(1992) 05 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

New India Assurance Co. Ltd. , INDRAKUMAR NAINMAL PARMAR — APPELLANT

Vs

New India Assurance Co. Ltd , INDRAKUMAR NAINMAL PARMAR — RESPONDENT

Date of Decision : 07-05-1992

Acts Referred:

Citation : 1992 0 CPC 435 : 1992 1 CPJ 341 : 1992 2 CPR 210 : 1993 1 CLT 125

Hon'ble Judges : V.Balakrishna Eradi , A.S.Vijayakar , Y.Krishan , B.S.Yadav J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal will dispose of the above entitled appeal and the other appeal No. 90 of 1992.

2. THE brief facts leading to the present appeals are: That the respondent in Appeal No. 206, Indrakumar Nainmal Parmar, who is a partner in firm M/s. Uttamkumar Nainmal Parmar & Co., had filed a complaint before the State Consumer Disputes Redressal Commission, Maharashtra at New Bombay, stating that he is a trader having a shop in village Pali in Raigad District in Maharashtra and deals in rice, paddy and food grains etc. and had taken a "shopkeeper''s policy" from New India Assurance Co. Ltd. (appellant in appeal No. 206) fora sum of Rs. 2,05,000/- for the period commencing from 18.5.1989 to 17.5.1990. While the policy was in force, the goods in his shop were damaged on 24.7.1989 due to extensive and severe floods. THE policy extended also to cover flood risk. THE loss caused to the goods in the shop amounted to Rs. 2 lacs. He made claim for the loss sustained by him to the appellant, New India Assurance Co. Ltd. THE Insurance Company, vide their letter dated 12.4.1990, repudiated the claim on the ground that the claim pertained to losses of items in a godown which was not payable under the shopkeeper''s policy. THE unreasonable attitude of the Insurance Company caused him mental agony and distress and caused injury to his reputation. He, thus claimed Rs. 1,92,000/- towards the damages for his goods contained in his shop as also compensation for the distress caused by the

repudiation of his claim. The Insurance Company, in their counter filed to the complaint, admitted that they had issued a policy, but stated that they rightly rejected the claim of the complainant because the goods that were destroyed or damaged in the floods were not in the shop but in a godown. The insurance policy related to the shop and not to the godown. It was further alleged by them that they sanctioned another claim of the complainant in respect of the shop M/s. Nainmal Indrakumar, which was a partnership concern of the complainant and he had no other shop in village Pali. In support of their contentions, the Insurance Company had relied upon the report of their surveyor dated 3rd July, 1991 and the report of a private detective agency dated 20.1.1990.

To prove his contention that the place concerned was his shop, the complainant had produced documentary evidence before the Slate Commission. A panchnama of the shop and godown was made immediately after the floods by the Tehsildar of Sudhagad Tehasil under which Pali village falls and a copy of the panchnama was issued to the complainant. In the panchnama, it is recorded that the complainant''s shop and godown were flooded and that he sustained a loss of Rs. 1,92,000/-. The complainant had also produced a statement of the landlord of house No. 477 in which the shop and godown were located and he stated that for the last 10 years the complainant was running the grain shop in house No. 477. The Sarpanch of the Gram Panchayat of village Pali also issued a certificate to the effect that Uttam Kumar Indra Kumar had a grain shop in house No. 477 for the last 10 years.

3. AFTER consideration of all the evidence, the State Commission came to the opinion that the Insurance Company had wrongly rejected the claim of the claimant. Accordingly, it granted Rs. 1,50,000/- to the complainant to be payable by the Insurance Company as compensation for the loss suffered by him. It was further ordered that the Insurance Company would pay the said amount within 30 days from the date of the Order failing which it would carry interest @ 18% p.a. till payment. They also awarded Rs. 2,000/- to the complainant as compensation for mental'' agony etc. and Rs. 300/- as costs of the complaint Feeling aggrieved against the above order, the appellant M/s. New India Assurance Co. Ltd. has filed the present appeal while the other appeal has been filed by the complainant The Insurance Company has challenged the award of compensation to the claimant by the State Commission, while the claimant''s contention is that he has been awarded less compensation.

