(2005) 09 NCDRC CK 0058

In the National Consumer Disputes Redressal Commission

Satya Sri Krishna Poultry Farm APPELLANT

Vs

ORIENTAL INSURANCE CO LTD RESPONDENT

Date of Decision : 05-09-2005

Acts Referred:

Citation : 2006 4 CPJ 421

Hon'ble Judges : M.B.SHAH , P.D.SHENOY J.

Judgement

1. IT is the say of the proprietor of the appellant, M/s. Satya Sri Krishna Poultry Farm, that he had established a poultry farm at Ankammapuntha, Ravulapalem Mandal in East Godavari District and insured the same for a sum of Rs. 13.90 lakh for a period of one year from 8.12.1995 to 7.12.1996. During the currency of the policy a devastating cyclone occurred on 6.11.1996 and the poultry farm was badly damaged. The complainant had claimed Rs. 8.50 lakh from the Insurance Company for the damages caused to him because of the cyclone. The Insurance Company had appointed a surveyor and thereafter it sent a discharge voucher to the financier. M/s. Union Bank of India, Vedurajeswarapuram Branch, from whom the complainant had obtained financial assistance for a sum of Rs.97,754 in full and final settlement. The complainant felt that it was a meagre amount and accordingly filed a complaint before the State Commission, Andhra Pradesh claiming a sum of Rs. 8.50 lakh with interest at the rate of 24% p.a. together with compensation and costs.

2. AFTER hearing both the parties, the State Commission partly allowed the complaint by directing the opposite party to pay a sum of Rs. 97,754 with interest at the rate of 9% p.a. from the date of filing of the complaint till the date of realisation together with costs of Rs. 5,000. Learned Counsel for the appellant submitted that the whole of the poultry farm was completely damaged by cyclone and the surveyor had rejected most of the claim without assigning any reason, the surveyor has delayed his report; the Insurance Company has not given a copy of the same to the complainant and the report was produced only before the State Commission. Submissions:

3. LEARNED Counsel for the appellant. Mr. Rajagopala Rao submitted that there are two sheds which were comprehensively insured for Rs. 7.5 lakh and Rs. 6.4 lakh respectively. He read out a part of the report of the surveyor and loss assessor. Mr. V. Nageswara Rao. He submitted that the loss in this case was similar to the loss sustained in another case which was decided by this Commission in First Appeal No. 106/2003 pertaining to M/s. Sri. Ramalingeswara Poultry Farm in which case this Commission directed United India Insurance Co. Ltd. to pay to the appellant a sum of Rs. 3,33,402 after deducting amount of Rs. 9,950 with interest @ 9% p.a. w.e.f. 1.4.1997. Therefore, he submitted that the amount claimed by him may be directed to be paid by the Insurance Company. It is also submitted that the Insurance Company had appointed an Investigator M/s. Teja & Co. who had found that all the bills produced by the complainant were genuine. In spite of that the Insurance Company has unjustifiably paid reduced amount.

4. MR . Kishore Rawat, learned Counsel for the Insurance Company submitted that the assessment of the Insurance Company is based on the Surveyors report. The complainant had not insured the birds and electrical appliances. Hence the Insurance Company is not bound to pay for the loss of birds and for damage to the electrical appliances. There is no evidence on record that all stocks were totally damaged. It is true that part of the stocks of the feed as well as machine, etc. were damaged for which the surveyor has assessed loss by counting each bag and by counting each part of the machine in the presence of the insured or his representative. There is no evidence on record to show that the assessment of the surveyor was not in order. The facts of the case under consideration are not at all similar to the facts of the case in First Appeal No. 106/2003 and hence, appeal is devoid of any merit and requires to be rejected. Findings: (a) A perusal of the Order in First Appeal No. 106/2003 indicates that in that case the Surveyor has not given adequate reasons while rejecting the claim under some heads whereas in this case the surveyor has given reasons for the part of the loss assessed by him. (b) It is pertinent in this connection to examine the surveyors assessment of the loss against each item: Surveyors Assessment of Loss S. Description Estimate Amount No. Rs. Ps. Allowed Rs. Ps. 1. Sheds 98,620.00 60,768.00 2. Electricals 85,283.00 No cover 3. Birds 1,25,000.00 No cover 4. Birds 76,650.00 No cover 5. Furniture 10,000.00 No damage 6. Cages 1,00,000.00 No damage 7. Eggs 75,000.00 3,508.12 8. Brooding material 7,070.00 No damage 9. Medicines 15,150.00 No damage 10. Feed Mixing plant 15,000.00 10,000.00 11. Motor Rewinding 6,000.00 No damage 12. Feed 2,27,078.00 59.645.00 8,40,851.00 1,33.922.10 Less : Policy Excess Net Loss assessed for consideration 34,750.00 Rs 99,172.10 The surveyor has rightly found that the birds and the electrical appliances are not covered by the policy. Hence, the Insurance Company is not liable to pay compensation for the loss suffered on these two counts. It is true that the electrical appliances are not covered, electrical wiring which is part and parcel of the sheds cannot be excluded.

