
(2002) 12 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

RUGHA RAM

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD.

RESPONDENT

Date of Decision : 02-12-2002

Acts Referred:

Citation : 2003 3 CPJ 322

Hon'ble Judges : M.A.A.Khan , Ratan Prakash J.

Final Decision : Complaint dismissed

Judgement

1. THIS complaint under Section 15 of the C.P. Act, 1986 (the "Act") by Sri Rugha Ram, complainant in his capacity as a partner of M/s. Meel and Co., Sikar, had been filed under the following circumstances.

2. M/s. Meel & Co., the actual complainant in this case, is a partnership firm registered as "A" Class contractor with the concerned departments of the Govt. of Rajasthan. Of its six partners, Sri Rugha Ram, complainant is its managing and working partner. This firm is engaged in the business of executing work contracts regarding construction of roads, bridges and other works of like nature awarded to it by Public Works Deptt. and other departments of the Govt. of Rajasthan. During the year 1995 the complainant had obtained from PWD, Sikar a work contract for upgrading Nawalgarh-Sikar Road from 0.00 to 25.5 km. The work was to be completed by June 1995. In order to execute the said work the complainant obtained a Medium Term Loan of Rs. 6,70,000/- from Punjab National Bank, Kotwali Road, Sikar against the security of Plant and Machinery installed near village Kundil on Nawalgarh-Sikar Road. The machineries mainly included Tar Boiler, Pover Finisher and Hot Mixed Plant allegedly purchased by the complainant from M/s. Surjeet Singh Engineering Works, New Delhi during the months of March and May, 1995. With a view to secure the interest of the money-lender and the borrower, a CPM Policy for Rs. 7,92,500/- for the period from 6.6.1995 to 5.6.1996 was obtained for and on behalf of the firm from the Sikar Branch of the New India Assurance Co. Ltd. This policy was got renewed from year to year and at the time of the incident in the instant case on 1.4.1998 was

valid and effective as the same was lastly renewed on 6.6.1997 for Rs. 12,61,500/- for the period from 6.6.1997 to 5.6.1998 under Cover Note No. 77759. This cover note insured the risk against loss or damage to-

Since after the execution of the work contract for upgrading Nawalgarh-Sikar Road by June, 1995 or near about that, the plant and machinery in question, had been lying in idle condition and the policy in respect thereto appear to have been renewed without physical verification either by the Bank Officials or the Officers of the Branch Office of the Insurance Company.

3. THE complainant did not pay the term loan to the Bank (O.P. No. 3). THE said Bank, therefore, filed its suit for recovery of Rs. 10,90,061/- against the complainant on 21.7.1999 before the Bank Debts Recovery Tribunal at Jaipur. THE said suit is reportedly still pending before the said Tribunal. It is in the above background that complainant's case is that on 1.4.1998 at about 11.00 p.m. Sri Kurda Ram, Chowkidar at the plant informed complainant's son, Sri Hari Ram, that some unknown vehicle had dashed against the plant causing extensive fire, which had burnt the entire plant. On his return from Jaipur and after inspection of the site and verification of the loss caused to the plant, he lodged a First Information Report with the Station House Officer (S.H.O.), Police Station Raghunathgarh, Distt. Sikar Camp, at Sikar, on 3.4.1998. Although the Police registered Crime No. 73/1998 under Sections 279, 427, I.P.C. against the unknown driver of the unknown vehicle but since they could not locate/trace either the vehicle or the driver thereof, they submitted a Final Report in the matter on 30.4.1998. Further case of the complainant is that on 3.4. 1995 he had informed the Bank (O.P. No. 3) of the incident and required them to inform the Insurance Company (O.P. Nos. 1 and 2) also. Along with their letter dated 6.4.1998, the Bank (O.P. No. 3) although sent to the complainant a copy of the relevant Cover Note and advised him to lodge his claim with the Insurance Company but since the policy itself was not made available to him, despite repeated demands, the complainant could not file the claim early.

