(1999) 08 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE Company Limited APPELLANT

Vs

SUMANGALA STEEL LIMITED RESPONDENT

Date of Decision : 25-08-1999

Acts Referred:

Citation : 1999 0 CTJ 731 : 1999 2 CPC 587 : 1999 3 CPJ 4 : 1999 3 CPR 34 : 2000 1 CLT 62

Hon'ble Judges : S.C.Sen , R.Thamarajakshi , S.P.Bagla , C.L.Chaudhry , J.K.Mehra J.

Final Decision : Appeal disposed of

Judgement

1. THE Oriental Insurance Company Limited has preferred this appeal against the order of the State Consumer Disputes Redressal Commission, Madras, directing it to pay to the complainant Rs. 6,61,324/- with interest thereon @ 18% p.a. from 5.3.1993 till the date of payment. THE Insurance Company has also been directed to pay costs assessed as Rs. 3,000/-. THE dispute arises out of a Machinery Insurance Policy issued by the appellant on 30.6.1989 in favour of M/s. Sumangala Steel Limited, respondent herein. THE period of insurance is stated to be from 11.9.1988 to 10.9.1989. THE annual premium was shown as Rs. 23,871/-. Total sum insured was Rs. 17,00,402/-, out of which Rs. 10,29,600/- was on account of Furnace Transformer, 4000/4500 KVA/22KV-200V - Cromptom Greaves India - Make 1987.

2. M/s. Sumangala Steel Limited, the complainant is a manufacturer of steel in Ingots having its factory at Industrial Estate Pondicherry. In 1987, it purchased the Furnace Transformer alongwith the other machinery which was insured for which the insurance cover was taken in 1989. There is a dispute about the quantum of premium payment. According to the Insurance Company, the full amount of the premium was not paid till 30.6.1989. Initially a sum of Rs. 22,000/- was paid by the complainant. But on further evaluation, the Insurance Company demanded another sum of Rs. 1,871/-.According to the Insurance Company, this sum was received by it on 30.6.1989,7 days after the breakdown

of the machine in the factory of the complainant. The complainant''s case is that a sum of Rs. 1,871/- was sent by it by cheque dated 20.6.1989 alongwith the covering letter which was also dated 20.6.1989. The State Commission has upheld the contention of the complainant. It has been vehemently argued on behalf of the Insurance Company that the complainant had not submitted the full bills relating to the purchase of the Furnace Transformer and other machinery which was insured. Ultimately, on scrutiny of the additional list of bills filed by the complainant, the Insurance Company called upon the complainant to pay a further premium of Rs. 1,871/-. There was no response from the complainant till after the date of the breakdown. In the list of documents annexed to the Order of the State Commission, it can be seen that as many as 4 reminders dated 16.11.1988, 15.2.1989, 31.3.1989 and 15.5.1989 were sent by Insurance Company to the complainant. The alleged letter and cheque dated 20.6.1989 was sent by the complainant after ignoring all these reminders and more than four weeks after a statutory notice under Section 64VB of the Insurance Act, 1938. The breakdown of the Transformer took place on 23.6.1989. The finding of the State Commission that the cheque and the letter dated 20.6.1989 was actually sent on 20.6.1989,3 days before the breakdown is a finding of fact. But unfortunately there was no explanation from the complainant as to why they delayed the payment till the 20.6.1989 after ignoring all the reminders which were sent to it. The proximity of the alleged date of payment and the date of breakdown is highly suspicious but we are not inclined to disturb the finding of fact made by the State Commission on the ground of suspicion alone.

Coming to the main issue, the State Commission has come to a right decision, the transformer was purchased in 1987. Its value was declared as Rs. 10,29,600/-. It has not been proved that on the date of the insurance, it was undervalued. The manufacturer M/s. Crompton Greaves was of the opinion that extensive repairs had to be carried out to bring the transformer back into working condition.

3. ACCORDING to the Manufacturer Company, the transformer could be replaced by a similar new transformer for which the prevailing market price was Rs. 32,03,410/- in July, 1991. The Insurance Company has concluded from this that proper price of the transformer was not stated when the insurance cover for the transformer was taken on 30.6.1989. However, no enquiry was made from M/s. Crompton Greaves as to what was the price of 1987 make transformer on 30.6.1989 when the policy of insurance was taken. Between 1989 and 1991, the price of the machinery may have gone up several times. For repair of the machinery M/s. Crompton Greaves had to take the transformer to its factory by road. The total cost of repair was worked out by Mr. Shankar Dhawan, Chartered Engineer, as under : The Insurance Company on the basis of the Chartered Engineer''s assessment paid a compensation of Rs. 3,98,944.70 which was worked out as under : We have noted earlier that the plea of belated payment of additional premium made by the Insurance Company has not been upheld by the State Commission. The only question that remains is whether on the plea of non-

declaration of the correct value of the insured article, compensation can be reduced in the manner in which it has been done. The basic facts in this regard are that the transformer could not be repaired at the factory site of the complainant, it had to be taken to Bombay by road on 22.8.1989. The complainant had to pay the manufacturer finally a total sum of Rs. 18,51,988.00 for all the repairs that was done. The Surveyor appointed by the Insurance Company assessed the loss of Rs. 12,72,910.45 excluding the charges for making modifications and improvements in the transformer. The complainant was ready and willing to accept the assessment made by the Surveyor and take Rs. 12,72,910.45 as full compensation. But the Insurance Company ultimately paid a sum of Rs. 3,67,676/- making deductions on account of average claim. This is the crux of the dispute before us. In the policy of the insurance our attention has been drawn to the following clause : "Sum insured : It is a requirement of this insurance that the sum insured shall be equal to the cost of replacement of the insured property by new property of the same kind and same capacity which shall mean its replacement cost including freight dues and customs duties; if any and erection costs."

The Average Clause in the policy is as under : "If the sum insured is less than the amount required to be insured as per provision hereinabove the Company will pay only in such proportion as the sum insured bears to the amount required to be insured."

The State Commission has taken a view following a decision of the Allahabad High Court that the question of application of the average clause will only arise if the compensation claim is less than the sum insured. In this case admittedly the complainant paid Rs. 18,51,988/- for repairs which is a much larger sum than what he was claiming as compensation. He is not entitled to get anything more than Rs. 10,29,600/- which was the sum insured. Under these circumstances, the question of applying the Average Clause does not arise in this case. Apart from that the basic infirmity in the case of the Insurance Company was that nobody found out the actual price of the transformer in 1989. The price of a new transformer in 1991 according to M/s. Crompton Greaves would be at Rs. 32,03,410/- but what was the price of the transformer of 1987 make in 1989 ? This simple exercise was not done by the Insurance Company. The Insurance Company has paid the complainant Rs. 3,67,676/-. The State Commission has directed to the Insurance Company to pay a further sum of Rs. 6,61,324/- on the basis of the Surveyor''s estimate of loss. Taking an overall view of the facts of this case, we see no reason to interfere in this matter.

4. HOWEVER, having regard to the peculiar circumstances, we are of the view that the award of interest and cost should not have been made in this case. Under these circumstances, we direct that Insurance Company will pay to the complainant Rs. 6,61,324/- as directed by the State Commission. The direction to pay interest and cost will stand deleted. The amount of Rs. 6,61,324/- must be paid within six weeks if not already paid. The appeal is finally disposed of as

above. Appeal disposed of.