(c) There is an insurance cover for Shed Nos. 1 and 2 for Rs. 7,50,000. The surveyor has allowed Rs, 60,768 towards repairs and replacement of tiles including labour charges after detailed examination and analysis. Accordingly, we do no propose to interfere with the same.

(d) The surveyor has assessed loss at Rs. 59,645 after counting each bag of the poultry feed in the presence of representative of the complainant. Hence, this does not call for any interference. As regards furniture, cages, brooding material and medicines, the surveyor has looked into the same and observed that there was no damage, hence this does not call for any interference.

(e) Now, it is useful to refer to the report of investigator for arriving at loss suffered by the complainant. He has looked into all the bills and found that they are genuine. However, in some cases, the number and date of the bill was not found but the work was carried out by the contractor on contract basis. As the Investigator was appointed by the Insurance Company, we have to give due weight to his report.

The investigation report of M/s. Teja Investigation Agency indicates that bill dated nil for Rs. 19,550 issued by Mr. Mallidi Srinivasa Reddy, Ravulapalem is genuine. Inquiries revealed that the work has been taken on contract basis for repairs and fixing of pipelines with new and old pipes, new gate valves, etc. and also for sprinkling water on the sheds for Rs. 19,000 plus conveyance and transport charges from the poultry farm to Ravulapalem and vice versa. Hence, this amount of Rs. 19,550 is payable to the complainant by the Insurance Company.

(f) Mr. Karri Satyanaryana Reddy, a contractor has issued a bill for Rs. 19,050, for fabrication job works. The investigator has found that the work has been done but the rate is high but has not given any cogent reasons for this view. Accordingly, we feel that Rs. 19,050 requires to be awarded towards expenditure in connection with the fabrication work.

(g) Further the payment were made by the complainant to, Sri Kodanda Rama General Store for purchase of Hardware items for Repair of sheds vide

(i) Bill No. 164 dated 20.11.1997 Rs. 9,820

(ii) Bill No. 168 dated 21.11.1996 Rs. 3,890 (iii) Bill No. 170 dated 21.11.1996 Rs. 3,945 (iv) Bill No. 173 dated 23.11.1996 Rs. 9,600 (v) Bill No. 176 dated 20.11.1996 Rs. 8,400 (vi) Bill No. 177 dated 21.11.1996 Rs. 5,680 Rs. 40,735 Hence, the complainant has to be compensated to the tune of Rs. 40,735 for these bills.

(g) The complainant has paid Rs. 20,000 to Mr. Sathi Reddy for the works of electrical re -wiring. Investigation conducted by Mr. Teja revealed that the work of electrical wiring of the sheds damaged due to cyclone had been taken up on contract basis and completed the work within two days only but the rates were found to be very high but has not given any reasons why rates were high.

Though the Insurance Company is not liable to pay for electrical appliances as they are not covered by the insurance policy they cannot shirk the liability towards the electrical re -writing of the sheds as it is a part and parcel of the building. Hence we propose to compensate to the tune of Rs. 20,000 towards this expenditure.

5. THEREFORE , the complainant is entitled to reimburse from the Insurance Company following amounts: (1) Bill for repairing and fixing of pipelines and new gate valves, etc. Rs. 19,550 (2) Bill for fabrication job works Rs. 19,050 (3) Bill for hardware items for and repair of shop Rs. 40,735 (4) Bill for electric wiring Rs. 20,000 Rs. 99,335

6. IN view of the above discussion, the appeal is partly allowed and Insurance Company is directed to pay Rs. 99,335 in addition to the amount awarded by the State Commission along with interest @ 9% p.a. from the date of filing of the complaint till the date of payment to the complainant. The Insurance Company is also directed to pay Rs. 5,000 as costs to the complainant. Appeal partly allowed.