4. ANYHOW, the insurer, after a claim was received by it, registered MBD Claim No. 98/02, A/C Meel & Co. in respect to the cover note in question for Rs. 12,85,000/- and deputed Sri S.C. Jain, Chartered Accountant to verify the damages, if any were sustained by the insured as a result of the reported incident. Sri S.C. Jain, after thorough investigation into such claim, opined that although the maximum loss, which may be payable to the insurer, worked out to Rs. 1,80,000/- only, but such damage was not caused to the plant and machinery either because of the alleged accident/incident or the fire broken out as a result thereof as no such incident or accident had ever taken place, but it was as a result of "wear and tear and idleness", that the plant and machinery had got damaged. The damage so caused was stated to have been wrongly attributed to a false and concocted accident. Accepting such opinion of Sri Jain the Insurance Co. repudiated the claim. In their written reply, O.P. Nos. 1 and 2, averred that the claim of the complainant was rightly repudiated by them for

good reasons and in good faith in view of the facts found by Sri S.C. Jain, Surveyor on thorough investigation into the facts attending upon the claim. In its separate reply the Bank (O.P. No. 3) averred that as soon as they received the information of the damage to the insured property, they had duly forwarded the relevant Cover Note to the complainant and repeatedly advised him to file the claim with O.P. Nos. 1 and 2 and to assist them in settlement of the claim, but the complainant, under one pretext or the other did not co-operate with them. It was denied that the Bank, which had already filed a suit before Bank Tribunal against the complainant for recovery of its debt due from him, had in any way rendered deficient services to him.

5. BOTH the sides filed affidavits of concerned persons and their documents in support of their respective versions.

6. O.P. Nos. 1 and 2 had filed affidavits of, besides others, Sri S.P. Mathur, Manager, New India Insurance Co. Ltd. and the survey report prepared by Sri S.C. Jain, C.A. To rebut the facts stated in such affidavit and survey report, the complainant filed an amended complaint, comprising of 35 typed pages, wherein it was mainly averred that a few days after filing the complaint by him and issuance of notices to the O.Ps. by the Commission, one Sri J.P. Gupta, Surveyor had called for the complainant and apprised him of the fact that in his survey report Sri S.C. Jain, Surveyor, had doubted the very purchase of the machineries by the complainant from M/s. Surjeet Singh Engineering Works, New Delhi and that the Insurance Company had deputed him to further investigate the purchase of the machines. On the basis of such averments the complainant required the O.Ps. to produce the survey report of Sri J.P. Gupta. O.P. Nos. 1 and 2, however, denied such a fact. The complainant had further averred in the amended complaint that he had got the report of Sri S.C. Jain, Surveyor examined by his Surveyor, Sri Narain Prakash Mathur, retired Chief Engineer, who totally rejected Sri Jain's report. The comments made by Sri Mathur on Sri Jain's survey report were reproduced in the amended complaint.

We heard the parties at considerable length and closely studied the material relied upon by them in support of their respective versions. We further studied the written arguments also, submitted on behalf of the complainant.

7. IN view of the averments made in the pleadings of the parties, the depositions made by the deponents in their respective affidavits and the contents of the documents filed by them it is not only well established but is also not in dispute between the parties that in order to execute the work contract for upgrading Nawalgarh-Sikar Road from 0.00 to 25.5 km. the complainant had installed a Hot Mixed Plant at the junction of Nawalgarh-Sikar Road and Gokulpura Bye-pass in the year 1995, that the work contract had been executed by the month of June, 1995 and thereafter the said plant and machinery were not put to use and were lying in idle condition, that the plant and machinery were insured with O.P. Nos. 1 and 2 for the first time for the period from 6.5.1995 to 5.6.1995 for Rs. 7,92,500/- and thereafter such policy continued to be renewed year after year

