**(2011) 07 NCDRC CK 0037**

**In the National Consumer Disputes Redressal Commission**

Rathi Dye Chem Pvt. Ltd. APPELLANT

Vs

Oriental Insurance Co. Ltd. RESPONDENT

**Date of Decision :** 15-07-2011

**Acts Referred:**

**Citation :** 2011 0 NCDRC 415 : 2011 4 CPJ 87

**Hon'ble Judges :** R.C.Jain , S.K.Naik J.

**Final Decision :** Appeal dismissed

## Judgement

1. JUSTICE R.C.JAIN, PRESIDING MEMBER Challenge in these proceedings is to the order dated 21.06.2010 passed by the Maharashtra State Consumer Disputes Redressal Commission Mumbai in First Appeal no. 169/09. By the said order, the State Commission has dismissed the appeal filed by the complainant against the order dated 28.11.2008 passed by the Addl. District Consumer Forum, Pune in consumer case no. APDF/01/2008, by which the District Forum had dismissed the complaint of the complainant.

2. THE facts and circumstances which led to the filing of the complaint and then appeal are amply noted in the order of the State Commission and need no repetition at our end. THE insurance claim made by the complainant under the Standard Fire & Special Perils policy ( material damage) was repudiated by the insurance company primarily on the ground that the complainant had failed to establish that the loss of the material was occasioned to them due to malicious act of certain employee (s). Both the fora below on consideration of the respective pleas and the material on record came to the conclusion that complainant has failed to establish its case by means of any cogent evidence and the claim was based merely on suspicion that certain disgruntled employee of the complainant might have indulged in certain malpractice by transferring the material of pink dye to the container of Olive colour dye because there had been some unrest due to dismissal of one of the employees of the complainant-company. We have heard Mr.Aditya Narain, learned counsel for the petitioner at length and have considered his submissions. Mr. Narain vehemently argued that

 

there is enough material on record to show that in all probabilities, the said loss was occasioned due to the malicious act of certain employee(s). In this connection he has invited our attention to the representations made to the insurance company, police report and report of the surveyor. Going by the sequence of events put forth by the complainant, it is almost impossible to believe their version that some unknown person(s) had done some mischief in order to cause loss to the complainant. We say so because it is the specific case of the complainant that concerned workman was instructed ( record of which was made in writing in the Daily Production Report /shift report) that the pink dye was ready in vessel no. SV-10 for further spray drying to be transferred to the spray dryer section in the vessel ST 011301 for spray drying on 06.11.2006 which was actually done but the volume was much less. That would clearly mean that they were aware of the person who had been assigned this task but instead of checking with him as to the deficient weight and without making any further inquiry, claim was lodged. Going by the nature of the process involved and that the contents could neither evaporate nor drain out, the complainant ought to have become suspicious of the modus operandi used in the matter. We are unable to believe that it was after two days that the complainant learnt that the said dye had been transferred to the wrong vessel containing the olive dye.

That apart we must note that in order to cover the loss, peril should fall within the terms and conditions of the policy. In the case in hand mere allegation that the loss has been occasioned due to malicious act of unknown person is not sufficient because malicious act should lead to destruction by external violent means caused to the insured property. Neither it was alleged nor established that any direct external violent means were used to cause loss of the material. Assuming that disgruntled employee(s) of the complainant-factory had adopted said methodology in order to cause loss to the complainant, in absence of such person using external violent means to cause such a loss, the peril would not be covered under the policy. A similar question arose before a three Member Bench of this Commission (of which the Members of the current Bench were party) in the case of J.K.Corp. Ltd. Vs. National Insurance Co. Ltd. & Ors, where almost on similar facts, this Commission held that complainant had failed to prove with reasonable certainty that damage was caused due to malicious act of disgruntled employee and consequently dismissed the complaint.

3. THE surveyor has cited number of circumstances in support of his opinion that the loss is not covered under the terms and conditions of the policy. Both the fora below have considered the same and given detailed reasons for taking the same view. In our view the said findings are justified on the face of the existing material on record and are also in consonance with the settled legal proposition. We see no illegality, material irregularity or jurisdiction error in the concurrent findings of the fora below warranting our interference. Revision petition is accordingly dismissed.