

(2013) 05 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

SIMPLEX CONCRETE PILES (INDIA) LTD

APPELLANT

Vs

NATIONAL INSURANCE COMPANY

RESPONDENT

Date of Decision : 31-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 491 : 2013 3 CPJ 36

Hon'ble Judges : V.B.GUPTA , Rekha Gupta J.

Advocate : G.N.RATHI , KISHORE RAWAT

Judgement

1. REVISION Petition No.2750 of 2008 has been filed under section 21 (b) of the Consumer Protection Act, 1986 (short, "Act ") against the judgment/order dated 14.2.2008, passed by State Consumer Disputes Redressal Commission, Delhi (short, "State Commission ") in First Appeal No.A-378/2004 titled as National Insurance Co. Ltd. Vs. Simplex Concrete Piles (India) Ltd. The facts of the case as they emerged from the existing record are that the petitioner/complainant a Public Limited Company was awarded as a sub-contractor, the contract in January, 1995 for executing civil and structural work for 235 MV gas based combined Cycle Power Project at Jegurupadu Rajamundhary (Andhra Pradesh). In order to get this work insured against any hazard, the petitioner submitted a proposal to respondent/opposite party for getting a "Contractor "s All Risks Insurance Policy ", the proposal form was examined and petitioner was informed orally by respondent that they would have to pay a total premium of Rs.4,50,543/- and that the said amount could be paid in installments. The first installment of Rs.1,18,268/- was paid on 5.6.1995 and insurance policy number 35900/9506421 was issued for the period 5.6.1995 to 4.12.1996. The total sum insured was Rs.19,02,00,000/- apart from 3rd party liability of Rs.10 lacs. The petitioner paid the balance in three installments of Rs.1,10,759/- on 18.9.1995, Rs.1,14,512/- on 5.12.1995 and Rs.1,07,004/- on 15.3.1996.

2. ON 6.11.1996, a devastating cyclone storm dashed at the site of work at Jagurupadu and other existing structure/building/labour colony of the petitioner. The petitioner vide its letter dated 7.11.1996 intimated respondent about the

said loss. Following the said intimation of loss to the respondent, they appointed a surveyor and the said surveyor assessed the loss at Rs.9,11,169/- as per the reports submitted to the respondent on or about 31.12.1996. Meanwhile, since the insurance policy was due to expire on 4.12.1996, while the work of petitioner was to continue beyond that date, the petitioner asked the respondent for extension of the policy for a further period of 3 months and thereafter for another period of three months and finally for another 6 months and he paid Rs.1,43,042/- on 4.12.1996, Rs.1,43,042/- on 3.3.1997 and Rs.2,28,867/- on 6.6.1997 towards the premiums. After the receipt of the said premiums amount, respondent issued endorsement notice on each of the occasions. The said policy expired on 4.12.1997 and till that time the respondent did not indicate to the petitioner that the premium charged from the petitioner was short by any amount. However, on 30.4.1998, respondent informed the petitioner that their claim of loss had been approved by competent authority for Rs.7,58,700/- subject to rectification of policy by charging additional premium of Rs.50,823/- and also requested for remittance of this amount. The petitioner informed respondent that he had paid the premium amount as per the directions of the respondent and that he had never been informed of any deficiency in payment of premium and, therefore, the new demand of Rs.50,823/- is arbitrary and afterthought. Similarly, demanding 3 times penalty by the respondent is also uncalled for and reiterated for settlement of his claim for Rs.9,11,169/- with interest @ 24% per annum. There had been no response of the respondent to this request of petitioner till 16.9.1998, when the petitioner being under financial constraints sent cheques for additional premium of Rs.50,823/- under protest on which the respondent sent a sum of Rs.7,58,700/- by cheque dated 23.9.1998 to the petitioner. The petitioner "s case is that once having issued the policy, respondent had no right to ask for additional premium or for imposing a penalty and, therefore, there was deficiency in service on the part of the respondent. Accordingly, the present complaint has been filed requesting for issue of directions to the respondent to :- (i) Refund a sum of Rs.1,52,469/- charged by way of penalty and deducted from the claim amount ; (ii) Refund a sum of Rs.50,823/- paid by the petitioner as additional premium ; (iii) Pay interest @ 24% per annum of Rs.9,11,169/- from 1.1.1997 to 23.9.1998 ; (iv) Pay interest @ 24% per annum of Rs.1,52,469/- from 24.9.1998 till payment ; (v) Pay interest @ 24% on Rs.50,823/- from 8.9.1998 till payment ; (vi) Pay compensation of RS.50,000/- on account of harassment and inconvenience and (vii) Pay Rs.20,000/- as cost of litigation.

