(1992) 07 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

SHIVALIK FERTILIZER LTD. APPELLANT

Vs

United India Insurance Co. RESPONDENT

Date of Decision : 15-07-1992

Acts Referred:

Citation : 1993 1 CPR 739 : 1993 2 CPJ 1019

Hon'ble Judges : S.S.Dewan , Laxmi Kanta Chawla J.

Final Decision : Complaint dismissed

Judgement

1. M/s . Shivalik Fertilizer Limited, Chandigarh (complainant) has filed this complaint on 14th January, 1992 under Section 12 read with Section 17 (a)(i) of the Consumer Protection Act, 1986 (for short ''the Act'') against the opposite parties, which will for the sake of brevity will hereinafter to be referred as ''the Insurance Company'', praying that a sum of Rs. 5,93,352/- may be awarded to it together with interest at the rate of 24% p.a. with effect from 28th September, 1988 till the date of realization.

2. THE broad outline of the complaint is that the M/s Shivalik Fertilizer Limited is carrying on the business of manufacturing fertilizers (SSP) and allied products. THE firm through the Bank of Baroda, Chandigarh, had insured its stocks of fertilizers stored in godowns Nos. 1 and 2 of Sardar Cold Storage, G.T. Road, Ludhiana, with the Insurance Company on 8.2.1988 for one year under a fire policy ''C (Annexure R 1) upto a sum of Rs. 40 lakhs. According to the complainant, in the last week of September, 1988, the stocks stored at the aforesaid godowns at Ludhiana were lost or damaged due to extensive floods. Admittedly, the said fire policy excluded from its scope any loss or damage to the goods due to the floods. THE complainant alleges that the Insurance Company was informed about this incident and on its request the surveyors M/s. Mehta and Padamsey Pvt. Ltd. were appointed and they assessed the loss at Rs. 5,93,352/-. However, its claim was rejected by the Insurance Company vide Annexure C7 dated 10.8.1990 on the ground that the alleged loss of the fertilizer had occasioned due to floods, and, therefore, the Insurance Company was not

liable to indemnify the loss suffered by the insured. THE present complaint was preferred by the complainant before this Commission on 14.1.1992 and in support of its case the complainant filed 8 documents. In the counters filed by the Insurance Company, five preliminary objections were raised denying the liability to pay any amount to the complainant-insured. It was stated that the damage to the stocks of fertilizers had occasioned due to floods and it was not covered by the fire policy obtained by the complainant. It was also stated that the Insurance Company got the claim of the complainant thoroughly examined and obtained experts'' opinion and on the basis of the same, came to the conclusion that the alleged loss was not due (to fire and did not fall within the purview of the policy and the same was repudiated. In support of the version of the case, the fire policy ''C (Annexure R 1) and the survey report of M/s Mehta and Padamsey Private Limited (Annexure R2) dated 23.6.1989 were submitted.

The complainant has submitted a letter dated 10.8.1990 (Annexure C7) addressed to the complainant. It was signed by the Branch Manager of the Insurance Company. It will be useful to read it in extenso : - "Please refer to our letter dated October 6, 1988 wherein on referring to the policy, it was intimated to you that the flood risk had not been obtained by you. The company has re-examined the matter very carefully and minutely and it is observed from the policy that you had obtained only a fire policy and the flood risk was never covered and no premium whatsoever for flood risk has been paid by you nor the same has been charged by the company. As the damage to your goods has been caused by flood, therefore, the same does not come under the ambit of the policy issued by the company. As such, the claim preferred by you is being treated as ''noclaim'' and the company is not liable for any loss."

3. LEARNED Counsel for the Insurance Company has contended that the Insurance Co. has considered the claim of the complainant in all aspects and only thereafter it has been rejected, and hence there is no deficiency of service. If the complainant is not satisfied with the rejection of the claim, it is open to it to file a suit in a competent Court of civil jurisdiction, but cannot seek adjudication of its claim before this Commission. Reliance is placed on a decision of the National Commission in M/s Janata Machine Tools v. Oriental Insurance Co. Ltd., I (1991) CPJ 234 (NC). Be that as it may, before coming to the primal argument of Shri R.L. Sharma, learned Counsel for the complainant, it is necessary to clear the decks with regard to one factual aspect. This pertains to the question, ''whether the fire policy ''C (Annexure R 1) includes the risk of flood or not ?'' Now the bare reading of the complaint would indicate that the complainant had obtained the fire policy on 8.2.1988 and that covered the risks of fire, riot, strike, Malicious Damage and terrorist act. Faced with the somewhat uphill task of establishing the complainant''s case, Mr. Sharma, its learned Counsel, had with great vehemence submitted that the words "other specified perils" in the fire cover note (Annexure CI) include the risk of flood. We are unable to see how these words in the fire cover note would help him. The submission of the learned counsel is completely negative by this document itself. The words ''premium

perils'' in the fire cover note precede the words ''Fire, R & S.M.D., Terrorist Act''. It is thus manifest that the complainant had paid the premium for these risks only and not for flood. Moreover, the word ''peril'' is to be read in conjunction with the risks mentioned in the fire policy, which is the basic document of insurance. The word ''perils'' cannot be given such a wide meaning as to cover all sorts of risks. The word ''flood'' is, however, covered by the exclusions of the fire policy. The exclusion Clause (h)(ii) of the policy reads as under : - "(h) Any loss or damage occasioned by or through or in consequence directly or indirectly, of any of the following occurrences, namely, (i). xx xx xx xx (ii). Typhoon, Hurricane, Tornado, Cyclone, or other atmospheric disturbance, Flood and Inundation."

4. THE loss of fertilizer had occasioned due to floods. THErefore, the Insurance Company is not liable to make good the loss suffered by the complainant-insured as its case falls within the purview of Clause (h)(ii) of the exclusion mentioned in the fire policy ''C''. THE primal and indeed the solitary argument of the learned 8. Counsel for the complainant, consequently, must fail and is rejected. In the light of the above, the answer to the question posed above is rendered in the negative and it is held that the risk of flood does not come within the ambit of the fire cover note as well as the fire policy. In view of the aforesaid detailed discussion, we are unable to detect any merit in the present complaint, which must necessarily be dismissed. There would, however, be no order as to costs. Complaint dismissed.

