(2013) 04 NCDRC CK 0131

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE CO. LTD APPELLANT

Vs

Mangal Textile Mills (India) Pvt. Ltd RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Citation : 2013 0 NCDRC 220 : 2013 2 CPJ 318

Hon'ble Judges : ASHOK BHAN , VINEETA RAI , S.M.Kantikar J.

Final Decision : appeal stands dismissed

Judgement

1. THIS first appeal has been filed by Oriental Insurance Company Limited, Appellant herein and Opposite Party before the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad (hereinafter referred to as the State Commission) being aggrieved by the order of that Commission which had partly allowed the complaint filed against it by M/s Mangal Textile Mills (India) Pvt. Ltd., Respondent herein and Complainant before the State Commission.

2. FACTS : Respondent-Complainant had taken a Fire Policy ''C '' from the Appellant-Insurance Company for the period 02.05.1996 to 01.05.1997 to cover the risks of damage to its Boiler and chimney pipe fittings. During the validity period of the policy, on 18.08.1996 the Boiler was damaged to the tune of Rs.8,97,481/- by the Contractor and his staff who was entrusted with the cleaning and servicing of the Boiler. Since the Boiler and the fusible plug were intentionally damaged, Respondent-Complainant lodged a complaint with Vatva Police Station and also intimated the Appellant-Insurance Company, which registered the claim and appointed a Surveyor M/s Mehta Padamsey Surveyors (Bombay) Pvt. Ltd. to assess the loss. Respondent-Complainant contended that the Surveyor was given all the documents required by him. Respondent-Complainant had also appointed a Surveyor and Loss Assessor to look into the incident, who had clearly concluded that the Respondent-Complainant had suffered a net loss amounting to Rs.5,72,500/- due to damage to the Boiler with ''malicious intent ''. However, the Appellant-Insurance Company vide letter dated 19.12.1997 arbitrarily repudiated the claim though it was squarely covered by

the insurance policy since the Boiler and the fusible plug were intentionally damaged because of the malicious act on the part of the Contractor and his staff, who had tampered with the Mobrey level switch which resulted in water starvation leading to damage to the Boiler. Despite issue of legal notice to the Appellant-Insurance Company to settle the claim, this was not accepted. Respondent, therefore, filed a complaint before the State Commission on grounds of gross negligence and deficiency in service on the part of the Appellant-Insurance Company in arbitrarily and wrongly rejecting their valid claim and requested that the Appellant-Insurance Company be directed to settle the claim for Rs.8,97,481/- with interest @ 18% per annum from 01.01.1997 till realization as also Rs.50,000/- as compensation for mental agony, hardship and harassment caused to the Respondent-Complainant and Rs.10,000/- as litigation costs. Appellant-Insurance Company on being served filed a written rejoinder denying that there was any deficiency on their part. It was stated that the claim was thoroughly investigated by the Surveyor, who vide his report dated 21.04.1997 stated that the Mobrey level switch had not sustained any visible physical damage by external violent means. Therefore, there was no evidence to support Respondent-Complainant ''s allegation that the Mobrey level switch had been tampered and damaged with malicious intent by the Contractor or his workers. In view of these facts, the claim was not covered as per the terms and conditions of the insurance policy and, therefore, Respondent-Complainant was not entitled to the damages as claimed by him. The Police had also in its report stated that the involvement of the workers in causing damage to the Boiler could not be proved.

3. THE State Commission after hearing the parties and on the basis of evidence produced before it partly allowed the complaint and directed the Appellant-Insurance Company to settle the claim of the Respondent-Complainant for Rs.5,00,000/- by observing as follows : " ... admittedly the steam boiler in question got damaged because of starvation (lack of water supply inside the boiler). It is a settled legal position that the jurisdiction to be exercised under the provisions of the Consumer Protection Act, 1986 is an equitable jurisdiction and the strict proof of evidence would not be necessary to adjudicate the claim of the consumer. Simply because there is no evidence found against the workers of the contractor to implicate them with the incident as per the police certificate that cannot baffle the claim of the consumer which is otherwise established in the instant case i.e. damage to the steam boiler because of starvation is an admitted position. Looking to the facts revealed as pointed above the damage to the steam boiler in question because of starvation could be possible only by the intervention of some human agency and the proof of the identity of the miscreant is not essential. It may be seen that damage caused to the boiler by any act would be a violence to the boiler and the intention of the miscreants would be to cause damage maliciously in as much as damage intended to be caused to the boiler of the complainant. "

4. AGGRIEVED by the order of State Commission, the present first appeal has

been filed. Learned Counsels for both parties made oral submissions.

