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(2011) 01 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

Oriental Insurance Co. Ltd. APPELLANT

Vs

Blan Coffee Curers Pvt. Ltd. RESPONDENT

Date of Decision : 17-01-2011

Acts Referred:

Citation : 2011 0 NCDRC 24 : 2011 1 CPJ 247

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Petition is dismissed

Judgement

1. THIS revision petition has been filed by the Oriental Insurance Co. Ltd. (hereinafter referred to as the Petitioner) against the order of State Consumer Disputes Redressal Commission, Karnataka (hereinafter referred to as the State Commission) in favour of Blan Coffee Curers Pvt. Ltd. (hereinafter referred to as the Respondent) who was the original complainant before the District Forum.

2. THE factual matrix of the case is that the Respondent company which is a coffee processing company took a Fire Insurance Policy from the Petitioner in respect the various varieties of coffee (both raw and processed) kept in its godown for a sum of Rs.50,00,000/-. THE Respondent company paid a sum of Rs.1,34,663/- as premium for the risk covered. THE policy was in force from 07.01.2000 to 06.01.2000. On 28.04.2000 at about 9.00 pm there was severe rainfall, thunder and lightning at the place where the Respondents godown was located and the roof of the godown was hit by lightning causing damage to it and resulting in entry of the rain water which ruined a substantial part of the clean coffee which was stored in the premises. THE Respondent, therefore, informed the Petitioner about the incident who in turn deputed a Surveyor to assess the loss. THE Surveyor in his report stated that out of the total 281 bags of coffee which were stored in the godown, 84 bags were badly spoiled and the coffee could no longer be used. He further confirmed that this damage occurred because the asbestos sheet covering a portion of the roof had fallen on the gunny bags of the coffee resulting in entry of rain water. THE Surveyor after subtracting the salvage value declared the net loss as Rs.1,20,450/-. THE

Respondent thereafter lodged a claim with the Petitioner furnishing the required documents to settle the claim. Vide letter dated 09.05.2001 Petitioner repudiated the claim of the Respondent on the ground that the asbestos sheets which formed the roof of the godown had fallen not because of lightning since lightning cannot damage asbestos (which is a poor conductor of electricity) but because of storm and severe thunder. Since these are not covered specifically under the Fire Insurance Policy taken by the Respondent, the claims filed by the Respondent were not valid. Aggrieved by this action, Respondent filed a complaint before the District Forum stating that since the incident of the roof falling occurred due to it being broken by lightning is covered under the Fire Insurance Policy, the claim was wrongly repudiated and the Petitioner is liable to pay a sum of Rs.4,75,000/- to indemnify the loss. He further requested for Rs.10,000/- as compensation, cost of proceedings and other reliefs in his favour.

Petitioner denied the contentions of the Respondent and stated that on the basis of the detailed report of the Surveyor the claim was rightly repudiated because the coffee stored in the godown was spoiled by entry of the rain water into the godown. The asbestos roof did not break as a result of lightning as stated by the Respondent because it is well know that asbestos sheets cannot be damaged by lightning being poor conductor of electricity. It was perhaps damaged because of storm and thunder. As per Fire Insurance Policy taken by the Respondent, flood, inundation, typhoon and convulsions of nature etc. come within the exclusion clause and the claim can only be validated if the property was destroyed inter alia by fire, lightning etc. which was not so in the instant case.

3. THE District Forum after hearing both the parties accepted the complaint by concluding that as per the photographs produced by the Respondent and other evidence filed before it, it was lightning that had caused damage to the asbestos sheets on the roof, causing it to fall and consequently rain water had entered into the godown causing damage to the coffee bags. It directed the Petitioner to pay the Respondent Rs.1,20,450/- i.e. the loss assessed by the Surveyor with interest @ 10% per annum till the final payment is made to the complainant along with Rs.1,000/- as costs. Aggrieved by this order, the Petitioner filed an appeal before the State Commission. The State Commission dismissed the appeal and confirmed the order of the District Forum. The operative part of the order of the State Commission reads as follows:

4. THE learned counsel for the Complainant has contended before us that the incident was in the night of 28.04.2000, and the surveyor visited the spot on the next day. He has stated at para 8 of his report that Asbestos Sheets used for the roof are non-conductors of electricity and therefore lightning could not physically damage them and the damage must have been caused by storm and not by lightning. In so far as this observation of the surveyor is concerned, one has to remember that the surveyor has not collected statement of any person residing in the neighborhood to the effect that there was no lightning in the night of the incident. Secondly, he has relief upon the opinion given by some of the dealers of

