
(2006) 02 NCDRC CK 0094

In the National Consumer Disputes Redressal Commission

SATAYANARAYAN JIWANRAM

APPELLANT

Vs

National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 06-02-2006

Acts Referred:

Citation : 2006 1 CPR 286 : 2006 2 CPJ 58

Hon'ble Judges : M.B.Shah , Rajyalakshmi Rao J.

Final Decision : Complaint allowed

Judgement

1. THIS Original Petition is filed by M/s. Satayanarayan Jiwanram, a partnership firm, having its godown premises at Police Bazar, Shillong, Meghalaya, against M/s. National Insurance Co. Ltd. (hereinafter referred to as Insurance Company) for unjustifiably repudiating the claim arising due to the damage by fire and water. The complainant has claimed a sum of Rs. 20 lakhs for the loss suffered by it with interest at the rate of 24% p.a. and Rs. 5 lakhs as damages with costs of Rs. 50,000. Facts :

2. IT is the say of the complainant that in May 1996, an agent of the Insurance Company approached the complainant and consequent thereupon the complainant took two policies of "Fire Policy C" bearing Nos. 201000/11/97/31/04848 and 201000/11/97/31/04849 for a sum of Rs. 10 lakhs each for the period between 9.5.1996 and 8.5.1997 covering its godown located at Police Bazar, Shillong, Meghalaya and paid a premium of Rs. 2,205 for each policy. The aforesaid policies being were renewed from time to time. The godowns were used for storing clothings and other fabrics. The premium for relevant period commencing from 12.5.1997 to 11.5.1998 was paid on 13.5.1997. On 20.9.1997, at about 10 a.m., there was a devastating fire in the godown and goods worth more than Rs. 20 lakhs were destroyed in the said fire. The complainant intimated to the opposite party, Insurance Company about the mishap and thereafter approached it to reimburse for its losses. For this purpose, the complainant has submitted duly completed claim forms, a detailed list of stocks damaged by fire, smoke and water and a list of sound stocks, income tax

and sales tax returns for the past three years, books of accounts, police and fire brigade reports, local newspaper cuttings, Bazar Committee Report regarding the incident and history of previous fire loss claims. Thereafter, the complainant supplied other documents which were required by the Surveyor.

As the complainant had not received the fire policies from the Insurance Company, it sent a letter dated 20.3.1998 to the Insurance Company reminding them to forward the copies of policies. On 1.4.1998, the complainant received another letter from the Surveyor asking for more documents. The complainant was shocked to receive the said letter after a lapse of 8 months. Despite this, as there was no alternative, under cover of a letter dated 7.4.1998, those documents were supplied to the Surveyor. Thereafter, on 15.9.1998, the policies were supplied to the complainant. Meantime, complainant addressed a number of letters requesting the Insurance Company to settle the claim. As there was no response, the complainant sent a Legal Notice dated 12.4.2001. Subsequently, he came to know that a second Surveyor was appointed to assess and determine the loss suffered by the complainant. Despite indulgence and assurances by the Head Office of the Insurance Company, the Insurance Company failed to process the claim. Therefore, second Notice dated 21.5.2001 was issued to the Insurance Company.

3. THEREAFTER, by its letter dated 3.7.2001, the Insurance Company repudiated the claim on the ground that the subject claim preferred under the policies of different premises as per the description of the building for which the cover was granted. Hence, the complainant has approached this Commission by filing the aforesaid complaint in December 2001. Undisputedly, the Insurance Company has repudiated the claim solely on the ground that "the subject claim preferred under the policies of different premises as per the description of the building for which the cover was granted". It is contended that the godowns which were affected by fire were not in double storey building as mentioned in proposal from but were in a building which was having 7 storeys. In the written version, it was also contended that the claim was time-barred. There is no dispute with regard to insurance policies. Survey Reports

