(1996) 10 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

Oriental Insurance Company Ltd. APPELLANT

Vs

Romesh Kumar RESPONDENT

Date of Decision : 28-10-1996

Acts Referred:

Citation : 1997 1 CPJ 49

Hon'ble Judges : P.N.Nag , I.D.Bali , Krishana Tandon J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is directed against the order of the learned District Forum, Kullu, dated 27.11.95, whereby the appellant (hereinafter to be referred to as the Insurance Company) has been directed to pay to the complainants/respondents (hereinafter to be referred to as the respondents) Rs. 9,214.50 as Insurance Claim alongwith interest @ 12% per annum from the date of repudiation of the claim till the actual payment and also cost of Rs. 250/-.

2. THE case set out by the respondents is that they owned a partly constructed house situated at Kullu which was insured with the Insurance Company for the period from 3.6.93 to 2.6.94 and they had been paying the insurance premium on that account. During the period when the insurance policy was in force, there were flash floods in Kullu which resulted in sinking of Municipal path running just behind the aforesaid house of the respondents and the debris thereof alongwith flash flood water hit the back portion of the house and completely caused loss/ damage to the aforesaid portion of the house, which part/ portion had to be demolished later on. This has been elaborated in the rejoinder filed by the respondents. THE risk covered under the insurance policy is of ''flood'' and the flood has ultimately resulted in damage to the house. It has not been denied that the insurance policy was in force when the house was damaged and the flood has also not been denied but the case set up by the Insurance Company is that the house was damaged due to landslide and not due to flood and the risk of ''landslide'' is not covered under the insurance policy and, therefore, the Insurance Company is within its right to repudiate the claim. The evidence

produced by the respondents in their affidavit is that the damage has been caused due to landslide and the landslide is the result of heavy rains resulting in flash floods on 4.4.94 which continued upto 6.4.94. This rain resulted in the Municipal road behind the house of the respondents being washed away and the back side of the house resultantly was very badly damaged. It is apparent from the evidence produced by the respondents that there were heavy rains resulting in flash floods and flash floods resulted in sinking of the Municipal road running behind the house of the respondents which ultimately resulted and caused damage to the house of the respondents.

Mr. Ashwani Kumar Sharma, learned Counsel for the Insurance Company submits that the house of the respondents might have been damaged due to washing away of the Municipal road running behind the house of the respondents but that may be a case of landslide and not of a flood and only risk of ''flood'' is covered under the insurance policy and not of ''landslide''. It has not been disputed that the risk of flood is covered by the insurance policy. The contention of the Insurance Company is based on the averments made in the affidavit of Mr. R.L. Sharma, Divisional Manager of the Insurance Company dated 18.10.95. From the certificate issued by the Municipal Committee, Kullu vide Annexure R-2, according to the Insurance Company it is revealed that the alleged damage has occurred due to landslide. The Annexure R- 2 is reproduced below: "Certified that the house under construction of Shri Ramesh Kumar and Sudarshan Anand at Gandhi, Nagar Kullu got damaged due to slip down of Municipal path, the pillars and walls of the back side got damaged extensively due to impact".

3. IT is apparent from Annexure R-2 that there was slip down of Municipal path and on account of that impact, the pillars and the walls of the back side of the house of the respondents got damaged extensively. IT nowhere speaks that the house has been damaged due to landslide. The contention of the Insurance Company is not borne out of Annexure R-2. Even if it is presumed that slipping down of the Municipal path has caused landslide (which is not mentioned in the document relied upon by the Insurance Company) on account of which the house has been damaged, the fact still remains that the damage has been occasioned and caused by or is the consequence of flood which is covered under the risk in the insurance policy and which is not disputed by the learned Counsel. In such a situation, the contention of the learned Counsel has to be rejected. Mr. Ashwani Sharma, learned Counsel for the Insurance Company has relied upon certain rules of Tariff Advisory Committee that for the purpose of risk covered under the policy, specific endorsement of landslide should have been made in the insurance policy. Such a point was never taken in the written statement and the respondent had no opportunity to meet such a case. Further this point was never raised before the learned District Forum and such a point cannot be permitted to be raised at this stage. Furthermore, it has not been shown whether the rules of Tarrif Advisory Committee have been made a part of the insurance policy and, therefore, no notice can be taken of this submission.

4. IN the result, there is no force in this appeal and the appeal is accordingly dismissed. There is no order as to costs. Appeal dismissed.