and for the period from 6.6.1997 to 5.6.1998 the same stood insured for Rs. 12,61,500/- under Cover Note No. 77759 dated 6.6.1997, that on 3.3.1998 the said plant and machinery was reported to the police by the complainant as having been substantially damaged by the strike given by a moving mini truck "Trolla" on 1.4.1998 at about 10.00 p.m. and that the claim preferred by or on behalf of the complainant's firm, was repudiated by the INSurance Company on the ground that no such incident had ever taken place. Since the claim of the complainant was repudiated for this specific reason, we need not go to the question as to whether the claim was filed late and which of the parties was at fault and responsible for such delay. The pertinent question for decision in this case, therefore, is as to whether the O.P. INSurance Company had reasons to believe that the plant and machinery had not got damaged as a result of any strike by a vehicle, as was the case put forth by the complainant and that such a belief had been formed by the INSurance Company in good faith. In support of his version of the case the complainant heavily relied upon the documents prepared by the police in the course of investigation of the case, which was registered on the basis of the First Information Report lodged by the complainant with them. Such documents include a site map of the place of alleged occurrence dated 3.4.1998 and the statements of S/Shri Rugha Ram complainant, his son Hari Ram, Kurda Ram Chowkidar, Deboo Ram, Bhadurmāl and Sultan Singh, recorded on that very day i.e. 3.4.1998. On a close study of the facts mentioned by the Investigating Officer it is gathered that the plant and machinery were installed in open space at some distance from the Nawalgarh-Sikar Road and the Gokulpura By-pass, that on the other side of Nawalgarh-Sikar Road there was "Hotel Naveen" and "Jao" of Bhagwan Ram Jat and on the other side of the Gokulpura By-pass there was field and "Dhani" of Gorji Master. It is reported in detailed particulars of the site-map that the burnt engine of the machine of the plant, which was fixed on the iron poles at point No. 6, was found lying on the ground at point No. 5. At point Nos. 7 and 8 there were "pucca" pits and at point No. 9 the Bitumen machine, with some burnt Bitumen was lying. The map shows distance between points 5 and 6 & 6 and 9. This map thus prima facie establishes that, (i) the plant and machinery were installed at some distance from the main roads on two sides; and (ii) the allegedly damaged engine of the machine was found lying at some distance from its platform, whereupon the same was affixed or fastened with some bolts. The Investigating Officer made no observations with regard to the condition of the platform.

8. NOW coming to the statements of the persons, named above, recorded by the Investigating Officer as per Section 161, Cr.P.C. we note that the complainant, his son Hari Ram and their Chowkidar Kurda Ram were not eye-witnesses to any occurrence resulting in damage to the plant. Kurda Ram, Chowkidar had simply stated that at about 10.00 p.m. he had left the plant in order to take his meal at complainant's residence and on return therefrom had found the plant and machines burnt and lying on ground. The other three persons, Deboo Ram, Bhadurmāl and Sultan Singh had stated that while returning from their work on

their bicycles and scooters, they happened to pass by the place of incident and at that time they noticed that a "Trolla" came from Jaipur side and in order to take a turn for going back to Jaipur from that place it dashed against the plant and machinery, leading to the breaking out of a fire in the engine. Suffice it to point out here that none of above named three persons was named as a witness in the F.I.R. and it is not known as to how these three persons came to be known as eye-witnesses to the alleged occurrence and why were they preferred to those who might have been available from the "Hotel Naveen", the "Jao" of Bhagwan Ram Jat or the "Dhani" (resting place in the field) of Gorji Master. The version of the alleged incident, as given by these three persons, apparently appears to be quite un-natural, un-believable and imaginary. In order to take a turn at that place the Troller was not required to go to the distant place where the plant and machinery were installed. The junction point of the two roads was there and there the vehicle could have been reversed to the desired side or direction. In any case, the strike given by a vehicle in reverse gear would not be having so much of force as would uproot an object imbedded in earth or affixed on a cemented platform with iron bolts. If force of that degree in the speed of the reversing vehicle may be visualised, it shall have to be also visualised that the vehicle itself would get too damaged in its rear side to move from that side and if it had remained in a condition to move then it would not have been difficult to be traced by the Investigator in the course of the investigation, which had remained pending for 21 days.