4. FOR appreciating the contention, we would refer to the Surveyor's report-one dated 4.5.1998 given by Mr. G.R. Das and second dated 22.5.2000 given by Mr. B.R. Poddar, Chartered Accountant. We would first refer to the relevant part of the second report dated 22.5.2000 given by B.R. Poddar, Chartered Accountant, wherein he has stated that under the instructions vide Appointment Letter dated 10.8.1999, he visited Shillong on 27.8.1999 and subsequently on 18.9.1999 and 11.12.1999 for the purpose of investigation, re-survey and re-assessment of the loss suffered by M/s. Satyanarayan Jiwan Ram in their godowns at Police Bazar, Shillong due to a major fire on 20.9.1997. After thorough investigation, survey and study of the survey report of Sri G.R. Das and scrutiny of the papers/documents available in the file and obtaining the clarification of the insured, he submitted his final findings. He has further stated that during discussion with Sri

D.R. Saikia, Dy. Manager, NIC, RO, while handing-over the claim file, he was apprised of the following: (i) There are anomalies in the underwriting aspects. (ii) The Surveyor Sri G.R. Das had expressed doubt about the admission of liability. (iii) The insured is unwilling to accept the settlement as recommended by the Surveyor.

It was under these circumstances that he was entrusted with the job of Re-survey/Investigation and review of the assessment if warranted.

5. HE has also stated that the godown is situated at J.B. Textiles premises and the subject godowns form part of the two basements of the building owned by Jiwan Ram Chokhani, popularly known as J.B. Textiles premises, a sister concern of the complainant. These basements are negotiable by a staircase leading from the first floor occupied by M/s. J.B. Textiles as their shop premises. The main building above the ground level is having 5 floors built of pacca walls, all through having RCC roofs and having intermediate floors. HE has also noted that the insured has taken three policies-two for godowns and the third policy for a shop and a godown in a different premises which was at a distance approx. 50 ft. from J.B. Textiles premises. HE has also stated that complainants partnership firm accounts were subject to compulsory audit. HE has, thereafter, discussed the report submitted by Mr. G.R. Das and thereafter assessed the loss as per the finding given by Surveyor G.R. Das. Finally, he has assessed the loss under the two policies at Rs. 14,21,204.

6. IN the special remarks, he has stated as under: "The insured had suffered a loss in their godown at Police Bazar on 26.4.96. The said loss had been surveyed and assessed by Sri A.K. Modi and the claim is said to have been settled by the insurers. It is ascertained during inquiry and investigation that there had been a fire in the basement godown of the premises known as J.B. Textiles. It is established from my inquiry that in the year 1996 M/s. Satyanarayan Jiwanram had their godown in the basement of J.B. Textiles premises. Sri Das had offered certain comments on the assessments of Sri A.K. Modi based on the Xerox copy of the survey report he had procured but the Xerox copy of the same is not enclosed to the Report of Sri G.R. Das. I have requested Shillong D.O. in person, in writing and over phone once again to provide me with a copy of the Survey Report of Sri A.K. Modi INspite of my earnest endeavours no copy of the survey report had been supplied to me. Under the circumstances I am unable to offer any comments on the submissions of Sri G.R. Das on the survey report of Sri A.K. Modi. With this I conclude my Re-survey cum Re-assessment Report along with enclosures subject to admission of the liability by the insurers."

Without considering this aspect, the Insurance Company relied upon the first survey report and repudiated the claim.

In our view, this repudiation is apparently unjustifiable for the following reasons: (1) Firstly, till the incident of fire took place, the Insurance Company had not issued the policies. (2) Secondly, in the insurance policy which was issued after

the incident, it is specifically mentioned that the property is situated at "Police Bazar", Shillong- (i) being owned by (not mentioned in the proposal form); (ii) it is specifically stated that property is required to be insured as stock in godown (risk covered for all kinds of cloth in the godown).

7. IT is true that with regard to the construction of premises, it is stated : walls - Assam type; roof-Assam type; floor-Assam type. This description is totally vague. From the policy, it is clear that insurance coverage was given to the complainant for the godowns which were situated at Police Bazar, Shillong. Submission: However, the learned Counsel for the Insurance Company submitted that the first Surveyor has visited the site and also has verified the proposal form. In the proposal form, address is mentioned as Police Bazar, Shillong. Premises used by the proposer is mentioned as "godown". But, in the description of the premises, for the walls of the building, it is mentioned "Assam type". Similarly, floors of the building are built of "do" and roof of the building "do"-that means Assam type. He contended that for the description of the building-it is mentioned "the building is double storeyed in height including basement and attic or loft in the roof". As the building in which the fire took place is not double-storeyed, therefore, on the basis of the proposal form, there is no insurance coverage.

