
(1998) 11 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE CO LTD

APPELLANT

Vs

Dawood Kumar Taj

RESPONDENT

Date of Decision : 19-11-1998

Acts Referred:

Citation : 1998 2 CPC 678 : 1998 3 CPR 49 : 1999 1 CPJ 14

Hon'ble Judges : S.C.SEN , R.THAMARAJAKSHI , S.P.BAGLA , C.L.CHAUDHRY , J.K.MEHRA J.

Judgement

1. THIS judgment will cover the controversy involved in 81 First Appeals bearing Nos. 185 to 265 of 1994 against the common order passed by the State Commission, Maharashtra, Bombay.

2. THESE cases relate to one godown situated at G.P.H. No. A -I at Post Veer, Mahad District, Raigad (Maharashtra). All the 81 complainants are engaged in the business of purchase and sale of dry fish in Raigad Taluk in general and in Mahad Taluk in Raigad District in particular. The complainants purchased dry fish from fisherman and stored the stock of said dry fish in their godowns for its subsequent sale in the villages. In order to carry on their trade of buying and selling dry fish, the complainants who were basically traders were availing of financial facilities from the Mahad Co-operative Bank Ltd., Mahad i.e. respondent No. 2 herein. The loans were granted by the said Bank respondent No. 2 against hypothecation of the said stock of dry fish. This modus operandi/arrangement has been going on for a very long time. Every year fresh stock of dry fish were purchased by the complainants which were hypothecated in favour of the Bank as security for repayment of the money advanced. The Bank used to insist on the stocks of dry fish being insured as that was the main security at the hands of the Bank. The said Bank used to directly negotiate with the Insurance Company the appellant herein and obtained the insurance policy in respect of the said hypothecated stock of dry fish. Premia amount towards the said insurance policy were also paid directly by the Bank and the policy was also sent by the Insurance Company to the Bank. The insurance was being taken in the past for fire, spontaneous combustion and flood. However, the amount which used to be

remitted earlier in respect of each policy, was duly remitted for taking out a policy in respect of each of the complainants for the aforesaid risks in the same sum which was being paid earlier, was paid and received by the Insurance Company. In the year 1989 also the same amount was collected by the Insurance Company in respect of each of the complainants' stock of dry fish and they were expected to issue a similar policy as was being done in the past. However, before the policy of the cover could reach the Bank, there was a cyclone and heavy rain on 24th July, 1989 which had the effect of damaging the stock of dry fish as a consequence of such torrential rain fall and consequent flooding of the area. Some stocks of fish was washed away and lot of it which remained got damaged by dampness or flood water seeping in. The case of the complainants is that they took up the matter with their Banker requiring it to recover the amount of their loss from the Insurance Company. The case of the Bank is that since they had not yet received the cover notes they orally took up with the Insurance Company for the policies. The cover notes actually reached on various dates in the month of August, 1989. However, when the cover notes were received in the month of August, the damage by flood had not been mentioned thereon. There are very few startling facts which have come to light in the present set of cases such as : (i) There was never any formal proposal for taking out insurance policy in any of the years and it was all done orally. Similarly, according to the Bank, they had lodged the claim also orally on the agent of the insurance. According to the complainants, the Bank kept them in the dark about their claims by saying that the Bank was taking up the cases with the Insurance Company themselves which in fact does not appear to be the case. Although the Bank kept assuring the complainants that their case was being taken up and that it was duly covered by the insurance cover. The complainants getting fed up with such excuses approached the Bank to ascertain the reply of the Insurance Company and only when the Bank opposite party No. 2 failed to give any satisfactory reply the complainants filed complaints which are the subject matter of the present petition. All along the stand of the Bank was that they had paid the same amount which was being paid in the past and the Insurance Company never intimated that there was any increase in the tariff in the year 1989. The Insurance Company on the other hand states that the claim could not be entertained and for that reason it was finally repudiated because there was no insurance cover relating to the flood. According to the Counsel for the Insurance Company the amount received could cover only two of the three risks. On enquiry, the Insurance Company was found wanting in producing any evidence of its having intimated to the Bank or the insured the increase in tariff which leads one to the inference that Insurance Company intentionally delayed first the issuance of the cover note and when it was issued the damage had already taken place and to escape the liability they excluded the risk on account of flood. 3. We have perused the impugned judgment and heard the parties. Sortie of the glaring lapses on the part of the insurer as also the Bank cannot be overlooked. Some of such lapses are as under : (1) The insurer was negligent in not obtaining any proposal form in writing while collecting the premium. Such

lapse has led to all the complications; (ii) The Bank was negligent in not ensuring proper coverage and thereafter in delaying the lodgment of the claim with the insurer. It appears that the calls of the complainants were treated very casually; (iii) The Bank having debited the accounts of the insured with the amount of premium remitted to the insurer, had not made sure that the proper coverage was provided for; (iv) The insurer on receiving the remittance which fell short on account of increased tariff never took steps to inform the Bank seeking either, (a) the balance payment, or (b) seeking clarification as to which two out of the three risks it wanted to be covered; and (v) The insurer having delayed issuance of cover note until after the floods, turned dishonest in issuing a cover note without including flood risk in it when in the past all along such risks had been covered.

3. NO explanation is offered by Mr. Suri except that in the year in question i.e. on this occasion the tariff had gone up and as a consequence thereof they had to exclude the flood risk. There is again no proper explanation as to why the insurer did not communicate to either the complainants or the Bank about the change in tariff and ask for the balance amount. Since in the past all along a comprehensive cover covering all the three risks including flood was being obtained by the Bank there was no reason why only this risk should have been excluded this year. The issue of the cover notes was delayed beyond 24th July, 1989 when the damage had already taken place on account of flood. It has been stated on behalf of the Insurance Company that since the amount received sufficed only two of the three risks they had included fire and spontaneous combustion. There is no indication of the Insurance Company having ever asked for more money or communicated the increased rate of tariff or failing that the least it should have done was to enquire of the Bank and/or the insured as to which two of the three risks they wished to be covered. The insurer could not of its own, unilaterally, take any decision in this connection. Mr. Suri has also agitated various grounds such as delay in reporting damage to the Insurance Company by the Bank which had resulted in a situation where no proper assessment could be made of the loss and by that time fish that remained in the godown also had been destroyed/disposed of under orders of the District Authorities which fact is borne out from the record. He has also raised the plea of delay. In this plea we find virtually no merit because there is no delay in approaching the State Commission from the date of repudiation of the claim. We do not find any serious infirmity in the impugned orders. However, we find that apart from the insurer there was clear negligence and deficiency in service on the part of the Bank also, first in not verifying the amount of the premium required, there after not insisting on the insurance cover reaching it without loss of time. Thereafter the Bank had not seriously pursued the claim on behalf of the complainants. We think there is clear deficiency of service on the part of the Bank also who must bear substantial part of the claim because if Bank had been vigilant the matter could have been suitably settled.

4. THIS Commission feels that loss as determined by the State Commission should be apportioned between the Bank and the insurer and keeping in view all

the facts and balancing of equities, it will be appropriate that each of the parties i.e. the appellant -insurer before us and respondent No. 2, the Bank must bear the loss to the insured -complainant equally. It appears that 50% of the amount awarded by the State Commission vide impugned order has already been deposited by the insurer and is lying with the Bank. That amount should be made over to the complainants in the ratio and proportion it has been ordered by the State Commission and the balance 50% of the said amount awarded be borne by the Bank in the same ratio and proportion. Keeping very peculiar circumstances in view, there shall be no order as to costs. Except for the above modification of the impugned order, the same is upheld in all respects. Ordered accordingly.