9. HERE it would be worthwhile to refer to the joint report of Sri S.P. Mathur, retired Assistant Engineer, PWD and Sri N.P. Mathur, retired Chief Engineer, dated 5.5.1998. In their said report they have observed that the site was inspected by valuation team with owner Sri Rugha Ram Meel on 16.4.1998 and 5.5.1998 and it was observed that severity of accidental dashing was so great that it uplifted the foundation and its pillars of the plant and as a result of which "(i) the entire plant came down on the ground, (ii) Tar Boiler also hitted severely losing its insulation and thermostat devices, (iii) conveyor belt broken out and fallen on the ground, that was removed subsequently, (iv) all controls and safety devices including Prime Mover Engine badly damaged.....".

10. NEED we observe that the above observations of the two engineers with regard to the facts allegedly found by them on inspection of the site find no corroboration at all from the observations made by the Investigating Officer in the site-map prepared on the third day after the occurrence of the alleged incident/accident. As against the above evidence led by the complainant in support of the genuineness of his claim, the O.Ps. had relied upon the detailed and very well reasoned report of Sri S.C. Jain, Surveyor. Sri Jain had made physical verification of the plant and machinery in question on 18.4.1998 in the presence of the Managers of the branches of the Insurance Company and the Bank at Sikar. Although the complainant had also been asked to be available at the site but no representation was made for and on his behalf. The Surveyor had asked for the relevant account books, for the purposes of assessment of loss, but

complainant's Counsel, Sri Mahabir Prasad stated that production of such books was not necessary for verification of the assets in question, when the acquisition of assets, is otherwise proved.

Anyway Sri Jain noted that the Paver Finishing Machine was not there. On inspection of the facts on the site Sri Jain noted and observed as under : "1. The Tar Boiler and the Hot Mixed Plant were found fixed on foundation made of cement-concrete duly tied with steel bolts. The place where such plant was installed is quite far off from main road and a vehicle running on main road is not in a position to hit the plant directly under normal conditions of running, turning or moving; but if purposely the same is hit then the condition of hitting of plant by a vehicle and then its over-turning on the ground can be acceptable, if proved. The condition of Hot Mixed Plant lying on the ground speaks itself the story that the same was intentionally tilted down on the ground and has not fallen down as a result of an accident. The photographs taken by us reveals this condition clearly. 2. The Tar Boiler and the Hot Mixed Plant claimed to have been destroyed after the accident because of fire is also absolutely incorrect because on no portion of the Hot Mixed Plant, the fire was noticed when examination physically. However, one side tyre affixed on Tar Boiler was found burnt and burning thereof speaks of the intent. This fire is just to prove the occurrence of an incidence of fire. This apprehension is apparently clear if the photographs taken by us are examined which disclose that the other tyre of the Tar Boiler is intact and in order. If the tyre from one side was burnt then why the flames have not taken in its grip, the Tar Boiler, the Bitumen available in the tank and the other side-tyre which all are prone to fire. Further the apprehension noted by us gets confirmed when it was co-related with the evidence collected during the course of the examination of the site and the residue of wooden sticks and grass burnt near the tyre of Tar Boiler."

11. THE above observations of Sri Jain are required to be appreciated in the context of complainant's conduct that although the alleged incident had allegedly taken place on 1.4.1998 but the typed F.I.R. was delivered to the S.H.O. on 3.4.1998 and investigation was completed as early as on 30.4.1998, the cover note was made available to him by the O.P.-Bank on 6.4.1998 but the claim was not filed by him promptly; when called upon by Sri Jain to produce the relevant account and participate in the inspection of the site he did not; after examination of the reports of the Engineers of the complainant and the quantum of loss assessed by them when Sri Jain tried to verify the bills of purchase of the machinery from M/s. Surjeet Singh Engineering Works, New Delhi it was known by him that the said concern was neither a manufacturer nor supplier of such goods, but simply a provider of bills of purchase of such goods. When so appreciated the report of Sri S.C. Jain, C.A. is found quite reasonable and worth reliance. To sum up the discussion we conclude that in the facts and circumstances of the case and particularly on taking note of the facts mentioned and opinion expressed by the Surveyor in his report the O.P.-Insurance Company had good reasons to repudiate the claim of the complainant. We accordingly hold

that in repudiating complainant's claim the O.Ps. did not render deficient services to him. In the result the complaint is dismissed with cost on parties. Complaint dismissed.