8. CONTRA, it is contended by the learned Counsel for the complainant that this proposal form is filled in by the insurance agent and the agent has taken signature on the blank form. Apart from this, she contended that the premises which were used by the complainant as godowns were insured and the complainant is having godowns as per the survey report in the premises where fire took place and that is the report of the second Surveyor. She further submitted that on the basis of the report submitted by the first Surveyor, the Insurance Company was prepared to settle the dispute as per the assessment made by Mr. G.R. Das. However, as the complainant was unwilling to accept the settlement as recommended by the said Surveyor, the Insurance Company has taken this ground to defeat the claim. For this purpose, she has relied upon the introductory remark quoted above by the second Surveyor, Mr. B.R. Poddar. Findings: In our view, it is apparent that for one or other unjustifiable reason, the Insurance Company has delayed the settlement of the claim. Undisputedly, the fire took place on 20.9.1997. After receipt of the report, it appears that Insurance Company was prepared to settle the claim as assessed by the first Surveyor. As the same was not accepted, the Insurance Company appointed the second Surveyor. The second Surveyor assessed the loss at more than Rs. 14 lakhs and thereafter on 3.7.2001, the Insurance Company repudiated the claim. First Surveyor assessed the loss at Rs. 10,49,726. However, he has stated that: "Liability It appears from the above circumstantial evidences that the moral hazard of the insured were too poor. Scrutinizing of both the proposal forms felt that the intention of the insured was to cover the stock held in the godown of the rented building which is double-storey Assam type building but not their own seven storey R.C.C. building, in which the loss occurred. Therefore, the

undersigned is of opinion that the policies have not covered the godowns in which the loss occurred, therefore, no liability attaches with the insurer against both the policies. However, the question of admissibility of the liability is left to the absolute discretion of the underwriter to be resolved as deem fit and proper by them."

On the basis of the aforesaid remarks the claim is repudiated.

9. THE first Surveyor arrived at the conclusion that the premises were different solely on the basis of the previous report given by Shri A.K. Modi, wherein with regard to the previous fire which occurred on 26th April, 1996 it is stated that the insured's godown was situated at Police Bazar, Shilong, which is situated in the ground floor of 2nd storeyed building and the building was owned by Mohd. Wahed. THE present godowns are situated in the premises owned at JB Textiles owned by one of the partners of the complainants. It is also stated in his report that the insured was occupying two buildings in that locality-one is their own seven-storey building and the other one is occupied as clothes shop being styled under name of M/s. Satyanarain Jiwanram away from the insured own building. As such, this Surveyor has not referred to the 3rd policy which is referred to by the second Surveyor, namely, Poddar, a Chartered Accountant. Two policies pertain to godown and the third policy pertains to a godown and a shop. It is quite possible that the third policy is with regard to the shop wherein the fire took place in 1996. Admittedly, the godowns where the fire took place there is no shop of the complainant. In our view, the entire basis of repudiating the claim on the said ground is totally unjustified.

10. FURTHER, in our view, there is no justifiable reason not to accept the second survey report. The policy issued by the Insurance Company only mentions that godowns which belong to the complainant are covered by the insurance policies. FURTHER, even if there is any vagueness in issuance of the policies, complainant should not suffer. It was for the Insurance Company to mention it clearly as to which premises are covered under the insurance policies. In case of ambiguity, in the terms of the policy, they are required to be interpreted in favour of the insured. The law on this subject is settled. FURTHER, even in cases where two reasonable interpretations of the terms of the policy are possible, the Court in the case of Shashi Gupta (Smt.) v. Life Insurance Corporation and Another, II (1995) CPJ 15 (SC)=(1995) Suppl. 1 SCC 754, held that "...we would accept the one which favours the policy-holder, as the same advances the purpose for which the policy is taken and would be in consonance with the object to be achieved for getting the lives assured relied in Life Insurance Corporation of India v. Raj Kumar Rajgarhia and Another, II (1999) SLT 362=(1999) 3 SCC 465. To the same effect law on the subject is succinctly stated in Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan and Others, I (1987) ACC 413 (SC)=(1987) 2 SCC 654, wherein the Apex Court observed: ".....It is the statutory provision defining the conditions of exemption which is being interpreted. These must, therefore, be interpreted in the spirit in which the same have been enacted

