(2016) 03 NCDRC CK 0062

In the National Consumer Disputes Redressal Commission

Case No : 395 of 2010

NEW INDIA ASSURANCE CO. LTD. — APPELLANT

Vs

M/S. ARIHANT WEIGH BRIDGE — RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:
Consumer Protection Act, 1986, Section 21(b) - Jurisdiction of the National Commission

Citation : 2016 2 CPR 303

Hon'ble Judges : M. Shreesha

Advocate : Jos Chiramel, Apoorva Srivastava, M.Y. Deshmukh, Yatin M. Jagtap

Judgement

1. Challenge in this Revision Petition, under Section 21(b) of the Consumer Protection Act, 1986 (for short "the Act"), is to order dated 3.9.2009 in Appeal No. 1478 of 2003 passed by the State Consumer Disputes Redressal Commission, Rajasthan (for short "the State Commission"). By its impugned order, the State Commission allowed the Appeal preferred by the Complainant and set aside the Order of the District Forum directing the Insurance Company to pay an amount of 1,66,820/- with interest at the rate of 9% per annum from the date of repudiation till the date of realisation, together with costs of 5,000/-.

2. The brief facts as set out in the Complaint are that the Complainant has insured his Weight Bridge, which is the sole economic subsistence for his survival, with the Opposite Party/Insurance Company covering the period 18.3.2002 to 17.3.2003 for an amount of 6,38,500/-for covering fire and theft. While so, on 3.9.2002, there was incessant rain and the sky was thundering with lighting clouds and the 11 K.V. electric lines passing through the Complainant''s premises were struck by lightning meteors from the sky, consequently damaging a lot of electronic equipment and all transformers coming under the line were also burnt. The Complainant averred that the

Weigh Bridge, which was fully electronic, was damaged as six electronic load cells were burnt. The cables, electric and electronic items, the computer kit and

S.T.D. conferencing machine were also burnt.

3. The Complainant immediately informed the Opposite Party/Insurance Company about the incident and Mr. D.D. Mantri was appointed as a surveyor, who assessed the loss in the presence of the Service Engineer on 5.9.2002 and prepared a report. The Complainant averred that he had purchased all the electronic load cells from Wintek Company, Ahmedabad for an amount of 1,98,180/-. He further pleaded that a certificate issued by Arihant Phosphate Fertilizer (Sagbadia), which had also taken 11 K.V. line connection and certified that due to such incidents all electronic items were damaged, was submitted to the Insurance Company. But the Insurance Company had repudiated their claim vide letter dated 23.12,2002 on the ground that the subject loss does not fall within the policy parameters. The Complainant further pleaded that this act of the Insurance Company is arbitrary as the platform is specifically manufactured from Westige and below it the load cells are fixed which were genuinely burnt due to lightning meteors and this was inspected by their own surveyor and photographs were also taken to evidence the same. Hence, the complaint seeking directions to the Opposite Party to pay the claim amount of 1,98,180/- and 18,000/- which was spent for load fitting charges and expenses towards hiring of Service Engineer alongwith interest @ 24% p.a., compensation of 25,000/- and costs of 15,000/-.

4. The Insurance Company filed their reply stating that on 3.9.2002, lightning struck 300 meters away from the premises of the Complainant on the 11 KV High Tension line which has no direct bearing on the Complainant''s business; the Complainant had taken connection from 11 KV Low Tension line whereas the lightning actually struck the 11 KV High Tension line; damage to the Complainants equipment was on account of some other kind of break down but not as a result of lightning; a separate policy is available for break downs due to electrical faults and in the instant case this damage is not covered under the Fire Policy; documents produced by the Complainant do not evidence any visible signs of damage on the DP or electric line due to striking of the lightning, therefore, their repudiation is justified.

5. The Surveyor submitted his report stating that the loss incurred in the Weigh Bridge had no direct relation with the lightning which occurred that day and that though the damage is genuine, under Clause 7 of the Insurance Policy, damages to electrical machinery and electrically operated equipment are not covered under the Fire Policy. The claim of the Complainant was declared as ?No Claim''.

6. The District Forum, based on the evidence adduced, dismissed the complaint observing as follows:

"Actually, it is a complicated matter and these matters can only be resolved by evaluation of complete evidence on record. Therefore, complainant is free to raise

this issue before competent Court / Authority and prove his case. But, resolution of such cases by summary trial procedure is inappropriate and with submitting this view on record, the present case is disposed accordingly. Hence, in view of the aforementioned direction, the present case is dismissed. No separate order for litigation cost is made".

