(2013) 07 NCDRC CK 0066

In the National Consumer Disputes Redressal Commission

Shital Fibres Ltd APPELLANT

Vs

Bharti Axa General Insurance Co. Ltd. RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Citation : 2013 0 NCDRC 496 : 2013 3 CPJ 674

Hon'ble Judges : J.M.MALIK , S.M.Kantikar J.

Advocate : K.L.NANDWANI

Judgement

1. THE key question involved in this case is "Whether this Commission can travel outside the Insurance Policy and grant relief to the complainant, without adhering to the parameters laid down in the policy itself? ".

2. THE present complaint has been filed by M/s. Shital Fibres Ltd against M/s. Bharti Axa General Insurance Co.Ltd., wherein a sum of Rs.4,19,04,368/- towarcds loss and damage, Rs.25,00,000/- towards punitive losses, Rs.20,00,000/- towards compensation for loss of business and delay in settling the claim, interest @ 2% or at the bank rate prevalent as on 15.04.2012 as per Regulation No.9 of the Insurance Regulatory and Development Authority (Protection of Policyholders '' Interest) Regulations, 2002, because the amount was not paid within 30 days from the appointment of Surveyors and costs of the complaint, were claimed. The facts germane to the present case are these. The complainant got constructed a building at Plot No.C-81, Focal Point, Jalandhar, Punjab, in December, 2007. The building was insured with different insurance companies, from time to time, but in the year 2011, the building was got insured from M/s. Bharati Axa General Insurance Co. Ltd, opposite party, which was issued seven policy schedules but did not issue the complete policies till date. The policies issued were Special Peril policies which also included the loss of the building due to subsidence and landslides. Unfortunately, on 15.04.2012, the building collapsed like a pack of cards when machines were running and work was going on as the factory used to run for 24 hours.

3. THE loss was intimated to the opposite party, which appointed M/s.Puri

Crawford Insurance Surveyors and Loss Assessors, which visited the site for the first time, on 17/18/12/2012. The surveyors called for documents in piece-meal, from time to time, w.e.f. 25.06.2012. All the documents and drawings were immediately furnished whenever the same were required. A Structural Engineer, was appointed by the Surveyor but he did not have any interaction with the complainant. No joint meeting was held with the surveyor. On receipt of the survey report, the complainant again contacted M/s.Gossian and Associates. They supervised the construction of the building and had issued completion certificate. The Structural Engineers vide their report reiterated that the sudden collapse of the entire structure suggested that it could not be a design/material defect and had to do more with the movement of soil. The opposite party did not pay heed and a legal notice was served on it to make the payment. The complainant approached Guru Nanak Dev Engineering College Testing and Consulting Cell, Ludhiana, which vide their report, dated 15.03.2013, gave the opinion that structural design was ''OK '' and there was no defect in it. Another opinion from an Expert, namely M/s.ARO Tech Structural Consultants, Jalandhar City, Punjab, was obtained, which was also of the opinion that the collapse was due to faulty construction of sewer line by Punjab Sewerage Board, due to which soil underneath had become bad. The complainant also met Shri Kunwar Sunil Kumar, Chartered Engineer for his expert report and he opined that if the total vibration of the machine is taken together, it cannot cause the collapse of the building.

4. THE Opposite party repudiated the claim made by the complainant vide its letter dated 04.02.2013, wherein it was mentioned : " ... .We reiterate that the claim lodged is not admissible under the captioned policy due to non-operation of any insured peril as observed and recommended by surveyors. We thus repudiate our liability under the claim and close the claim file as "No Claim ".

This report is accompanied by the report given by Er. Surjan Sindh Sidhu, BE (Civil) MIE India, FIV, Structural Engineer, Formerly Executive Engineer, PB.PWD (B & R), Associate Professor (Civil) RIET, Abohar. This is a detailed report which runs into five pages. The conclusion drawn by the Expert is reproduced, as follows:- "4. CONCLUSION Keeping in view the above facts and figures, it is reported that the main cause seems to be the failure at and near joints of R.C.C. Columns and R.C.C. beams due to shear stresses, as the work was done without following structural design and may have led to the collapse. Therefore, structural design defect is the main cause of collapse of building. Addition to it, there is no reliable information regarding construction procedure adopted, required quality control system applied, and qualified Civil Engineers deputed for construction and supervision, etc. So, non-compliance of building construction Codal Rules and Regulations, Byelaws, Technical Specifications, may have contributed to produce a weak structure, which could not resist the applied loads, continuous vibrations due to operating machinery and other forces causing ultimate failure of the building ".

We have heard the counsel for the complainant at the time of admission hearing of this case. The policy in question was produced before us which mentions about the Standard Fire and Special Perils and material damage. According to counsel for the complainant, this case falls within the ambit of Clause VIII of the policy in question, which reads, as under:- "VIII. Subsidence and Landslide, including Rock slide: Loss, destruction or damage, directly caused by subsidence of part of the site on which the property stands or Landslide/Rock slide EXCLUDING : a) the normal cracking, settlement or bedding down of new structures b) the settlement or movement of made up ground c) coastal or river erosion d) defective design or workmanship or use of defective materials e) demolition, construction, structural alterations or repair of any property or ground works or excavations ".

[EMPHASIS SUPPLIED]

5. HE further submits that as his case falls within this clause, the case should not be dismissed in limine. He further contended that an enquiry should be made in the questions raised by him. In support of his case, he has cited the following authorities : (1) Consumer Education and Research Society and Ors., Vs. Ahmedabad Municipal Corporation and Ors., 2002 (10) SCC 542; (2) United India Insurance Co.Ltd. Vs. Kiran Combers and Spinners, (2007) 1 SCC 368; (3) New India Assurance Co. Ltd. Vs. Pradeep Kumar, (2009) 7 SCC 787; (4) Punj Lloyd Limited Vs. Corporate Risks India Private Ltd., (2009) 2 SCC 301; (5) V.N.Shrikhande (Dr.) Vs. Anita Sena Fernandes, (2011) 1 SCC 53; and (6) New India Assurance Co.Ltd., Vs. Avadh Wood Products (Cold Storage), II (2013) CPJ 10 (NC).

6. WE are of the considered view that the case in hand does not fall within the above said clause. This is not a case of landslide/rock slide. It must be borne in mind that the policy does not include the normal cracking, settlement or bedding down of new structures or the settlement or movement of made-up ground. This case clearly falls within the exceptions (a), (b), (d) and (e), appended with Clause 8, already cited above. There is hardly any need to make an enquiry. The facts are crystal clear. The report given by the Expert carries enough value. It is well settled that it will get preponderance over the report made by the Experts appointed by the private party. There is no allegation against the Surveyor. He appears to be guileless and there is no reason to discard his statement/report. The Hon ''ble Supreme Court of India has already held that a Surveyor ''s report has significant evidentiary value unless it is proved otherwise, which the complainant has failed to do so in the instant case. This view was taken in United India Insurance Co. Ltd. Vs. Roshanlal Oil Mills and Ors., (2000) 10 SCC 19 and also by this Commission in D.N.Badoni Vs. Oriental Insurance Co.Ltd, 1 (2012) CPJ 272 (NC). Otherwise, too, the reports submitted by the Experts, engaged by the Complainant have exiguous value. Their reports are vague, evasive and lead us nowhere. They harp on the same point that structure was quite alright. They have given different reasons. It is apparent that the complainant is trying to

make bricks without straw.

7. THE complainant has no bone to pluck with the opposite party. The case is meritless and, therefore, the same is dismissed at the admission stage.