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Asbestos Sheets, and also on some paper report, which are nothing but hearsay. Even if Asbestos Sheets are non-conductors of electricity a lightning is not as if two electrodes are connected through a non-conductor. Lightning is defined in the concise Oxford Dictionary as a flash of bright light produced by an electric charge between clouds or between clouds and the ground. When a heavy charge of electricity passes between the cloud and the ground possibility of any material in between getting damaged cannot be ruled out. In the middle of para 8 of the report of the surveyor, he has also observed However the possibility of damage to Asbestos Sheets due to storm and thunder cannot be rule out. Thunder is explained in the Oxford Dictionary to mean a loud rumbling or crashing noise after a lightning flash due to the expansion of rapidly heated air. That means that thunder always follows lightning, which is covered by the policy. This observation by the surveyor makes it probable that the damage to the Asbestos Sheets also could have occurred on account of the thunder, which followed lightning. The District Forum, while appreciating evidence, has observed that when two interpretations are possible on the materials placed record, the one in favour of Consumer has to be adopted. The District Forum has, therefore, adopted the interpretations that the Asbestos Sheets could have been damaged on account of the thunder, which followed the lightning. Learned counsel for the both parties made oral submissions. Counsel for Petitioner stated that without going into the issue of whether asbestos sheets are such bad conductors that they cannot be broken by lightning, the claim of the Respondent was rightly repudiated because there is no proof of lightning having caused damaged to the roof on the day of the incident. Further, as per the provisions of the insurance policy which is a Fire Policy, a claim can only be validated if it is shown that the lightning resulted in fire which caused due damage. In the instant case it is very clear that there was no fire as a result of the lightning and the stocks of coffee were damaged due to rain water flooding the godown. As per insurance policy, since inundation, flood and other atmospheric disturbances are specifically excluded from the Fire Policy Insurance cover; therefore, the claim was rightly repudiated. Counsel for Respondent stated that adequate evidence has been produced before the learned fora below of there being severe rainfall and thunderstorms on the night of 28.04.2000 and also photographs and newspaper reports confirming this had been filed before the District Forum. Further, it is well known that thunder is always preceded by lightning which in the instant case hit the asbestos roof causing it to break. Counsel for Respondent also stated that on the website of the National Oceanic and Atmospheric Administration which is a federal agency of USA, it has been stated that lightning can have 100 million to 1 billion of volts and contains billions of watts and can damage by way breaking, burning etc. any object that may fall in its path. Therefore, contention of the Petitioner that an asbestos sheet cannot be damaged if hit by lightning is not a scientifically correct statement. Apart from this, the contention of counsel for Petitioner that any damage by lightning will only be valid in terms of the Fire Insurance Policy if it results in a fire, is not a correct interpretation and nowhere in the Fire Policy document has this been specifically stated. The learned fora below had correctly

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appreciated the entire position and given due relief to the Respondent. The present revision petition, therefore, does not merit any consideration.

5. WE have heard both learned counsel at length and carefully considered the evidence of record. So far as the provision of interpretation of the Fire Policy is concerned it is very clear from a perusal of it that it covers claims pertaining to damage to property by caused the following: (i) Fire, (ii) Lightning, (iii) Explosion etc. From this it is clear that these are all stand alone provisions, valid for claiming insurance. The interpretation of the Petitioner that damage caused by lightning would only be valid for claiming insurance if it resulted in a fire causing damage is not correct. To that extent the term Fire Policy is somewhat of a misnomer because it actually included claims pertaining to damage to property caused by reasons not related to fire. Regarding the evidence whether there was heavy rainfall accompanied by storm and thunder on that day, we see no reason to differ with the findings of the learned fora below which is a finding of fact backed by credible evidence. Even the Surveyor & Loss Assessor of the Petitioner had stated that the roof could have been damaged because of storm and thunder. This gives further credence to the fact that the asbestos sheet would indeed have been damaged by lightning which always precedes thunder since thunder per se cannot cause damage to an asbestos roof.

6. IN view of the above facts, we see no merit in the present revision petition which is dismissed. We uphold the order of the State Commission in toto. The Petitioner is directed to pay to the Respondent Rs.1,20,450/- with interest @ 10% till the date of realization and Rs.1,000/- as cost of litigation.

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