7. Aggrieved by the said Order, the Complainant preferred an Appeal before the State Commission. The State Commission allowed the Appeal and set aside the order of the District Forum directing the Respondent/Insurance Company to pay to the Complainant a sum of 1,66,820/- with interest @ 9% p.a. from the date of repudiation till the date of realisation and observed as follows:

" The Surveyor also found that there was damage of load cells which were six in number. The loss assessed was Rs.1,79,820/.- and after deducting Rs.10,000/- as excess clause the maximum liability of the insurer was fixed at Rs.1,69,820/-. Salvage value is assessed at Rs.3,000/-. The Surveyor is of the view that there was no direct loss due to lightening and also excluded this loss from the fire policy and therefore the claim was refused.

The insurance policy goes to show that the loss due to lightening was also covered. Whether there was direct impact of the lightening or indirect impact, where the loss has occurred due to lightening, the Assurance Co., as per policy is bound to pay the amount of loss.

The learned counsel for the respondent has also submitted that the loss is excluded from the fire policy coverage by exclusion clause No.7 of the policy. In our view, this plea cannot be accepted. The exclusion clause of the policy runs as follow :-

"Loss of or damage to any electrical machine, apparatus, fixture or fitting (including electric fans, electric household or domestic appliances, Wireless sets, television sets and radios) or to any portion of the electrical installation, arising from or occasioned by over-running, excessive pressure, short circuiting, arcing, self-heating or leakage of electricity from whatever cause (lightening included), provided that this exemption shall apply to the particular electrical, machine apparatus, fixtures, fittings or portion of the electrical installation which may be destroyed or damaged by fire, so set up.

We are of the view that this clause cannot be made applicable to the instant case. If we go through the policy in question, we find that six load cells with assembly with indicator were also made part of the risk covered under the policy and therefore, 6 load cells if got damaged, then the Assurance Co., as per policy, is bound to pay the amount of loss".

8. Learned counsel for the Revision Petitioner/Insurance Company submitted that surge in the electricity is the cause of damage and that as lightning was not the direct cause of the damage, the claim is excluded under Condition No. 7 of the Policy, which says that loss, destruction or damage to any electrical machine, arising out of overrun, short circuit or leakage of electricity is not covered. Learned counsel also submitted that the lightning had struck and damaged the

equipment connected to the HT lines and that the Complainant''s equipment was connected to the LT lines.

9. I observe from the cover note that the property insured includes the following:

"-Fire Insurance of WTWB model fully electronic

-Weigh Bridge with plate form desk of 60x10 mt.

Six load cells, with assembly with indicator, UPS, printer, keyboard whilst stored and/or lying on the room of first class construction situated at above address. Subject to bank clause".

10. The contention of the Revision Petitioner that lightning is not a direct cause of damage but only electrical disturbances was the cause is unsustainable in the light of their own Surveyor''s report, which, in page-2 reads as follows:

" The loss & cause of loss was discussed with Repairer''s Service Engineer & insured in details & it was concluded from the above that above loss took place due to flash over due to lightening on DP or HT line, cause surge voltage in surroundings caused electrical disturbances in LT line & damaged to very sensitive load cells of above weight bridge.

11. The Service Engineer of Weitech Engineers has also given a report stating that due to lightning the strain gauge, all the six load cells had been damaged as the strain gauge is a very thin part and is sensitive to high voltage, lightning and magnetic effects. There is also a spot report done by the Electricity Department''s Administrative Officer regarding the loss that occurred due to the lightning strike. The report of Executive Engineer (Vig.), A.V.V.N.L. Chittorgarh reads as follows:

"It is a proved phenomena of electricity that it flows through the path which is having less resistance. If any installation is provided with lightening arrestor then lightening electricity flows to earth through lightening Arrestor. The electricity lines are prone to be affected by lightning. The lightening may cause surge voltages in system which may further damage the electrical & electronic equipments connected to system.

Sd/-

(Er. B.M. Goyal)

Executive Enginner (Vig.)

A.V.V.N.L. Chittorgarh"

12. The fact remains that lightening had occurred on 3.9.2002 leading to damage of the six sensitive load cells of the Weigh Bridge, which were admittedly covered under the Policy. Therefore, the repudiation of the Revision Petitioner herein on the ground that lightning did not directly cause the loss, is totally unjustified as there is direct nexus between the lightning and the damage caused.

13. The State Commission has also awarded the amount only as per what the surveyor assessed i.e. 1,66,820/- with reasonable interest at 9% p.a., I do not see any illegality or infirmity apparent on the face of the record to interfere with the order of the State Commission.

14. Keeping in view the limited revisional jurisdiction as laid down by the Hon''ble Apex Court in Rubi (Chandra) Dutta vs. United India Insurance Co. Ltd. II (2010) CPJ 19 (SC), I do not see any substantial reason to interfere with the well-considered order of the State Commission.

15. For all the afore-mentioned reasons, this Revision Petition fails is dismissed accordingly. No order as to costs.

