(1999) 07 SC CK 0056

In the Supreme Court Of India

Case No : Civil Appeal No. 2681 Of 1992

New India Assurance Co. Ltd. APPELLANT

Vs

Sri Venkata Padmavathi R and B Rice Mill RESPONDENT

Date of Decision : 21-07-1999

Acts Referred:

Citation : (2000) 10 SCC 336

Hon'ble Judges : S. Saghir Ahmad, J;R. P. Sethi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Stocks of rice and paddy belonging to the respondent Mill were insured with the appellant for a sum of Rs 27.50 lakhs under a policy of insurance issued by the appellant which also covered the risk of damage/loss from flood and cyclone. Kakinada town where the respondent Mill is situated was hit by cyclone and heavy rains between 9-5-1990 and 13-5-1990 as a result of which the stock of rice and paddy of the respondent Mill was damaged. The matter was reported to the appellant who appointed Mr M.V. Subba Rao as a surveyor. He conducted a preliminary survey on 10-5-1990 and submitted his report indicating the loss and damage to the stock of paddy and rice due to cyclone and heavy rains. The appellant, thereafter, appointed two surveyors to carry out joint and final survey of the loss occasioned to the respondent. The two surveyors were (7) M/s Vardhman Insurance Service Pvt. Ltd., and (2) Shri Nageswara Rao.

2. On 5-11-1990 Shri Nageswara Rao submitted his report assessing the loss at Rs 5.25 lakhs. On 12-11-1990 M/s Vardhman Insurance Service Pvt. Ltd. submitted their report assessing the loss at Rs 23.30 lakhs. In view of the huge divergence in the two reports submitted by the two surveyors, the appellant appointed a third surveyor M/s Mehta and Padamsay who submitted their report on 18-3-1991 and assessed the loss at Rs 14.80 lakhs and recommended Rs 14.16 lakhs to be paid in full and final settlement which was agreed to by the respondent.

3. In the meantime, CBI wrote to the Head Office of the appellant that some staff of the appellant had colluded with the respondent and the loss had been assessed at a much higher figure than the actual damage and that the matter may be investigated by the Vigilance Department.

4. The respondent was informed that his claim would be settled after the matter was considered by the Vigilance Department. It was at this stage that the respondent approached the National Consumer Disputes Redressal Commission with a claim of Rs 24.50 lakhs. It was mentioned in the petition that they were no longer bound by their agreement to accept Rs 14.16 lakhs in full and final settlement. The matter was contested by the appellant, but the Commission by its order dated 10-4-1992 allowed the claim for a sum of Rs 23.30 lakhs along with interest at the rate of 18 per cent per annum with effect from 10-9-1990. It is against this judgment that the present appeal is filed.

5. Learned counsel for the appellant has contended that the respondent having agreed to accept Rs 14.16 lakhs in full and final settlement of the claim, were not justified in approaching the National Commission for being paid an amount of Rs 23.50 lakhs in terms of the report of the third surveyor and that the Commission was not justified in awarding that amount to the respondent.

6. There is no dispute between the parties that the respondent had agreed to accept Rs 14.16 lakhs in full and final settlement of their claim. That being so, they are bound by their commitment, particularly, as there is no allegation anywhere before the Commission or before us that the agreement was vitiated by fraud, coercion or undue influence.

7. The appeal is partly allowed. The claim of the respondent shall stand allowed for a sum of Rs 14.16 lakhs instead of Rs 23.50 lakhs as ordered by the National Commission. Since the respondents are entitled to interest for the period from 14-3-1991, the date of agreement, to the date on which the Commission ordered the payment of the amount to the respondent, we direct that the appellant shall pay an additional sum of Rs 84,000 to the respondent making the total amount payable to the respondent as Rs 15 lakhs. The payment shall be made within four months.

8. The appeal is partly allowed in the above terms.