(2005) 10 NCDRC CK 0084

In the National Consumer Disputes Redressal Commission

SHAILENDRA SHOP And OIL INDUSTRIES — APPELLANT

Vs

Oriental Insurance Co. Ltd. — RESPONDENT

Date of Decision : 18-10-2005

Acts Referred:

Citation : 2006 1 CLT 497 : 2006 1 CPJ 188 : 2006 1 CPR 465

Hon'ble Judges : V.K.Agrawal , Veena Misra , R.S.Awasthis J.

Final Decision : Appeal dismissed

Judgement

1. BY this appeal, under Section 15 of the Consumer Protection Act, 1986, the order dated 13.2.2004 in Complaint No. 61/2002 by the District Consumer Disputes Redressal Forum, Jagdalpur (hereinafter called the ''District Forum'' for short) whereby the appellant''s complaint has been dismissed, has been challenged.

2. INDISPUTABLY, the complainant/appellant is the proprietor of Shailendra Soap and Oil Industries, which has its factory at industrial area, Jagdalpur. The complainant had obtained fire policy ''C'', covering the risk of his factory, etc. from 1.5.2000 to 30.4.2001. It is further not in dispute that the partition wall of the said mill fell down on 17.1.2001 resulting in damage to the stock and machinery kept in the mill. The two workers of the mill also died in the said accident. The complainant laid claim with the respondent/insurer regarding the damage to the mill, and machinery and stock kept therein. The respondent/ insurer first appointed Surveyor Hitesh H. Chitalia, who submitted a preliminary report, and subsequently Utkarsh Shingwekar was also appointed for assessing the loss. The said Surveyor Utkarsh Shingwekar opined that the claim is not payable under the circumstance of the loss, as it was not covered under the terms of the policy. Accordingly, the respondent/insurer intimated the complainant, by their letter dated 20.6.2001, that the loss reported does not come within the purview of the policy, hence its claim is treated as no claim. Feeling aggrieved by repudiation of his claim, as above, the complainant approached the District Forum and filed the complaint.

The complaint was resisted by the respondent/insurer. In substance, it was averred in the written version, that the partition wall collapsed on account of excessive weight and pressure of seeds, etc. stacked against it. It was also averred that the claim was not acceptable as there was no combustion, etc. Hence, there was no deficiency by the respondent/insurer in repudiating the claim of the complainant.

3. THE District Forum in the impugned order accepted the above defence of the respondent/insurer and held that as there was no internal combustion, etc. and no explosion, or implosion hence the loss was not covered under the policy. THE complaint was accordingly dismissed. The learned Counsel for the parties were heard. Record perused.

4. THE learned Counsel for the respondent/appellant strenuously urged that the risk was covered under Clause 3 of the policy, which reads as below: In consideration of the insured named in the schedule hereto having paid to the Oriental Insurance Company Limited (hereinafter called the "Company") the premium mentioned in the said schedule. THE Company agrees, (subject to the conditions and exclusions contained herein or endorsed or otherwise expressed hereon) that if after payment of the premium the property insured described in the said schedule or any part of such property, be destroyed or damaged by the following: 1. .... 2. .... 3. Explosion/implosion but excluding loss of or damage (a) to boilers (other than domestic boilers), economisers or other vessels, machinery or machinery apparatus in which steam is generated or their contents resulting from their own explosion/implosion, (b) caused by centrifugal forces. It was submitted by the learned Counsel for complainant/appellant that partition wall collapsed on account of explosion. Hence, the complainant was entitled to get compensation, as per terms of the policy. However, the learned Counsel for the respondent submitted that the collapse of the wall was the result of over-stacking and heavy pressure of stock of seeds, etc. stored against it, and not on account of any explosion. Therefore, the aforementioned Clause 3 of the fire policy could not cover the risk of the complainant. It was, therefore, submitted by the learned Counsel for the respondent, that the dismissal of the complaint was justified. The meaning of ''explosion'' as given in New Oxford Advanced Learner''s Dictionary is given below: The sudden violent bursting and loud noise of something such as a bomb exploding; the act of deliberately causing something to explode; a bomb/nuclear/gas explosion. It would, therefore, be clear that the meaning of the word explosion as defined amounts to sudden violent bursting with loud noise such as bomb, etc.

5. IN view of the above, it has to be considered as to whether the wall collapsed as a result of explosion, as has been urged by the learned Counsel for the complainant/appellant?

6. IT may be noted in the above context that the complainant in his complaint has stated in para 3 (b) that the wall collapsed on account of unknown cause. The above averment is also supported by affidavit of Santhosh Bafna-proprietor

of the complainant/factory in which it has been simply stated that the wall of the factory collapsed. No reason has been assigned therein as to why the wall collapsed. IT may further be noticed that the complainant/appellant had also lodged First Information Report of the incident, in which he had categorically reported that the stock was piled up and stacked against the wall which was beyond the capacity thereof, as a result of which the wall collapsed. IT would, therefore, appear from the said F.I.R. also that the collapse of the wall was the result of external pressure on account of overstacking of stock against it. Similar is the report of Surveyor Utkarsh Shingwekar who reported that the wall collapsed on account of extra pressure on it, due to overloading of seeds. Thus the collapse of the wall was not due to explosion or implosion.

In the face of overwhelming material as above, and the circumstances of the case, we are of the opinion that the fall of the wall was due to extra pressure beyond its capacity put against it; and not on account of any explosion or implosion. Therefore, the finding as arrived at, after detailed consideration and discussion of the material and circumstances of the case, by the District Forum, appears to be justified.

Learned Counsel for the appellant relied upon the decisions of Andhra Pradesh State Commission in M/s. Shirdi Traders v. The Branch Manager, The Oriental Insurance Co. Ltd. and Another, III (1999) CPJ 410, and Chuhar Gyanchand Satwani v. United India Insurance Co. Ltd., I (2002) CPJ 83. However, the facts of the said cases and ratio laid down therein do not help the case of the appellant. In M/s. Shirdi Traders (supra), the stock of neem fruit stored in the godown got damaged due to spontaneous combustion. It was held that the damage was covered under the policy. In Chuhar Gyanchand Satwani (supra), the stock got damaged due to collapse of the roof. It was held in the circumstances that the insurer wrongly repudiated the claim. However, in the instant case, as noted earlier, the stock got damaged due to heavy piling of stock against the partition wall, resulting in its collapse and not due to any explosion. Hence, the law laid down in the said cases does not render any assistance to the appellant''s case.

7. IN the circumstances, it is clear that the complainant''s loss was not covered under the terms of the policy as above. Hence the repudiation of its claim by the respondent/insurer was bona fide and cannot be termed as deficiency in service. There appears to be no reason to interfere with the finding as above recorded by District Forum. Accordingly, we find no error in the impugned order. This appeal has no substance. It is accordingly dismissed. Appeal dismissed.

