(2009) 02 NCDRC CK 0061

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE Company Limited APPELLANT

Vs

SHISHIR KHANDELWAL RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Citation : 2009 0 NCDRC 16

Hon'ble Judges : Ashok Bhan , B.K.Taimni J.

Final Decision : Revision Petition dismissed

Judgement

1. THE Oriental Insurance Company Limited (hereinafter referred to as the petitioner for short), which was the Opposite Party before the District Forum, has filed the present Revision Petition.

2. COMPLAINANT/respondent had taken a Fire Policy C in the name of M/s Khandelwal Mineral Industries, hypothecated to the Bank of India, covering stock of Acid slurry/LABSA, tanks platform and building/shed, etc. During the validity of the Policy, the respondent reported to the petitioner that a PVC container filled with LABSA kept in the godown leaked totally on 17.04.2000 and spread over the godown and ground due to the leaking of the container. On being reported, the petitioner appointed a Chartered Engineer Surveyor for inspection and assessment of loss who found that the container had broken from the height of about 4 feet from the bottom surface because of which LABSA had leaked out. Surveyor came to the conclusion that the cause of loss was either the inferior quality of tank design or it could not bear the surface tension/centrifugal force of LABSA chemical or it might have been kept in the tilting position and, therefore, force could have sustained by certain portion of circumference that the tanker volume could not sustain the entire load. The Surveyor found that the tank had broken due to excessive load.

On the basis of the Report submitted by the Surveyor, the petitioner repudiated the claim on the ground that the tank had broken-up due to excessive load and the claim was closed as No Claim.

3. AGGRIEVED against the repudiation of the claim, the respondent filed the complaint before the District Consumer Disputes Redressal Forum, Jabalpur, Madhya Pradesh (hereinafter referred to as the District Forum for short), which came to the conclusion that there was no evidence to substantiate the ground of repudiation beyond the mere opinion of the Surveyor based on conjunctures. The Claim Petition was allowed and, accordingly, the petitioner was directed to pay to the respondent a sum of Rs.4,75,500/- with interest @ 6% p.a. from the date of filing of the complaint, i.e., 20.09.2002 till payment. Cost of Rs.1,000/- was also imposed. Being aggrieved, the petitioner filed an Appeal before the M.P. State Consumer Disputes Redressal Commission, Bhopal, Madhya Pradesh (hereinafter referred to as the State Commission for short). The State Commission by its Order dated 07.02.2005, affirmed the Order of the District Forum and dismissed the Appeal. Being aggrieved, the present Revision Petitioner has been filed.

4. IT is not disputed before us that the loss was caused to the goods of the respondent due to leakage. IT is also not disputed before us that the petitioner repudiated the claim on the ground that the tanker leaked due to excessive load. Except the Report of the Surveyor, no other evidence was led by the petitioner to prove that the tank broke due to excessive load. The Surveyor in his Report, while making the details of the loss, found as under: - Details of loss: It is revealed by the undersigned that one of PVC containers having the capacity of 10,000 Kg. was lying in broken pieces condition. Container was broken from the height of about four feet from its bottom surface. Content of chemical LABSA totally leaked away and spreadover the godown and as well as flown away in the ground. As discussed with the insured regarding cause of loss it is stated that they could not ascertain the cause of leakage. At the time of loss the godown shutters were closed and were not locked by the insured. Later on they have also informed to Insurers that the cause of breakage is not known. Undersigned ultimately concluded the cause of loss might have been happened due to the following reasons: - (1) Inferior quality of container/tank design. (2) Container could not be procured or not having the capacity to bear the surface tension/ centrepetel/centrifugel force of the subject chemical. (3) It might have been kept in tilting manner (not vertical). Therefore, force could have sustained by certain portion of circumference that the tanker wall could not bear the load.

It would be seen from the Report of the Surveyor that he has not recorded a categorical finding that the loss was due to the excessive load rather he has used the words might have happened which is in the realm of conjectures, probability, guesswork or uncertainty. Further, the inference drawn by him that the leakage may have been caused as the tank wall could not bear the load is an opinion whereas the fact of leakage of the tank due to excessive load would be a finding of facts which had to be based on findings. The question that the tank may have been of inferior quality or it may have been filled beyond the permissible quantity, the grounds on which the claim was repudiated, is a mere opinion of the Surveyor based on his own understanding and conjectures. The respondent had placed on record the document of purchase, which clearly showed that the tank was purchased by him from Premier Containers Private Limited and the same had the capacity of 10,000 liters and was meant for storing chemicals like LABSA. The petitioner did not get the broken tank tested chemically so as to find out its quality. The evidence of the Surveyor cannot be accepted as a conclusive evidence to show that the tank in question was either made of inferior material or was not sufficient to sustain the weight of the lost material.

5. THE finding recorded by the State Commission is the finding of facts. For the reasons stated above, we find no merit in this Revision Petition and dismiss the same with costs which are assessed at Rs.5,000.00.