(1996) 02 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

S.Kamala APPELLANT

Vs

NEW INDIA ASSURANCE CO.LTD RESPONDENT

Date of Decision : 06-02-1996

Acts Referred:

Citation : 1996 2 CPJ 325 : 1996 3 CPR 93

Hon'ble Judges : E.J.Bellie , V.S.Kandasamy , Angel Arulraj J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant S. Kamala is the registered owner of the Motor Fishing Vessel "Kamala" MDS 260. THE vessel has been insured with the 1st opposite party for a sum of Rs. 7,54,000/-. THE vessel has been hypothecated with the 2nd opposite party Indian Bank, Royapuram. On 30.4.93 the vessel started from Madras Harbour for fishing operation and was going towards Kovalam. Suddenly the engine of the vessel ceased to function. THE crew in the vessel tried their best to prevent the vessel going aground but in vain. On 1.5.93, the hull was completely broken and the machinery was seriously damaged. THE incident was reported to the 1st opposite party-Insurance Company, and it appointed a Surveyor to assess the loss, and the Surveyor had submitted a report. After discussion with the Surveyor the complainant prepared a claim with the Insurance Company for indemnifying the loss. But the Insurance Company by their letter dated 13.2.95 repudiated the claim on the ground that the vessel had no valid licence on the date of the incident. This stand taken by the Insurance Company is unjust and improper and it amounts to deficiency in service. Even if there was no licence at the time of the incident it was only an irregularity and not illegality that entitles the Insurance Company to deny liability. On account of the callous indifference on the part of the Insurance Company the complainant has suffered great mental agony. THE Insurance Company is also liable to pay interest on the amount to be paid by it, @ 18% p.a. from the date of the Surveyor''s Report. On these grounds the complainant has sought relief of compensations under various heads aggregating to Rs. 8.27,500/- plus cost of the complaint at Rs. 5,000/-.

2. THE 1st opposite party-Insurance Company in its written version denies that there was any deficiency in service on their part. It contends that under the conditions in the policy and under the Tamil Nadu Marine Fishing Regulation Act, 1983, "the fishing vessel should have had a licence." But on the date of the incident the vessel had no licence and, therefore, there was a breach of the condition of the policy and also the Fishing Regulation Act and as such the complainant is not entitled for any claim from the Insurance Company. Considering this and also considering the other investigations made in the case the Insurance Company had repudiated the claim and as such there was no arbitrary or unreasonable repudiation and therefore the complaint is not maintainable against the Insurance Company. It is further contended that the loss was only a partial one and the amount payable in case the Insurance Company is liable is only Rs. 4,50,900/-. It is then contended that the complaint is liable to be dismissed. The 2nd opposite party-Indian Bank in their written version has claimed that in the case of any award being passed against the 1st opposite party-Insurance Company the award amount may be ordered to be disposed only through the 2nd opposite party, that too after discharging the entire loan amount due to it by the complainant.

The points that arise for consideration are: (1) Whether there was no licence for the fishing vessel at the time of incident; and if so whether the 1st opposite party-Insurance Company is not liable to pay compensation, (2) In the event of the Insurance Company is liable to pay compensation, what is the extent of the amount ?

3. POINT No. 1:- The incident of the vessel running aground and damage having been caused is not in dispute. It is also not in dispute that the fishing vessel must have had a licence, but there was no such licence at the time of the incident. But the plea of the complainant is that not holding a licence is not a material breach of the condition or law, and at the most it is only a breach of warranty, and the Surveyor''s report shows that there was nothing wrong with the sea-worthiness of the vessel and therefore this is a case in which the Insurance Company can waive the warranty clause in the policy regarding the licence and pay the claim. As against this it is contended by the Insurance Company that holding a licence is a condition which must be fulfilled by the complainant under the policy as well as the law and the breach of this condition dis-entitles the claimant making a claim. Now, in the policy Ex. A2 under the heading "Trading Warranty" there is a clause clearly reading : "Warranted vessel to comply with local laws and regulations with regard to registration and licencing" Tamil Nadu Fishing Regulation Act, 1983 is the local law applicable to the fishing vessels. Section 7 thereof deals with licencing of fishing vessels. As per Sub-section (1) of this Section the owner of a fishing vessel may make an application to the authorised officer for the grant of a licence for using such fishing vessel for fishing in specified areas. Section 8 deals with prohibition of fishing using fishing vessels which are not licensed. It states that "no person shall after the commencement of this Act carry on fishing in any specified area

using their fishing vessel which is not licensed under Section 7". From this it is very clear that there was a warranty in the above said clause in the policy as per which there must be a licence for using the vessel for fishing as required by the Tamil Nadu Fishing Regulation Act, 1983, and that Act prohibits use of a vessel without a licence of being used to fish. In the Marine Insurance Act, 1963, Section 35 relates to nature of warranty. This section is in the following words :- " (1) A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some conditions shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts. (2) A warranty may be express or implied. (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."

As per this section a warranty may be express or implied. In the present case there is a warranty in the policy expressed that the vessel shall comply with the local laws or regulations relating to licensing, and as per the local law namely the Tamil Nadu Fishing Regulation Act, 1983, the vessel is prohibited for the use of fishing without licence. This is in consonance with Clause (1) of Section 35 of Marine Insurance Act that the assured has undertaken that the vehicle shall not be used for any fishing without licence. This is a warranty within the definition of the said Clause (1). As per Clause 3 of Section 35 such a warranty is condition which must be exactly complied with whether it be material to the risk or not, and if it be not so complied with, then, subject to any express provision of the policy, the insurer is discharged from liability as from the date of the breach of the warranty, but without prejudice to any liability incurred by him before that date. It is not the case of the complainant that there is any express provision in the policy in view of which the insurers is not discharged from liability. It is, therefore, manifest that since the complainant had no licence at the time of the incident to use the vehicle for fishing the insurer is discharged from liability. But as seen above it is the plea of the complainant that the warranty in question can be waived by the insurer. May be this plea is taken in view of Section 36 Clause 3 of the Marine Insurance Act which reads that a breach of warranty may be waived by the insurer. But the insurer has not waived the warranty. This Commission cannot ask the insurers to waive the warranty. It is submitted on behalf of the complainant that there are some procedural guidelines to the Marine Insurance Companies regarding claims and therein there is a classification of "non-standard claims" and such claims shall be settled as indicated thereunder. But any such guidelines being no law or terms of contract, this Commission cannot direct the Insurance Company to settle the matter as per those guidelines. The result is that, as contended by them, the Insurance Company is not liable. The Insurance Company had repudiated the claim of the complainant taking into consideration the warranty clause in the policy and also the law relating to it and therefore the repudiation was after a careful deliberation and it was not arbitrary and it cannot be said to be unreasonable also. For all these reasons, it cannot be said that there was any deficiency in service on the part of the Insurance Company. In this view this Commission cannot pass any order directing the Insurance Company to pay compensation to the complainant. Point No. 2:-In view of our findings on point No. 1, consideration of Point No. 2 does not arise.

4. IN the result, therefore the complaint is dismissed. There will be no order as to costs. Complaint dismissed.

