(2004) 08 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

Oriental Insurance Company Ltd. APPELLANT

Vs

DINDAYAL SHARMA RESPONDENT

Date of Decision : 06-08-2004

Acts Referred:

Citation : 2005 1 CPJ 706

Hon'ble Judges : D.P.S.Choudhary , Asma Ahmad J.

Final Decision : Appeal dismissed

Judgement

1. O.P.-(Oriental Insurance Company Ltd.) is the appellant who has preferred the appeal against the order dated 4.5.1998 passed in Complaint Case No. 30/1997 by District Forum, Banka whereby and whereunder the appellant have been directed to pay the insured amount of Rs. 20,000/- besides interest @ 12% and a litigation cost of Rs. 1,000/- were allowed in favour of the complainant.

2. THE brief fact of the case is that complainant with the help of O.P. No. 6 got his coal depot insured for the year 1995-96 with Oriental Insurance Company Ltd. vide Policy No. 33240/F-70/1996. THE State Bank of India, Banka Branch paid the premium of the policy because the coal depot was established under the scheme of self-employmnet and after obtaining loan from the Bank. It is alleged that on 27.9.1995 due to flood the coal depot was flooded and all the coals stored in the depot were damaged. THE complainant for the compensation of loss placed claim before the Insurance Company but it was not accepted but repudiated on the ground that the insurance was not with respect to coal depot rather against the grill gate. THEreafter the complainant filed the case before the District Forum. THE O.P. No. 6- State Bank of India, Banka Branch appeared and supported the contention of the complainant and its contention was that complainant''s coal depot was insured and not the grill gate. O.P. Nos. 1 to 5 appeared and filed written statement and their contention was that earlier insurance was with respect to coal depot of the complainant but subsequently on the request of the complainant there was change in the insurance policy and in place of coal depot grill gate was insured with the Insurance Company. The policy

was under Clause-C of the Insurance Policy, which excludes the damage, caused due to flood and on this ground, the claim of the complainant has been repudiated.

The District Forum after considering the material on record and the submissions of the parties held that O.P. Nos. 1 to 5 admitted that earlier coal depot was insured and the Surveyor appointed by the Insurance Company in his report dated 28.9.1996 has held that complainant''s coal depot was damaged due to flood and the coal depot was insured with the Insurance Company. The District Forum did not accept the question of insurance of grill gate after payment of huge amount as premium. The District Forum further held that there is no substance in the contention of the Insurance Company that insurance policy did not cover the claim of loss due to flood. On the other hand, insurance policy was in respect to all losses caused to the coal depot and for that the premium was paid by the complainant. The District Forum further held reliance on the papers produced on behalf of the complainant to show that under Clause-C of the policy the Insurance Company has made payment earlier to other persons including one Madan Lal Sah whose coal depot was also damaged due to flood. His policy was also under Clause-C. The Insurance Company has accepted that Madan Lal Sah''s policy was under Clause-C and the Company has made payment of his claim, which was damaged, due to flood. Considering these facts the District Forum held that Insurance Company discriminated between two-policy holders under the same clause and the cause of damage to the coal depot of both the persons are same and similar. The District Forum held that this conduct of the Insurance Company is arbitrary and discriminatory and it amounts to deficiency in its service.

3. WE have considered the submissions made on behalf of both the parties looked into the policy in question on record. It is admitted fact that in the earlier policy it is mentioned that coal depot of the complainant has been insured for Rs. 20,000/- . WE are unable to accept this contention that subsequently the policy was in respect of grill gate only. The grill gate was a part of the coal depot, therefore, there is no substance in this contention of the Insurance Company that coal depot of the complainant was not insured on the date of its loss by flood. WE are also of the view that Insurance Company is making discrimination in between the two-policy holders. The Insurance Company has paid the claim amount to one Madan Lal Sah, when his coal depot was damaged due to flood and his policy was under Clause-C. The Insurance Company for such discrimination has given no satisfactory explanation. In the fact and circumstances, we are of the view that Insurance Company is liable to pay Rs. 20,000/- as insurance claim to the complainant-respondent. Since there has been abnormal delay in making of the payment on the ground which has not been found to be reasonable, therefore, the Insurance Company is entitled to make payment of interest @ 12% as awarded by the District Forum. The cost of litigation awarded to Rs. 1,000/- is also adequate and it does not require our interference.

4. IN the fact and circumstances, we do not find any merit in this appeal, which is dismissed, and the impugned order is hereby confirmed. However, there shall be no order as to cost. Appeal dismissed.

