(2002) 04 NCDRC CK 0053

In the National Consumer Disputes Redressal Commission

PANDI DEVI OIL INDUSTRIES — APPELLANT

Vs

Branch Manager, National Insurance Co. Ltd. — RESPONDENT

Date of Decision : 09-04-2002

Acts Referred:

Citation : 2002 2 CPC 444 : 2002 2 CPR 117 : 2002 3 CLT 303 : 2002 3 CPJ 71

Hon'ble Judges : D.P.Wadhwa , J.K.Mehra , B.K.Taimni J.

Final Decision : Revision Petition dismissed

Judgement

1. THIS revision petition has been filed by the petitioner/complainant against the order of the State Commission allowing the appeal filed by the respondent against the order of the District Forum allowing the complaint.

2. UNDISPUTED facts of the case are that the petitioner held a valid fire "C" policy which also covered losses by flood/inundation. This policy covered three items. Building (Rs. 5 lakhs), Machinery (Rs. 15 lakhs) and stocks (Rs. 60 lakhs). Due to heavy rains on 20.10.1997 the compound wall collapsed and on preferring a claim under the policy the respondent Insurance Company repudiated the claim on 9.12.1997 treating the claim as "No Claim" as according to the respondnet, ''building'' covered under the policy does not include the Boundary wall. Alleging deficiency the complainant approached the District Forum who after hearing both the parties allowed the complaint and directed the respondent to pay Rs. 1,06,605/- against claim for damage to the wall alongwith interest @ 12% and cost of Rs. 1,000/-. On an appeal filed by the respondent Company, the State Commission set aside the order of the District Forum and stated that there has been no deficiency of service on the part of the respondent, hence this petition by the complainant. It was argued by the learned Counsel for the petitioner that the State Commission erred in its appreciation of the case both on facts and law. He argued that the boundary wall was in existence at the time of taking the insurance cover. Policy was issued by the respondent after a visit to factory. Photographs of the factory produced before the District Forum and also before us, make it amply clear that there is no other protection to the

factory/machinery except the wall. This the only brick/masonry work protecting the machinery. If it was not there factory is not safe and could not have been insured. Premium was paid as demande. During discussions at the time of taking the policy, it was clearly understood that Boundary wall is included under the policy cover. District Forum has property appreciated and analysed all the points, in greater detail on the main issue involved, whereas the focus of the State Commission has been on the point whether there has been any deficiency in service or not ? Deficiency of service is clear in the face of it. On the other hand, it was argued by the learned Counsel for the respondent Company that boundary wall is not part of the building, was never deemed to be part of the building, hence the claim was rightly rejected by the respondent Company. Boundary wall was not shown as an item/part of the building to be covered. Our attention was also drawn towards Tariff''s as per TAC''s recommendation, where boundary wall has been shown as a separate entity and separate charge is leviable. No such separate charge has been levied hence it is clear that boundary wall was not covered. The Insurance Company proved its bona fide by repudiating the claim in time. Non acceptance of the claim cannot be deemed to be deficiency in service. Petition is not maintainable, hence need to be dismissed.

The limited point for consideration is whether boundary wall was covered/fell within the head "Building" mentioned in the policy ? Starting point is the proposal form. The respondent Company did not produce it. It is not disputed that the policy cover was provided after a visit to the factory by the respondents. Photographs produced before the District Forum and this Commission made it abundantly clear that there are no side walls to the factory/machinery. It is under a shed-open from all the sides. Protection to the factory/machinery is provided by the boundary wall. It is unimaginable that the respondent would have issued the policy without proper protection to the machinery in normal circumstances by a building-in this case provided by boundary wall. We have seen the tariff schedule and also see that there is a separate reference to "boundary wall" and tariff for this purpose. What we are unable to see is that in the Fire Acceptance Advice-produced before the District Forum-does not contain a breakup of the premium. How and who is then to determine whether the premium charged included tariff for the boundary wall or not ? No defence is on record on behalf of respondent company to clear this haze. Inference in such circumstances, has to go in favour of the Consumer.

3. WHAT we see amazing is that the incident occurred on 20.11.1997, claim is preferred and it is repudiated on 9.12.1997. So far so good but what we also see is that the complaint is filed on 10.9.1998 and Survey Report is dated 30.10.1998. WHAT was he doing after repudiation on 9.12.1997. This does not help improve the bona fides of the respondnet. We see there is a clear case of deficiency on the part of the respondent Company to repudiate the claim without having any document or any thing else to exclude the boundary wall from the array of items covered by the policy. They have failed to produce any documentary evidence to support their claim of exclusion of wall from the

heading "building". In the instant case, factory/machinery could not be imagined to have any security of a building without the wall. Machinery has to be in a building and not on the road. This would have been the situation, if there was no boundary wall in this case. Respondent has also failed to tell us as to what comprised the ''Building'' covered, because there is nothing to this effect in the proposal form, or at the time of its processing by the respondent''s office, not even while fixing the premium. Keeping in view the facts and circumstances of this case, we find that the respondent has been deficient in rendering the service and unable to sustain the order of the State Commission, hence is set aside. The order of the District Forum is restored. Petition is dismissed with cost of Rs. 1,000/- to be paid by the respondent to the petitioner. Revision Petition dismissed.