accompanied by an anxiety to ensure that the protection is not nullified by the backward looking interpretation which serves to defeat the provision rather than to fulfil its life-aim. To do otherwise would amount to nullifying the benevolent provision by reading it with a non-benevolent eye and with a mind not turned to the purpose and philosophy of the legislation without being informed of the true goals sought to be achieved."

"...In fact it appears that the former view is more plausible apart from the fact that it is more desirable. When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependants on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obedience to the doctrine of "reading down" the exclusion clause in the light of the "main purpose" of the provision so that the "exclusion clause" does not cross swords with the "main purpose" highlighted earlier. The effort must be to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose."

In *United India Insurance Co. Ltd. v. Pushpalaya Printers*, I (2004) CPJ 22 (SC)=II (2004) SLT 263=(2004) 3 SCC 694, the Apex Court has held that: "...it is also settled position in law that if there is any ambiguity or a term is capable of two possible interpretations, one beneficial to the insured should be accepted consistent with the purpose for which the policy is taken, namely, to cover the risk on the happening of certain event. Although there is no ambiguity in the expression "impact", even otherwise applying the rule of *contra proferentem*, the use of the word "impact" in Clause 5 in the instant policy must be construed against the appellant. Where the words of a document are ambiguous, they shall be construed against the party who prepared the document. This rule applies to contracts of insurance and Clause 5 of the insurance policy even after reading the entire policy in the present case should be construed against the insurer. A Constitution Bench of this Court in *General Assurance Society Ltd. v. Chandumull Jain*, AIR 1966 SC 1644, has expressed that "in a contract of insurance, there is requirement of *uberrima fides*, i.e., good faith on the part of the assured and the contract is likely to be construed *contra proferentem* i.e., against the company in case of ambiguity or doubt."

11. AT this stage, learned Counsel for the complainant relied upon the decision of the Apex Court in *Polymat India (P) Ltd. and Another v. National Insurance Co. Ltd. and Another*, IV (2004) CPJ 49 (SC)=VII (2004) SLT 243=(2005) 9 SCC 174, and submitted that proposal form is part of the contract. In our view, the said judgment is based on appreciation of facts with regard to the policy issued in favour of the complainant of that case and also that a specific queries made to the complainant about the premises. In the present case, no such query was raised, no policy was also issued for months together and it is alleged by the

complainant that the agent has filled the proposal form. This is not a case of amendment of the proposal form after entering into the contract of insurance. Therefore, the said judgment would have no bearing to the facts of the present case. However, the learned Counsel for the Insurance Company, in the proposal form, the building is mentioned to be two storeyed and as the building was 5/7 storeyed, it cannot be said that insurance policies were taken for the said premises. In our view, this submission is without any substance. If the property in the godown is insured and if there is some mistake in describing the premises, it cannot be said that insurance coverage is not there. Even if we take into consideration the proposal form, it is clear that the address of the godown is that of Police Bazar, Shillong. Again it is mentioned that part of the other premises are used as shop by others. In any case, Insurance Company is required to be more vigilant before accepting the premium and issuing the policy.

12. IN the result, complaint is allowed. The INSurance Company is directed to reimburse the complainant on the basis of assessment made by the second Surveyor, namely, B.R. Poddar, Chartered Accountant and pay a sum of Rs. 14,21,204 with interest @ 10% per annum after three months from 20.9.1997 (the date of fire), that is to say, from 1st January, 1998. The INSurance Company is directed to pay costs of Rs. 50,000 to the complainant. This is required because there was unusual delay in settling the claim. The INSurance Company is directed to pay the above referred amounts to the complainant within a period of eights weeks from the date of receipt of a copy of this order. Complaint allowed.