(2005) 12 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

S.Kamala APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 14-12-2005

Acts Referred:

Citation : 2006 3 CPJ 284

Hon'ble Judges : K.S.Gupta , B.K.Taimni J.

Final Decision : Appeal allowed

Judgement

1. THE appellant was the complainant before the State Commission, where she had filed a complaint alleging deficiency in service on the part of the respondent, Insurance Company.

2. FACTS leading to filing of the complaint before the State Commission were that appellant/complainant was the registered owner of a fishing vessel, which was insured with the respondent No. 1, Insurance Company for a sum of Rs. 7,54,000. On 30.4.1993, the vessel started from Madras Harbour for fishing operation and when it was going towards Kovalam, the engine of the said vessel ceased to function. Efforts made by the crew members for grounding the vessel went in vain. The hull was completely broken and machinery was damaged. The incident was reported to the Insurance Company, who appointed the surveyor. The Insurance Company repudiated the claim on 13.2.95 on the ground that the vessel had no valid licence on the incident date. It is in these circumstances, a complaint was filed before the State Commission, who after hearing the parties, passed a detailed order dismissing the complaint, hence this appeal before us. We heard the learned Counsel for the parties at length. The argument of the learned Counsel for the appellant is that at best the absence of licence to take the vessel for fishing would amount to an irregularity. He relied upon the terms of ''Trading Warranty'' incorporated in the body of the Policy as also the ''Trading Warranty'' attached with the Policy issued. The terms. ''Trading Warranty'' as they appear in the body of the conditions of the Policy reads as under: ''Trading Warranty'': As attached (To be included as per the Tariff) subject to no breach of

local port regulations regarding sailing warranted Vessel to comply with local laws and regulations with regard to Registration and licensing."

Term ''Trading Warranty'' as they appear in the attachment to the Policy read as under: "Warranted Vessel engaged in fishing and operations connected therewith on the coasts of Andhra Pradesh and Tamil Nadu (including Pondicherry) upto and including Palk Strait including Palk Bay and no beyond 50 Nautical Miles into the sea from shore. Warranted vessel laid up from 1st November to 31st Janauary (b.d.i.) with leave to operate on the coast of Andhra Pradesh during the period."

3. ACCORDING to the learned Counsel for the complainant, they had a valid registration for the vessel and the respondent Insurance Company cannot repudiate the claim on an irregularity. It is the case of the learned Counsel for the respondent that as per Provision 8 of the Tamil Nadu Marine Fishing Regulation Act, 1983 there is a clear prohibition of fishing, using fishing vessels which are not licensed. Section 8 of Tamil Nadu Marine Fishing Regulation Act, 1983 reads as follows: "8. Prohibition of fishing using fishing vessels which are not licensed.-No person shall, after the commencement of this Act, carry on fishing in any specified area using a fishing vessel which is not licensed under Section 7: Provided that nothing in this section shall apply to any fishing vessel, which was being used for fishing immediately before the commencement of this Act, for a period of three months or such further period as may be specified by the Government, by notification."

4. THE respondent also relies upon the term ''Trading Warranty'' as it appears in the Body of the Policy and he emphasised that this warranty was subject to no breach of local port regulations regarding sailing as well as local laws and regulations with regard to registration and licensing. Since there was no licence to operate the vessel, it clearly amounts to the violation of the local laws. He also relies upon Section 35 of the Marine Insurance Act, 1963. Section 35(3) of the Marine Insurance Act, 1963, reads as follows: "35(3). A warranty, as above defined, is a condition which must be exactly, complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged, from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date."

Our attention was also drawn towards the provisions contained in the Claims Procedural Manual. In this Manual under the Chapter "Procedural Manual for Marine Hall Claims", para 7 deals with settling the claim on non-standard basis, which reads as follows: "7. Non-Standard Claims Following types of claims shall be considered as Non-Standard and shall be settled as indicated below: 1. Breach of Warranty To pay upto where such breach exceeding is not material to the 75%. loss 2. Breach of warranty To pay upto where the breach is exceeding material to the loss 60% N.B. 1. Until registration of Fishing Vessels is made compulsory in all States having a coast line (i.e., Gujarat, Maharashtra, Karnataka, Kerala, Tamil Nadu, Andhra Pradesh, Orissa, and West Bengal) non-registration shall not be considered a breach notwith-standing the warranty included in the Policy. 2. If the reasons for non-registration of a fishing vessel are explained to the satisfaction of the Insurers, non-compliance of the relevant warranty may be condoned. 3. Unless it is conclusively established that presence of watch and ward would have prevented the loss, non-compliance of the relevant warranty may be condoned. 4. Benami ownership or hiring out of fishing vessel shall not be deemed to be a breach.

It is the contention of the learned Counsel for the respondents that the claim even cannot be settled on non-standard basis, firstly, that it is not possible to determine as to whether the breach was material to the loss or otherwise, and secondly, in the note given to the para 7 of settling the claim on non-standard basis (reproduced earlier), deals with the ''Registration'' and there is no mention of any word ''licensing'', hence not applicable in the present case.

5. AFTER hearing the arguments advanced by both the parties and perusing the material on record, we find that there is no disputing the fact that the whole issue revolves around interpreting the term. ''Trading Warranty'' as it appears in the body of conditions of the Policy, which is reproduced below: "Traing Warranty'': As attached (To be included as per the Tariff) subject to no breach of local port regulations regarding sailing warranted vessel to comply with local laws and regulations with regard to Registration and licensing."

6. THERE is no disputing the fact that the appellant had only a registration of the vessel and had no licence. The very fact that ''Heading'' under which this provision has been made, reads as ''Trading Warranty'', makes it clear that would imply that is it is the word ''Warranty'' which will carry the day one way or the other and in our mind, there is no doubt that the wording used both in the body of the terms and conditions of the Policy as also the attachment issued to the Policy speak of ''Trading Warranty'' and in the body of these paras, the crucial word is "Warranted" vessel. Thus, it will be quite clear that these both conditions will be indicating or associated with the terms of "Warranty" as the heading in both the conditions will make it amply clear. A plain reading of the term ''Trading Warranty'' as it appears in the body of the Policy will make clear that violation of any local law (like operating without Licence) would at best amount to violation of a ''Warranty'' clause. We also have no difficulty in accepting the contents of Section 35(iii) of the Marine Insurance Act, 1963, but in our view, the Insurer would have got away with the taking advantage of this provision but for the fact that the Insurance Companies themselves have, for good reasons, decided to settle the claim for breach of ''warranty'' treating them as non-standard claims, hence Section 35(iii) of the Marine Insurance Act would stand compromised to that extent as we are reasonably sure that at the time of drawing these ''Guidelines'' to be followed by the Insurance Companies, the provisions of Marine Insurance Act, would have been within their knowledge and yet they have agreed to settle the cases on non-standard basis in terms of breach of warranty.

It is true that we would not be able to determine whether the breach of the warranty was material to the loss or otherwise but we have also seen that in the Guidelines in the worst case scenario it has also been laid down to settle the claim on 60% basis, where the breach is material to the loss. Admittedly, Surveyor has assessed the loss at Rs. 4,50,900/-. Keeping in view the worst case scenario, the respondent Insurance Company is directed to settle the claim by paying 60% of the amount assessed by the Surveyor along with interest @9% p.a. from two months after the report of the Surveyor till the date of payment, as also with cost which we fix at Rs. 2,500/-.

7. THE order of the State Commission is set aside and appeal is allowed in above terms. All the above payment shall be made to the appellant/complainant within a period of 6 weeks from the passing of this order. Appeal allowed.

