(1995) 04 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

Oriental Insurance Co. Ltd. APPELLANT

Vs

MAHENDRA PAL GAURI RESPONDENT

Date of Decision : 25-04-1995

Acts Referred:

Citation : 1995 3 CPJ 598

Hon'ble Judges : N.C.Sharma , Firoza Bano J.

Final Decision : Appeal No. 562/92 dismissed & Appeal No. 583/92 allowed

Judgement

1. THIS order will decide Appeal Nos. 562/92 and 583/92 by a common order. Both these appeals arise out of the order of the District Forum, Ajmer dated 18.7.92. While Appeal No. 562/92 has been filed by Oriental Insurance Company, which was opposite parties Nos. 1 & 2 in the complaint filed by the complainant, Appeal No. 583/92 has been filed by the Life Insurance Corporation of India which was opposite party No. 3 in the said complaint.

2. MR. Ratan Chand Godha, Advocate is present for MR. Atul Luhadia, Counsel for Oriental Insurance Company. MR. B.B. Mathur, Advocate is present for Life Insurance Corporation of India. Complainant Mahendra Pal was present in person on 2.8.94 but he did not appear thereafter. We have gone through the order of the District Forum, Ajmer and have heard the learned Counsels appearing for the parties.

Complainant Mahendra Pal Gauri had obtained a House Building Loan of Rs. 50,000/- from the Life Insurance Corporation of India under an Insurance Policy pertaining to O.Y.H. Scheme. The complainant constructed a house after receiving the loan and the same was got insured by the Life Insurance Corporation of India through Oriental Insurance Company. According to the complainant, there were heavy rains in the year 1990 and considerable water had accumulated near the house constructed by him. The water made entry in the earth and in January, 1991, the floor of the house had become upset on account of internal displacement of rain. Cracks were also developed in the walls of the house. The complainant contacted the Branch Manager, Oriental Insurance

Company and latter assured to send a Surveyor. However no Surveyor was sent and therefore the complainant made an application on 4.3.91 to the Oriental Insurance Company. It is alleged that on 18.3.91 the Oriental Insurance Company repudiated the claim stating that it is not liable under the conditions of the Insurance Policy. The complainant got the house surveyed by Shri S.P. Khanna, Surveyor and he assessed the house at Rs. 27,580/-. The complainant intimated about this assessment, but his claim was repudiated. The complainant therefore filed the complaint claiming Rs. 28,000/- as compensation and further Rs. 10,000/- for mental distress and agony and Rs. 5,000/- as fees paid to the Surveyor.

3. THE Oriental Insurance Company filed a version stating that period of insurance was from 1.4.91 to 31.3.92 and according to the terms and conditions of the policy, no compensation was payable by the Insurance Company and the claim was repudiated. It seems that an argument was advanced on behalf of the Oriental Insurance Company before the District Forum that the damage to the house had started in the rainy season in the year 1990 and the floor was damaged in January, 1991. However the complainant informed about the damage to the house on 4.3.91 i.e., after delay. It was also urged on behalf of the Oriental Insurance Company that the claim was not covered under conditions Nos. 7, 8, 9 of the policy.

4. IT would appear from the documents filed by the complainant that originally the sum assured was Rs. 50,000/- which was increased to Rs. 1,15,000/- by letter of the Insurance Company dated 4.1.1988. Main reliance was placed by the Oriental Insurance Company on condition No. 4 of the conditions. These clauses provide that the Company reserves the right to treat the claim as no claim if no information/documents are submitted by the insured within a period of six months from the date of loss. It is further directed that in no case whatsoever shall be the Company be liable for any loss or damage after the expiry of 12 months from the happening of the loss or damage unless the claim was the subject of pending action or arbitration. It is also provided in Clause 4(i) of the conditions that on happening of any loss or damage, the insured shall forthwith give notice thereof to the Company and shall within 15 days after the loss or damage or such further time as the Company may in writing allow on its behalf, deliver to the Company. The complainant submitted a claim in writing and other documents were supplied. According to the Oriental Insurance Company, the case of the complainant was that damage to the house was caused due to heavy rains in the year 1990. It may be stated that that was not the case of the complainant. What the complainant had stated in para 5 of the complainant was that in the year 1990, there were heavy rains and as the house constructed by him was situated in a low lying locality, the water accumulated and was entering into the earth. This averment in para 5 of the complaint cannot at all tantamount to state that loss of house was caused in the rainy season 1990. The complainant had intimated to the Oriental Insurance Company about the loss and damage of his house on 4.3.91. He had also sent a notice through his Advocate on 15.6.91.

The right of the Oriental Insurance Company to treat the claim as no claim could only arise if no information was submitted by the insured within a period of six months from the date of loss. The information was given by the insured within six months of the loss to the house. The liability of the Insurance Company only ceased after the expiry of six months. In such circumstances, the repudiation of the claim by the Oriental Insurance Company was in bad faith. A vague repudiation is no repudiation whatsoever by the Oriental Insurance Company by letter dated 18.3.91 in reply to the complainant''s letter dated 4.3.91 that as per terms and conditions of the Company, the loss is not payable. No reason whatsoever was mentioned in this repudiation. It was simply an afterthought that on 4.3.91, the Oriental Insurance Company made out a case that the loss had occurred during the rainy season i.e., in July and August, 1990. The loss had occurred in January, 1991. The District Forum was right, on the basis of the assessment made by the Surveyor appointed by the complainant, to award a compensation of Rs. 29,080/- to the complainant.

5. CONSEQUENTLY, Appeal No. 562/92 filed by the Oriental Insurance Company has no merit in it and it is therefore dismissed. As the complainant is not present there will be no order as to costs.

6. SO far as Appeal No. 583/92 filed by the Life Insurance Corporation of India is concerned, it deserves to be allowed on the sole ground that the complainant had prayed for relief only against the Oriental Insurance Company and not against the Life Insurance Corporation of India. There is also no question on Life Insurance Corporation of India being liable to compensate the complainant for any loss. We, therefore, allow Appeal No. 583/ 92 filed the Life Insurance Corporation of India and set aside the order of the District Forum, Ajmer dated 18.7.92 in so far as it relates to the Life Insurance Corporation of India. Appeal No. 562/92 dismissed & Appeal No. 583/92 allowed.