5. LEARNED Counsel for the Appellant-Insurance Company stated that the State Commission erred in concluding that the damage to the Boiler was caused due to a malicious act since there was no evidence to prove the same. On the other hand, as per the detailed report of the Surveyor appointed by the Appellant-Insurance Company it was clearly established that the damage to the Boiler was not caused because of any malicious act. The Police had also confirmed after investigation that it could not be established that the workers of the Contractor had intentionally and maliciously caused damage to the Boiler. Further, there was no evidence or past history of any labour disaffection or dispute which could have prompted the workers of the Contractor to maliciously damage the Boiler by starving it of water. The report of the Surveyor is an important document and has to be relied upon unless otherwise contradicted by cogent evidence. In the instant case, Respondent-Complainant was not able to produce any evidence to show that the report of the Surveyor as also the Police investigation was wrong. The terms and conditions of an insurance policy are binding on both parties and in the instant case the insurance claim pursuant to damage caused to the Boiler not being covered as per the terms and conditions of the insurance policy, was rightly repudiated.

6. COUNSEL for the Respondent-Complainant stated that admittedly there was no damage to the Boiler when it had been sent for cleaning to the Contractor. Further, the Boiler in question was fitted with a number of safety devices, including the Mobrey dual control switch, which worked as a control switch for the feed water pump to work depending on the water level in the Boiler. In addition, a steam injector had been provided with the Boiler as an alternative feed water supply device and it was used for pumping water to the Boiler in case the water pump failed to work. A steam pressure switch had also been provided with which the pressure switch operated and automatically shut down the system to control fuel combustion. On 18.08.1996 when it was noted that the Boiler got damaged because of water starvation, it was found on examination that all the safety valves installed in the Boiler were in safe operating condition and had not been disturbed. The fact that damage was caused to the Boiler admittedly due to starvation of water clearly indicated that this had been done manually through human intervention, bypassing the safety devices. This fact by itself clearly indicated that damage was caused to the Boiler maliciously since it was not in the normal course on account of mechanical failure of the several safety devices installed in the Boiler. The private Surveyor appointed by the Respondent-Complainant had also reached the conclusion that all the safety mountings and accessories were operational prior to the date of damage as also thereafter concluding that the damage was by external violent means by bypassing the various safety devices in the Boiler. We have heard learned Counsels for both parties and have also carefully gone through the evidence on record. The fact that the Boiler which was insured with the Appellant-Insurance Company had been sent for servicing and cleaning to a Contractor is not in dispute. It is also an

admitted fact that on 18.08.1996 it was noted that the Boiler and the fusible plugs had got damaged because of water starvation i.e. lack of water supply inside the Boiler. As per the undisputed evidence, there was no record of any malfunctioning or defect in the various safety devices installed in the Boiler to prevent water starvation either on 17.08.1996 or thereafter. Even the Appellant-Insurance Company ''s own Surveyor has recorded in his report that all the safety valves were working normally and a letter dated 22.08.1996 from Thermax Limited, the manufacturer of the Boiler, also confirmed that there was no damage to any of the safety devices. However, since admittedly the Boiler had been damaged due to water starvation, we find force in the contention of Respondent-Complainant that this damage could only have occurred due to human intervention and by bypassing the various safety devices installed in the Boiler. Obviously, this damage could have been caused by the persons to whom the Boiler was entrusted for servicing and who were well aware that the water starvation would lead to damaging the Boiler. The Surveyor appointed by the Appellant-Insurance Company in his report, we note, has not been able to provide any credible evidence to counter this fact. Consequently, Appellant-Insurance Company on whom there was onus to do so also has not been able to prove that the damage caused to the Boiler was not because of any malicious intent while repudiating the claim. On the other hand, Respondent-Complainant has been able to adequately establish the fact that damage to the Boiler was caused due to water starvation when the Boiler was entrusted to the Contractor and his workers for cleaning and servicing because they knowingly permitted this water starvation by skillfully bypassing the various safety devices installed in the Boiler. This action on the part of the Contractor and his staff could not have been done except with malicious intent and knowing fully well that this intervention would damage the Boiler. The State Commission after taking into consideration all these facts, as a first Court of fact, had, therefore, concluded that the damage to the Boiler in question because of water starvation had occurred by the intervention of the Contractor and his staff with malicious intent. For the reasons discussed above, we agree with this finding of the State Commission that this case is fully covered under the provisions of the insurance policy which had insured the Boiler and the fusible plugs against damage with malicious intent, which occurred in this case.

7. TO sum up, we uphold the order of the State Commission. Appellant-Insurance is directed to settle the insurance claim of the Respondent-Complainant in respect of loss/damage to the Boiler under the insurance policy and pay Rs.5,00,000/- to the Respondent-Complainant with 9% interest from the date of the complaint i.e. 19.10.1998 till realization.

8. THE present first appeal stands dismissed. No costs.