(2005) 08 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

SAGAR COLD STORAGE P LTD — APPELLANT

Vs

United India Insurance Co Ltd — RESPONDENT

Date of Decision : 29-08-2005

Acts Referred:

Citation : 2007 2 CPJ 89

Hon'ble Judges : K.S.Gupta , P.D.Shenoy J.

Advocate : B.V.Desai , J.S.Chabra , M.R.Ramesh , S.K.Singh , S.Parwanda

Final Decision : Dismissed

Judgement

1. -RELIEFS claimed in prayer clause of the complaint are as under: (a) Direct opponent Insurance Company to pay the damage to the building, insulation, machinery, etc. worth Rs. 22. 60 lakh to the complainant as certified by the competent civil engineer; (b) Further direct the opponent Insurance Company to pay Rs. 42,62,810 towards damage caused to the complainant as certified by competent auditor; (c) Award interest @ 18% on the said amount from 30. 6. 1997; (d) Direct the opponent to pay token compensation of Rs. 5,000 for communication, transportation, etc. incurred by the complainant; (e) Direct the opponent to pay Rs. 1,00,000 for pain, shock and suffering and mental agony; and (f) Direct the opponent to pay legal cost of Rs. 10,000.

2. OPPOSITE party-Insurance Company has contested the complaint by filing written version. One of the pleas taken is that the peril for which claim has been made, is not covered by the two policies. Arguments by the parties Counsel mainly centered around this plea. Thus, averments made in complaint, written version and evidence confined to above plea only are being set out in detail here. Policy No. 060100/13/1/229/97 was for the period from 27. 6. 1997 to 26. 6. 1998 and it covered the risk of Rs. 80 lakh on stocks on first to fifth floors and Rs. 20 lakh on stocks lying in basement of the cold storage run by the complainant. Policy No. 060100/13/1/2270/97 for the period 21. 6. 1997 to 20. 6. 1998 covered the risk of Rs. 50 lakh to the building; thermocoal insulating sheet, cement sheets, compound wall, etc. and of Rs. 50 lakh to the machinery.

It was alleged that in heavy cyclonic rains in the last week of June 1997, the roof of cold storage was blown off and rain water entered into the cold storage from the top and other sides resulting in damage to the stocks and building, etc. of the cold storage. This damage was noticed only on 30. 6. 1997 when the situation improved. On complainant''s request the opposite party appointed Kirj Consultants, Surveyors. In written version, it was pleaded that there were heavy rains on 24th, 25th and 26th June, 1997. On account of heavy rains, the rain water seeped from the walls and damaged the stocks on the 5th floor, basement and near the walls of the cold storage. Since damage was due to seepage of rain water, the same was not covered under the policies. It was stated that M/s. Kirj Consultants was appointed as Surveyors while M/s. S. P. Singh and Associates as investigator by the answering opposite party. In its report dated 21. 5. 1998, the surveyors assessed the loss to the stocks of Rs. 14,83,842 and to the building of Rs. 11,82,000. Copies of two insurance policies are at pp. 13. 20 in Vol. III. Exclusion h (iii) thereof which is material, reads thus: "this insurance does not cover. . . . . (h) Any loss or damage occasioned by or through any consequences directly or indirectly of any of the following occurrences, namely, (i). . . . . (ii) Typhoon, Hurricane, Tornado, Cyclone or other atmospheric disturbances, Flood and Inundation. "

Policies in question would show that out of the said occurrences only ''flood'' was covered by them. Copy of report dated 21. 5. 1998 of M/s. Kirj Consultants, Surveyors running into 10 pages filed on 13. 10. 2004 by the complainant is placed in Vol. 1. A portion of this report under the heading "brief Details and Occurrence" which is relevant reads as follows: "m/s. Sagar Cold Storage is a cold storage having the refrigeration capacity of 30 tons. The building of 5 storeys and basement. Thus in six stages the goods are stored. The size of Cold Storage is 80x80x40. It has compound wall also. Goods are stored in hesian cloth bags. The goods stored are Chilli, Haldar, Dhaniya, Khajur, Imli. These goods belong to the customers and rent is taken by M/s. Sagar Cold Storage Pvt. Ltd. for storing. As reported there was heavy rain on 24th, 25th and 26th June, 1997 and due to this rain water seeped from walls from the ground and rain water entered from broken cement sheets of the roofs and goods stored at the basement near the walls and on the top of the 5th floor were damaged. The goods stored at the basement were damaged due to seepage of water from the ground. The goods stored near the walls were damaged due to seepage of water through the walls. The goods stored in the 5th floor were damaged due to rain water. Due to this seepage, the insulation and electrical wire and electrical fittings were damaged. The estimated loss reported by insurer was Rs. 50 lakh. This damage has occurred due to seepage and rain water which is not insured peril under the policy. "

3. DAMAGE to the building was also stated to be due to seepage of rain water. Report of the said investigator dated 12. 8. 1997 is at pp. 201 to 202 and material portion therof is reproduced below- "the levelling report clearly indicates that the highway is 5, 6" below the level of the door of the cold storage. This

means that the water level on the highway would have to be at least that high for water to enter from the door ruling out possibility of flooding. Further, inquiries with Amul have revealed that they were insured vide fire policy No. 11/220702/06604 and special contingency policy No. 46/220702/00932 with the Anand B. 0 of New India Assurance Co. Ltd. The inquiries conducted at the local office of Amul in Kankana are also confirmed that no claim for losses at the hired godown, cold storage at the premises of Sagar Cold Storage Pvt. Ltd. were reported in that period. "

4. IT was pointed out by Mr. B. V. Desai for opposite party that policy on stocks was taken on 27. 6. 1997 commencing from 3. 10 p. m. According to aforesaid reports of surveyors and investigator, the damage caused to the stocks and building was due to cyclonic rain and not flood. Since period of cyclone is not covered by either of the policies, the complainant is not entitled to any of the reliefs claimed. Further, claim for loss of stocks occurring on 24th, 25th and 26th June, 1997 was not tenable as policy on stocks was taken afterwards on 27. 6. 1997 commencing from 3. 10 p. m. Resultantly, the complaint is dismissed leaving the parties to bear their own costs. Complaint dismissed.