4. AT the outset, we may say that the complainant''s appeal No. 90 of 1992 is hopelessly barred by time. The Order of the State Commission is dated 11.7.1991 while the appeal was filed on 4th March, 1992. Application for condonation of delay has been filed. According to that application, a copy of the Order was received by him on 12th August, 1991 but he could not prefer an appeal immediately for paucity of funds and moreover he was advised by the local Advocate that it was not necessary to prefer a cross appeal since he had filed a Written Statement in the Appeal filed by the Insurance Company and in it

he has taken objection about less compensation having been awarded to him by the State Commission. We are of the opinion that none of the grounds averred by the said complainant for condonation of delay in the filing of his appeal is a valid cause for condonation of delay. Not much funds were required for filing an appeal as no Court fee is payable on the memorandum of Appeal. Wrong advice by the local Advocate is also not a sufficient ground for condonation of delay. No affidavit of any lawyer has been filed to show that he had given any such advice to the complainant. Hence, we reject the application of the complainant for condonation of delay and as a consequence of this, we dismiss his appeal No. 90 of 1992. Now, we come to the appeal filed by the Insurance Company. The main argument of the learned Counsel for the appellant was that the goods damaged by the floods were stored in a godown and the godown was not covered by the insurance policy. To support this argument, he has relied upon the report dated 3rd July, 1991 prepared by Mr. Jeevan Kulkarni, Surveyor and Loss Assessor. According to the report, the Surveyor found that both the policies were issued to the claimant in respect of the goods existing in the same premises, i.e., shop on Cross Lane, village Pali. The learned Counsel for the appellant also argued that in a village shop nobody will keep goods worth Rs. 2 lacs and therefore, a presumption should be raised that the goods in respect of which present claim relates were stored in some godown, which according to the report of Mr. Jeevan Kulkarni were not insured. According to the report of Mr. Jeevan Kulkarni the shop on Cross Bazar Lane is No. 380 and no damage was sustained to the goods in that shop. After consideration of the report and the arguments of the learned Counsel for the appellant, we are of the opinion that the above report cannot be relied upon. First of all, that report was obtained during the pendency of the complaint filed by the complainant before the State Commission. Secondly, as noticed earlier two policies had been issued to the complainant. In respect of one policy, the claim has been paid to the complainant. If the other policy in respect of which the claim has been settled was in respect of shop No. 380 and which did not suffer any loss due to the floods, we fail to understand why that claim in respect of that shop was settled. Thus, clearly the report of Mr. Jeevan Kulkarni appears to have been procured by the Insurance Company just to defeat the complaint of the complainant.

5. EARLIER, the Insurance Company had appointed Paras Bureau of (Pvt.) Investigation & Consultancy to verify the claim. The report is dated 31st October, 1989. It is a very detailed report Another report filed by the said firm is dated 20th January, 1990. From both these reports it is clear that the firm has a godown opposite to Limaye Rice Mill. The said Surveyor had inspected both the premises on 30th October, 1989 in the presence of the Divisional Manager of the Insurance Company. According to both the reports of the said firm, the godown situated opposite to Limaye Rice Mill was used as a store room/house and also for effecting retail sale business.

6. THE very fact that two policies were taken by the insured shows that both the policies were in respect of two separate shops and not in respect of one shop as

alleged by Mr. Jeevan Kulkarni, Surveyor. If there was only one shop and it had been got insured, we fail to understand what was the need of obtaining the second policy in respect of the goods already insured. That godown/shop appears to be in house No. 477. The complainant produced overwhelming evidence before the State Commission to show that the said premises were being used as a godowncum-shop. There is no rebuttal of that evidence. Therefore, there is nothing to belie the contention of the claimant that the disputed policy was in respect of premises No. 477 where he was also carrying on retail business. It is clear from the report of Paras Bureau of (Pvt.) Investigation & Consultancy that the claimant alongwith his father and brother are carrying on the business. Therefore, there is nothing surprising if they are running two shops. Hence, it is held that the Insurance Company wrongly repudiated the claim of the complainant.

There is also no evidence to belie the contentions of the complainant that his goods worth Rs. 1,92,000/- were damaged by the floods. That loss has been estimated by the Executive Magistrate of Sudhagad after spot enquiry. The State Commission has reduced that amount by Rs. 42,000/- on the ground that the loss is usually exaggerated and thus, they had awarded Rs. 1,50,000/- to the complainant. We do not agree with the reasoning of the State Commission about reduction of the claim amount from Rs. 1,92,000/- toRs. 1,50,000/- but as the claimant''s appeal has been dismissed as time barred, we have no alternative but to uphold that amount awarded by the State Commission. For the foregoing reasons, we dismiss the present appeal with costs which we assess at Rs. 1,000/-. Appeal dismissed.