(1993) 11 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO. LTD. APPELLANT

Vs

MURALIDHAR SARANGI RESPONDENT

Date of Decision : 16-11-1993

Acts Referred:

Citation : 1993 0 NCDRC 69 : 1993 3 CPJ 415 : 1994 1 CPC 437 : 1994 1 CPR 25 : 1995 2 CLT 264

Hon'ble Judges : V.BALAKRISHNA ERADI , Y.KRISHAN , B.S.YADAV J.

Advocate : S.K.PAUL , P.N.MISHRA

Judgement

1. THIS is an appeal against the order dated 9.4.1992 passed by the State Consumer Disputes Redressal Commission, Orissa at Cuttack in CD No. 102 of 1991. By the impugned order the State Commission has directed the present Appellant namely the National Insurance Co. Ltd. (for short Insurance Company to pay to the present Respondent Mr. Muralidhar Sarangi who was Complainant in the case, the amount assessed by the Surveyors in respect of both the vehicles insured with the Insurance Co. The Complainant was also allowed damages amounting to Rs. 5,000/- in respect of both the vehicles for delaying unjustifiably the settlement of the claims. It was further ordered that in case the amount as per the Surveyor''s report was not paid within two months interest at the rate of 18% shall be payable after the stipulated time on the aforesaid amounts till payment. It was also ordered that after making the payment the Complainant may require the Insurer to appoint an Arbitrator to settle the quantum of loss and on that basis an Arbitrator would be appointed as per the terms of the policy to settle the dispute.

2. FEELING aggrieved of that order the Insurance Co. has filed the present appeal before this Commission. The facts of the case are not much in dispute. The Complainant was the owner of the two trucks having registration Nos. AMA 8761 and OAC 7123. While the trucks were on their way carrying goods to the State of Assam, on 23rd March, 1989 at about 9.00a.m. these trucks a longwith other vehicles loaded with goods were attacked by Bodo terrorists. As a result

both the trucks were destroyed by fire and one of the drivers of the trucks was also shot dead. The complainant preferred the claim with the Insurance Company under the terms of the policy cover for the damage of the vehicles. On submissions of the claim, the Surveyor was appointed by the Insurance Co. He submitted its report in respect of both the vehicles on 9th May, 1989 and 30th May, 1989. The Surveyor in his reports had also mentioned that said two vehicles were stopped by a mob of 300 to 400 men armed with guns, bombs, bows and arrows and other lethal weapons. The mob set on fire the vehicles after sprinkling petrol. According to the Surveyor the accident was a sequel to the violent and inflamed situation prevailing in the entire Kokrajhar District and some other parts of Assam. Correspondence went on between the parties. The Head Office of the Insurance Co. came to the conclusion that the loss/damage to the two insured vehicles was caused by the terrorists and the act of terrorism was not covered by the aforesaid policies taken by the insured. Consequently the Insurance Company vide letter dated 5.6.1990 repudiated both the claims with the observations made by its Head Office. It was also mentioned that TAD A (P) Act, 1987 was in operation in the whole of Assam since 5th May, 1988. Thereupon the Complainant filed a complaint before the State Commission alleging deficiency in service on the part of the Insurance Company.

3. THE State Commission took into consideration condition No. 1 of Section 1 of the policy the relevant portion of which is as follows: 1. The Company will indemnify the Insured against loss or damage to the Motor Vehicle and/or its accessories whilst thereon. (c) by malicious act........" The State Commission came to the conclusion that as there was no specific term in the policy where under property insured which is damaged by terrorists, is not covered under the policy, therefore, the case fell under Clause (c) of the above condition. It was remarked: Accordingly, act of damaging the vehicle by a group of terrorists or individual terrorist is a malicious act. A malicious act is one which is an act prohibited by law and is done with intention to cause loss to another. This is such an act. This malicious act in the aforesaid clause does not restrict it to an act of the parties to the contrest. It also includes the act of others. Insurance which is a beneficial provision and is to be liberally construed in favour of the insured would be defeated in case any other interpretation is given. This is a deficiency in service."

4. THE learned Counsel for the Appellant has attacked the above finding of the State Commission and we are of the opinion that he is on sound footing. Before us a copy of the policy in respect of the truck bearing registration No. OAC-7123 has been filed. It has not been disputed by the respondent in its reply to the memo of appeal that the policy relating to the other truck bearing No, AMA-8761 is also in the similar terms. The argument of the learned Counsel for the Appellant is that the case is governed by provision (b) of endorsement number IMT 21. That endorsement reads as follows: (b) mutiny assuming the proportion of or amounting to popular rising military rising rebellion revolution insurrection military or usurped power or any act of any person acting on behalf of or in

connection with any organisation with activities directed towards the overthrow by force of the Government dejure or defacto or to the influence of it by terrorism or violence or by the direct or indirect consequence of the said occurrences.,,

The word "Terrorism" has been defined in Chambers 20th Century Dictionary 1983 Addition as follows: "An organised system of intimidation established for political ends. "

5. BODO Activists are using force and violence to influence and overawe the dejure Government by terrorism. In our opinon the case is covered by the said proviso (b) quoted above and the Insurance Company was justified in repudiating the claim on the ground that the risk in question was not covered by the policy. Accordingly we accept the present appeal, set aside the impugned order, and dismiss the complaint. In the facts and circumstances of the case we do not make any order as to costs.

