(2013) 04 NCDRC CK 0091

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE CO. LTD APPELLANT

Vs

M/S. Nagina Industrial Corporation RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Citation : 2013 0 NCDRC 265 : 2013 3 CPJ 646

Hon'ble Judges : VINAY KUMAR J.

Advocate : K.K.BHAT , Natasha Nautiyal

Judgement

1. THIS appeal has been filed with delay of 98 days. In the application for condonation of this delay, it is stated that certified copy of the impugned order of 4.10.2012 was obtained on 3.11.2012. The appeal itself was filed on 11.3.2013. In explanation of the manner in which the intervening period of nearly five months was utilised, the application merely states:- "3. Aggrieved by the judgment and order of the State Commission, the applicant immediately contacted the dealing advocate and discussed the further steps to be taken. The advocate advised that a Appeal ought to be filed since a State Commission failed to properly appreciate the evidence in the case. 4. The operating office then forwarded the files with all the evidences and Survey Report written arguments filed before the State Commission etc. to the Head Office together with the opinion of the advocate. 5. The Head Office consulted their counsel and the counsel after studying all the papers opined that there was miscarriage of justice and agreed with the opinion of the dealing advocate to file an appeal before this Hon ''ble Commission. " The above carries no explanation of the time spent in process of consultation at each stage. Nor does it give any idea of time taken in appointing an advocate and in consultation with him before filing the appeal on 11.3.2013.

2. IN terms of the provision in Section 19 of the Consumer Protection Act, 1986 appeal against an order passed by the State Commission is to be preferred before the National Commission within a period of 30 days from the date of the order. The proviso to this Section allows the National Commission to entertain an

appeal after the expiry of this period of 30 days, if the Commission is satisfied that there was sufficient cause for not filing it within that period. The question of approach to such delay came up for consideration in BalwantSingh Vs. Jagdish Singh & Ors., (Civil Appeal no.1166 of 2006), decidedby the Apex Court on 08.07.2010 it was held: "The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005] "

3. SIMILARLY , in AnshulAggarwal V. New Okhla Industrial Development Authority, IV (2011) CPJ (SC), H ''ble Supreme Court has held that "It is also apposite to observe that while deciding an application filed in such cases for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if this Court was to entertain highly belated petitions filed against the orders of the Consumer Foras. "

4. IN the present case, no details are forth coming. In the absence of any details in the condonation application, it is not possible to form any opinion whether there was any sufficient cause for the resultant delay of 98 days. Therefore, the appeal is liable to be dismissed on account of delay alone. Coming to the merits, a perusal of the record shows that the consumer complaint, decided in the impugned order, arose from repudiation of the claim of the Complainant under the Standard Fire and Special Perils Policy taken from the appellant/Oriental Insurance Company. The letter of repudiation issued on 11.11.2008 gives the following as the grounds for repudiation:- "Now you may appreciate that the cover of ''Loss, destruction or damage directly caused by Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, Flood or Inundation '' of the Standard Fire and Special Perils Policy is intended to cover unusual perils that stem from atmospheric violence and not owing to the usual entry of roadside rain water into the low lying cellars such as yours. "

5. IN brief, the facts of the case are that there was heavy rain fall in an around Hyderabad on 27.6.2008. Rain water entered the Complainant ''s godown and heavily damaged the insured goods stored therein, causing the alleged loss/ damage of Rs.20,13,310/-. The claim however, was not admitted by the insurer for the reason contained in their letter cited above. The State Commission has observed that the fact of heavy rain fall on 27.6.2008 has not been seriously disputed by the insurer/OP. It is also admitted that a claim for Rs.20,13,310/- was made under the policy. The appellant/OP also admitted that on the information of the Complainant about the incident, Mr. C.P.S. Rama Sarma, Surveyor was deputed, who conducted the spot survey on 27th and 28th of June,

2008.

6. THE State Commission has referred to the report of the Surveyor, where it says that in his opinion it was a case of entry of rain water during the monsoon season. The surveyor has seen the extent of submergence of goods in the godown and was also present when dewatering was done. As observed by the State Commission, even the second surveyor appointed by the insurance company has reported on the extent of drenching of the tools in rain water. However, the Commission has not accepted his assessment and observed that - "We are of view that the second surveyor of the opposite party has not conducted the survey in technical manner nor assessed the los on standard basis and he failed to take into consideration the opinion of BOSCH Co. Ltd., an authorized service centre, who have examined the damaged material as per the advise of the first surveyor of the opposite party. In view of the facts and circumstances of the case, we are not inclined to accept Ex.b3 report of the second surveyor of the opposite party. "

Therefore, the State Commission allowed the complaint holding that entry of rain water into the godown, due to heavy rain, can be treated as ''inundation '', which is a risk covered under the policy. The Commission has allowed the claim of Rs.2013310/-with deducting of Rs.149000/- towards recovery from the sale of damage goods.

7. WE have carefully perused the records submitted by the appellant and heard the counsel for the appellant. Learned counsel limited his arguments to the ground of repudiation relying upon the terms and conditions of the policy and reiterated the position of the appellant/OP that liability of the insurer does not extend to covering the loss arising from entry of rain water into the insured godwon. Learned counsel carried his argument further by asserting that ''inundation '' as per the policy would cover the over flow of rivers and nalas due to heavy rain fall but, rain water flooding the godwon due to over flow of the drainage system of the town would not amount to inundation.

8. HIS argument is very similar to the opinion of the second Surveyor appointed by the insurance company. His report says - "Thus inundation as the covered peril under the policy is an influx of water beyond its normal confines, esp. over land. Understandably, incessant rains only cause flooding of rivers and nalas and the overflowing water makes way to the adjoining ground occasioning inundation. However, if in the wake of incessant rains, water from the sewage system overflows in a part of a town, then that inundation can be taken as the covered peril under the policy. On the other hand, the overflow of rainwater from the road into the low lying roadside cellar godown in the instant case cannot be construed as inundation in the spirit of coverage under the Standard Fire Policy. "

In my view, it is a very strange logic. It amounts to ignoring a basic principle of urban planning that roads and drainage are two parts of an integrated system. The opinion of the second surveyor is clearly an attempt at redefinition of ''inundation '' to justify rejection of claim under the insurance policy. It has rightly been rejected by the State Commission.

9. IN my considered opinion, the decision of the AP State Consumer Disputes Redressal Commission in CC No.13/2011 is based on correct appreciation of evidence on record. There is no merit in the appeal of the Oriental Insurance Company Ltd. It is therefore, dismissed on the grounds both of limitation as well as merit. No orders as to costs.

