(2006) 05 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

PRAKASH INDUSTRIES LTD. APPELLANT

Vs

NATIONAL INSURANCE CO. LTD. RESPONDENT

Date of Decision : 22-05-2006

Acts Referred:

Citation : 2006 0 NCDRC 14 : 2007 1 CPJ 343

Hon'ble Judges : M.B.SHAH , S.N.KAPOOR J.

Judgement

1. HEARD the learned counsel for the parties exhaustively. Undisputedly on 29.2.1992, the complainant company took a Marine- cum-Erection Policy from the opp.party insurance company for a sum of Rs.2.65 crores. The complainant had paid a premium of Rs.1,07,318/- by cheque dated 5.3.1992. Further, the complainant gave a bank guarantee in favour of the insurance company for a sum of Rs.1 lakh in order to cover the premium under the aforesaid policy as provided in Section 64VB(1) of the Insurance Act, 1938.

2. FURTHER , the complainant has produced on record the debit notes starting from 1.6.1992 indicating premium payable by the complainant. First debit note is dated 16.6.1992 wherein it is specifically stated - "the debit should be settled before the last date of the next calendar month". It is also specifically provided that extension of the policy was up to 31.8.1992. The next relevant debit note is dated 26.8.1992 wherein a premium of Rs.3,709/- was demanded from the complainant. In that debit note also, it is specifically mentioned that the debit should be settled before the last date of the next calendar month. That means, the complainant was required to pay the premium before 30.9.1992. The validity of the policy was also extended up to 30.9.1992. To that effect there is a specific endorsement: "Extension of Marine Policy of Solvent Recovery Plant by one month, i.e., up to 30.9.92".

Admittedly, the said amount was paid by the complainant on 28.9.1992. Further, there is no dispute that the fire broke out in the premises on 20.9.1992. For the said fire, the claim was filed on 21.9.1992. Thereafter on 22nd and 23rd September 1992, the surveyor - Mr.D.K. Bhan, visited the plant of the complainant. He submitted his Preliminary Survey Report on 18.12.1992. In the said survey report, he estimated the loss at Rs.40,00,000/-.

3. THEREAFTER , Final Survey Report was submitted by him on 18.8.1994 wherein he arrived at the conclusion that net loss assessed was Rs.22,39,817/-. Thereafter, Sr.Divisional Manager wrote a letter to Executive Director of the complainant on 16.10.1995 that the claim was forwarded to the head-office. Finally on 16.3.1998, the insurance company repudiated the claim solely on the ground that the premium in respect of the second extension period was received only after the loss and, therefore, the insurance company was not liable to pay the loss suffered by the complainant. A reference was made to Section 64VB.

4. AT the time of hearing of this complaint, learned Senior Counsel Mr.G.L. Rawal, submitted that the officers of the insurance company or the head-office of the insurance company have not bothered to supply a copy of the survey report to the complainant. There was an unusual delay in deciding the claim for the accident which took place in September 1992. It is his submission that even the reference made to Section 64VB is without understanding its true meaning because in the present case, admittedly, the complainant has furnished Bank Guarantee for a sum of Rs.1 lakh to the insurance company which could be adjusted for the premium payable by the complainant and there is no dispute with regard to the Bank Guarantee furnished by the complainant and its validity. Further, as per the debit note, the insured was required to pay the premium amount before the last date of the next calendar month and the amount which was required to be paid, was paid on 28th September, i.e., before the end of the month. Hence, the repudiation letter is absolutely unjustified and arbitrary. Learned counsel for the insurance company, Mr.Basu, vehemently submitted that the repudiation letter is justified. He referred to Section 64VB(2) and submitted that the amount was required to be paid either in cash or by cheque and thereafter risk is to be assumed. In our view, this submission is without any substance in view of the fact that the premium amount was guaranteed as contemplated in Sub-section (1) of Section 64VB of the Insurance Act and Rule 58 of the Insurance Rules.

5. THEREFORE , only question which requires consideration is Section 64VB, which reads as under: "Section 64VB: No risk to be assumed unless premium is received in advance - (1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner. (2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer. Explanation : Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the

date on which the money order is booked or the cheque is posted, as the case may be. (3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent. (4) Where an insurance agent collets a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or despatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty four hours of the collection excluding bank and postal holidays. (5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories of insurance policies."

6. THIS Section is to be read along with Rule 58 of the Insurance Rules, 1939 which provides for advance payment of premium. Rule 58 reads as under : "Rule 58 : Advance payment of premiums- For the purposes of sub-section (1) of Section 64VB of the Act, a risk in respect of a policy may be assumed before the premium payable in respect thereof is received : (i) If the entire amount of the premium is guaranteed to be paid by a Banking Company before the end of the calendar month next succeeding to the month in which the risk is assumed, if the premium due is not paid by the insured before that date; (ii) If an advance deposit is made with the insurer to the credit of the insured sufficient to cover the payment of the entire amount of the premium together with the premium, if any, due from the insured in respect of any other risk already assumed against such deposit, such deposit being agreed to be adjusted towards the premium before the end of the month next succeeding to the month in which the risk is assumed, if the premium due is not paid by the insured before that date."

Reading Section 64VB along with Rule 58, it is apparent that if the premium is guaranteed, then risk can be assumed by the insurance company. In such cases, it cannot be said that as the premium is not paid, no risk was assumed by the insurer. The complainant has guaranteed the payment of premium by furnishing a bank guarantee for a sum of Rs.1 lakh. Secondly, as per the debit-note, the complainant was required to pay the premium at the end of the next month, i.e., up to 30th September 1992 and there is no dispute that the same was paid before the end of September 1992. In this view of the matter, in our view, the repudiation letter is totally unjustified and is against the statutory provisions as well as the scheme of Rule 58.

7. IN the result, this complaint is allowed. The insurance company is directed to pay to the complainant, within a period of four weeks from today, a sum of Rs.22,39,817/- with interest at the rate of 10% from 20.3.1993 (i.e. after 6 months from the date of the accident) till its payment. Learned counsel for the complainant submitted that there was an unusual delay in repudiating the claim as, admittedly, the fire took place in September 1992 and the insurance company rejected the claim in March 1998. For this inordinate delay, there is no reply. If

insurance companies are permitted to behave in this manner, the persons who have lost their assets due to the contemplated peril, would become bankrupt. In this view of the matter, insurance company is directed to pay compensation of Rs.2 lakhs in addition to the above amount. The said amount of Rs.2 lakhs be deposited with the Registrar of this Commission who in turn shall deposit it with the Consumer Welfare Fund. The complaint stands disposed of accordingly.