffered by the complainant. That claim was repudiated by the Insurance Company vide letter dated 21.4.1989 on the ground that the shop keepers comprehensive policy covers the premises situated at Attarattaiah Street, Governorpet, Vijayawada, and no policy was issued to cover the retail wine shop at Bandar Road, Governorpet, Vijayawada. The State Commission considered the entire evidence which was brought on record and arrived at the conclusion that the stand of the Insurance Company in repudiating the claim was unjustified because : (i) Complainant was having a retail shop which was facing both the Attarattaiah Street as well as Bandar Road; (ii) Complainant has brought on record proceedings before the Excise Superintendent, Krishna dated

3.6.1985 revealing that M/s. Lakshmi Trading Co. represented by S. Satyanarayana was permitted to shift his licensed premises from D. No. 27-10-7/1A Attarattaiah Street, Governorpet to D. No. 27-37-47/4 Bandar Road, Vijayawada and necessary corrections were made in the original licence; (ii) the shop in question opened both on Bandar Road as well as Attarattaiah Street; (iii) a policy was taken by the State Bank of Hyderabad on behalf of the complainant with regard to the premises bearing D. No. 27-37-47/4 and this was the very shop which was the subject matter of riots resulting in damage. The Surveyor assessed the loss for the premises for which the complaint was filed; (e) it was also contended that shop-keepers insurance policy is given for the retail shop and petitioner carries out the retail shop business only in the premises where arson and looting took place.

Considering the aforesaid findings, in our view, there is no substance in this appeal. For this purpose, it would be worthwhile to refer to the Surveyor''s report. The Surveyor arrived at the conclusion that: "Only the insured''s retail shop was affected in the incidence and there were no damages either at the wholesale godown or the office premises. As the insurance policy mentions the address as Attarattaiah Street without specifying door Nos. and the loss was in the retail shop at the junction of Attarattaiah Street and Bandar Road, in regard to coverage for the affected premises, the insured stated, as follows, during our discussions that- (a) Lakshmi Trading Company is the only registered firm in the same name in Vijayawada dealing with wine trade. (b) They furnish common sales tax returns for both wholesale and retail sales based on their common account books. The sales tax certificate of registration (xerox copy enclosed) mentions the retail business place as Door No. 27-37-47/4, Attarattaiah Street. (c) All the above facts are known to their bankers and Government authorities and the insurance policy is deemed to cover stocks in both the premises. Based on the above facts, the insurance may decide about their liability for the damages to the stocks in retail shp."

3. THE Surveyor further noted that the incident took place on 26.12.1998 in the morning, as there was large scale violence, arson and looting in Vijayawada resulting in destruction of private and public properties. THE insurer''s retail shop was also broken open by the unruly mob and properties destroyed and looted. Life in Vijayawada was paralysed with lawlessness during 26th to 28th December. It was also mentioned that there was no damage to the stock in the wholesale business godown. Finally, the loss was assessed at Rs. 1,11,000/-. Apart from the Surveyor''s report, the insured has produced on record the shop keepers insurance policy wherein the address of the insured shop is mentioned. It only provides that stock in trade consisting of brandy and various liquor while stored in Class-I constructed building constructed at Attarattaiah Street, Governorpet, Vijayawada-I, The policy is taken by the State Bank of Hyderabad in account of complainant. It nowhere mentions the number of the premises. It cannot be disputed that the petitioner''s retail shop is at Attarattaiah Street and it has opening also at Bandar Road. Further, the complainant is taking insurance

policies for such loss since years and on 7.5.1985 the complainant informed the Divisional Manager, Insurance Company, Vijayawada, stating that on the basis of the State Excise Department, wholsesale and retail business was separated and for shop keepers premises business which is carried out at Attarattaiah Street be considered as the premises where retail business is carried on for the purpose of insurance. The incident in the present case took place admittedly on 26.12.1988. Hence it would be difficult to accept the contention of the Insurance Company that the insured had not taken policy for his retail shop at Katiyara Street. That contention is totally baseless. Further, there is no reason to disbelieve the say of the State Bank of Hyderabad that it has taken the insurance policy for the premises where the incident of arson and looting took place.

4. IN this view of the matter there is no substance in this appeal as the State Commission awarded the damages as per the assessment made by the Surveyor. However, the award of interest at the rate of 18% requires to be modified and is hereby reduced to 12% p.a. IN the result, the appeal is partly allowed. The impugned order passed by the State Commission is modified and the INsurance Company is directed to pay the amount of Rs. 1,11,000/- with interest at the rate of 12% from 15.4.1989 till its payment with cost quantified at Rs. 1,000/-. Appeal partly allowed.