(2002) 12 NCDRC CK 0056

In the National Consumer Disputes Redressal Commission

Oriental Insurance Co.Ltd. APPELLANT

Vs

SANYASI PATRA RESPONDENT

Date of Decision : 31-12-2002

Acts Referred:

Citation : 2003 4 CPJ 744

Hon'ble Judges : D.M.Patnaik , Arati Mohanty , Pramodnath Das J.

Final Decision : Appeals dismissed

Judgement

1. THE above three appeals arise from the common judgment of the District Forum, Khurda, Bhubaneswar directing the appellant-Insurance Company to satisfy the claim under the insurance policy of the respective policy holders. THE three complainants claim for the same relief having been allowed by the Forum, the Insurance Company is in appeal.

2. COMPLAINANTS'' case is, all the three were carrying on business of selling OMFED Milk products in the Capital City area, occupying cabins by paying ground rent and licence fees to the Municipal Corporation, Bhubaneswar. The cabins along with the articles were insured with the present appellant-Insurance Company. It is their case on 24.12.1997 the Municipal Corporation demolished the cabins without prior notice. For the loss sustained the complainants moved the Insurance Company. But the Insurance Company repudiated the claim on the ground that they were not liable to pay any amount under the policy since the occupation by the complainants of the land was found to be unauthorised. Their main ground of contest is that under the terms of the exclusion clause i.e., 5(d) of the policy they are not liable to satisfy the claim. The District Forum did not accept this case and awarded the amount in favour of the respective claimants such as Rs. 1,00,000/- to the complainant in C.D. Case No. 199/1999, a sum of Rs. 90,000/- in C.D. Case Nos. 200/1999 and 201/1999 respectively along with interest at the rate of 12 per cent per annum from the date of claim i.e., 26.12.1997 till payment. Heard the learned Counsels for both sides. We have perused the impugned order and also the material on record. We have found no

infirmity in the order. The sole ground of the Insurance Company repudiating the claim is because of the interpretation of the exclusion clause in the insurance policy. The Forum has dealt with this aspect elaborately under Issue No. 1, the exclusion clauses have been quoted. We have carefully gone through the clauses under the policy and the same also having been mentioned by the Insurance Company in their letter of repudiation dated 13.5.1999 which quoted the clauses as follows : "(1) Loss or damage occasioned by permanent or temporary dispossession resulting from confiscation commanding or requisition by lawfully constituted authority. (2) Loss or damage occasioned by permanent or temporary dispossession of any building or plant or unit or machinery resulting from the unlawful occupation by any person or such building or plant or unit or machinery or prevention of access to the same."

We are of the view that this clause is not applicable and the repudiation is not justified because as rightly held by District Forum, the complainants were occupying the cabins on payment of ground rent. The learned Counsel for the Insurance Company or Municipal Corporation are not in a position to satisfy that the occupants were unauthorised persons. Having not been able to discharge the onus from their side, the complainants have proved by money receipts the ground rent paid by them. This position is not disputed. Therefore, their possession of the cabins could not be said to be unauthorised. That apart whether such demolition by the Municipal Corporation had a legal sanction or not is a matter for decision by some other authority but not by the Consumer Forum, therefore, we do not comment anything on that. But since the materials inside the cabins were covered under the policy which matter is not disputed we are in agreement of the view expressed by the District Forum that the Company is liable to make good the loss, under the policies. We dismiss these appeals having no merit and direct that the payment should be made within a period of two months from the date of communication of the order. No cost. Appeals dismissed.