On issue of notice to the respondent, they appeared and filed their reply stating that the claim has already been settled for amount of Rs.7,58,700/- and as such there is no deficiency in service on their part. Further, they acted within the guidelines as given by the GIC Claim Procedural Manual and whatever deficiency was in charging of the premium, the same has been recovered from the petitioner. Similarly, the penalty which is three times the short premium has also been recovered from the claim amount as per the guidelines governing the

settlement of the claim. They argued that even if they erred in calculating the correct premium, petitioner cannot take advantage of the same and he is under legal obligation to make the deficiency in shortfall of the premium. They also filed a simple affidavit stating that whatever has been stated in the reply is correct. District Forum, after going through the record and hearing the counsel for the parties gave the following order ; (1) Refund Rs.1,52,469/- with 9% interest from 24.9.1998 till the date of payment ; (2) Refund Rs.50,823/- with 9% interest from 8.9.1998 till the date of payment ; (3) Pay 9% interest on the claim amount of Rs.9,11,169/- from 1.4.1997 till 24.9.1998 considering a period of 5 months to be reasonable time in finalizing the claim ; (4) Pay Rs.20,000/- as cost of litigation ".

3. AGGRIEVED by order, the respondent - Insurance Company filed an Appeal No.A-378 of 2004 before the State Commission. The State Commission came to the following conclusion :- "Thus as regards the refund of Rs.50,823/- with 9% interest it was not permissible as such a premium was chargeable in terms of rules and regulations and as per provisions of insurance policy and law. As regards the refunds of Rs.1,52,469/-, the said amount was charged by way of penalty for payment of short premium. Such a refund is necessary because no party can be allowed to take advantage of its act of omission or Commission. Even, if there was a mistake on the part of the appellant - Company in going on receiving the short premium, still the respondent cannot be held liable to pay the amount by way of penalty for payment of short premium until the aforesaid amount of short premium was in the knowledge of the respondent. There was no such demand made till the date of the filing of the claim which means that the appellant - Company could not detect its mistake till the instant eventuality arose.

4. THE learned counsel for the appellant has also stated that out of Rs.9,11,169/- a sum of Rs.7,58,700/- was paid to the respondent on 23.9.1998 whereas the appellant deducted the penalty amount from the claim amount. In view of the peculiarity of facts of the case, the appeal is partly allowed by way of modifying the impugned order in the following terms. Appellant shall pay 9% interest on the claim amount of Rs.9,11,169/- from 1st April, 1997 till 24th September, 1998 by way of compensation and shall refund the amount of Rs.1,52,469/- charged towards the penalty amount. However, the order of refunding of Rs.50,823/- with 9% interest charged towards short premium cannot be sustained and is hereby set aside ". Hence, the revision petition. The grounds for the revision petitions are that ; Based on the submissions made by the counsel for the insurer at the time of final hearing before the State Commission arrived at the finding that the demand and recovery for short premium charged does not constitute deficiency in service and that the demand of penalty equivalent to 3 times of the premium charged short constitute deficiency in service, the Commission ought to have modified the order of the District Forum by deleting the directions made, to pay Rs.50,823/- with 9% interest and to maintain the rest of the directions of the District Forum.

5. THE State Commission while modifying the impugned order to the effect. "Refund Rs.1,52,469/- with 9% interest from 24.9.1998 till the date of payment " to, "shall refund the amount of Rs.1,52,469/- charged towards the penalty amount ", acted in the exercise of its jurisdiction illegally or with material irregularity. The State commission having arrived at the finding that there was deficiency in service on the part of the insurer, without assigning any reason and justification, acted in the exercise of its jurisdiction illegally or with material irregularity, in not upholding the directions of the District Forum, to pay Rs.20,000/- as cost of litigation.

6. THE petitioner has prayed that to allow the revision petition and modify the judgment/order of the State Commission by way of modifying the judgment to pay Rs.1,52,469/- with 9% interest from 24.9.1998 till the date of payment and to pay Rs.20,000/- as cost of litigation. We have heard learned counsel for the parties and gone through the record. Counsel for petitioner said that he is not pressing for refund of Rs.50,823/- paid towards premium but he still presses for payment of interest, on the amount of Rs.1,52,469/- which was charged as penalty and was to be refunded. The District Forum had in their order stated that the refund of Rs.1,52,469/- should be with 9% interest from 24.9.1998, till the date of payment. State Commission in their order, however, while modifying the impugned order, omitted the interest component. We are of the view that in the circumstances, State Commission order needs to be modified to the extent that 9% interest should also be paid on the amount of Rs.1,52,469/- from 24.9.1998 till the date of payment when the amount was refunded. Rs.20,000/- awarded as cost of litigation should also be paid to the petitioner. Hence, the petition is partly allowed by way of modifying the impugned order in the following terms ; (i) Respondent shall pay 9% interest on the amount of Rs.1,52,469/- charged towards penalty amount from 24.9.1998 till the date of payment ; and (ii) Respondent shall pay Rs.20,000/- as cost of litigation to the respondent.