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(1999) 04 NCDRC CK 0114

In the National Consumer Disputes Redressal Commission

RISHABH REFRACTORIES PRIVATE LIMITED — APPELLANT

Vs

UNITED INDIA INSURANCE COMPANY Limited — RESPONDENT

Date of Decision : 08-04-1999

Acts Referred:

Citation : 1999 2 CPC 358 : 1999 2 CPJ 589 : 1999 2 CPR 276

Hon'ble Judges : J.B.Garg , P.K.Vasudeva , Devinderjit Dhatt J.

Final Decision : Complaint disposed of

Judgement

1. THE complainant is a manufacturer of ceramics, tiles, stone ware and refractories of all kinds etc. He is carrying out this business in Village Jawahar Pur, Distt. Patiala in an area of about 2.5 acres of land. It has been alleged that it is a low-lying area. Since he had also obtained loan from Union Bank of India, Chandigarh, there was a joint insurance. THE complainant as well as the aforesaid Bank are the beneficiaries in the cover note which was for the period 11.6.1995 to 10.6.1996. THE risk was covered to the tune of Rs. 23.00 lakhs. Out of it, a sum of Rs. 5.00 lakhs covered loss to the semi-finished goods lying inside the shed and the remaining sum of Rs. 18.00 lakhs for material lying outside the shed. It has been alleged that there was heavy rain on 27.7.1995 mainly in the night and the entire area was flooded with water which resulted into heavy loss. It was reported to the Insurance Company on the following day i.e. 28.7.1995 Annexure C5 and it has been alleged that the complainant suffered loss to the tune of Rs. 10.99 lakhs. Sh. N.S. Sidhu was appointed as Surveyor. THE aforesaid Surveyor and Branch Manager visited the premises on 28.7.1995. THE respondent-Insurance Company has repudiated the claim. THE complainant has claimed a sum of Rs. 10.99 lakhs together with interest @ 18% p.a. from the date of loss till realisation.

2. IN a reply filed on behalf of United INdia INsurance Company, it has been averred that after considering all the aspects, it was found that the claim was not payable and thus rejected. If the complainant was dis-satisfied, he should have approached the Civil Court. It has further been averred that according to the

report of the Surveyor the maximum loss was to the tune of Rs. 45,000/- and the complainant should have approached the District Forum. The INsurance Company was not aware of appointment of a private Loss Assessor by the complainant. Besides this, it has specifically been averred that the rain on 27.5.1995 was only moderate and there was no floods. On behalf of the complainant, an attempt has been made to show that on 31.7.1995, turn-over of the complainant was Rs. 12,22,827/-. Sh. C.D. Singla, Managing Director of the complainant firm, when cross-examined here, told that in all the three preceding years, of this concern, there had been losses as per the returns filed in the Income Tax Deptt. This creates a doubt in respect of the statement issued by the Bank and in the circumstances of this case, it could not be considered as sufficient evidence to hold that the loss on 27.7.1995 was to the tune of Rs. 10.99 lakhs. In para 13 of the complaint, it has been averred that with the help of the private Loss Assessor and after going through the records on the basis of the residual material, it was found that the damage was to the tune of Rs. 10.99 lakhs. The corroborative evidence of the aforesaid private Loss Assessor has been withheld and not brought on record.

On behalf of the respondent, the important plea had been that it was not a case of flood and the complainant was not entitled to any compensation. However, after perusal of the affidavit, the documents and photographs filed by the complainant and in the absence of forceful rebuttal, it was a case of torrential rain. On behalf of the complainant, our attention has been drawn to Oriental Insurance Company Limited v. Him Agro Chemical and Nutrients, I (1998) CPJ 223, wherein a violent downpour of rain was held to be covered as a case of flood. The loss assessed by the Surveyor of the Insurance Company to the tune of Rs. 45,000/- is held payable by the respondents, to the complainant within two months of this decision failing which the respondents shall be liable to pay interest @ 12% p.a. from the date of this decision till realisation and the complaint stands disposed of. Complaint disposed of.

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