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(2015) 12 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

Case No : 20 of 2006

SONELL CLOCKS AND GIFTS LTD — APPELLANT

Vs

THE NEW INDIA ASSURANCE CO. LTD — RESPONDENT

Date of Decision : 10-12-2015

Acts Referred:

Constitution of India, Article 226 - Power of High Courts to Issue certain writs

Citation : 2016 1 CPR 239

Hon'ble Judges : V.K. Jain

Advocate : Nikhil Jain, Joseph Fernandes, J. P. N. Shahi

Judgement

1. The complainant took an insurance policy from the opposite party for the period from 19.07.2004 to 18.07.2005 in respect of its building, plant and machinery at plot no. 70/3, B. K. Textile Compound, Dan Udyog Sangh Ltd., Piparia, Silvassa, Dadra Nagar, Haveli, for a sum assured of Rs. 2,87,00,000/-. The policy was obtained on reinstatement value basis. According to the complainant, there were torrential rains and floods in the entire belt, where its factory was situated and water flowed into its factory, causing damages to the machinery as well as the raw material lying therein. This loss, according to the complainant Company, happened on 04.08.2004. The intimation of the loss to the Insurance Company, however was given only on 30.11.2004. A Surveyor was appointed by the Insurance Company to assess the loss to the complainant and investigate the matter. The Surveyor assessed the loss to the complainant reporting that the loss could be total. He, however, felt that the claim was not payable on account of the complainant having contravened para 6 of the general conditions of the policy.

2. Vide its letter dated 18.02.2005, the Insurance Company rejected the claim on the ground that neither the intimation of the loss had been given to it immediately after the loss nor were the requisite particulars of the loss conveyed within a period of 15 days or even the extended period of next 15 days. Being aggrieved the complainant is before this Commission, by way of this complaint,

claiming an amount of Rs. 2,66,05,000/- alongwith interest, compensation etc.

3. The complaint has been resisted by the Insurance Company primarily on the same ground on which the claim was repudiated.

4. The insurance policy taken by the complainant, to the extent it is relevant, reads as under:- "6. (i) On the happening of any loss or damage the Insured shall forthwith give notice thereof to the Company and shall within 15 days after the loss or damage, or such further time as the company may in writing allow in that behalf, deliver to the Company.

a) A claim in writing for the loss or damage containing as particular an account as may be reasonably practicable of all the several articles or items of property damaged or destroyed, and of the amount of the loss or damage thereto respectively, having regard to their value at the time of the loss or damage not including profit of any kind.

b) Particulars of all other insurances, if any No claim under this policy shall be payable unless the terms of this condition have been complied with.

4. Reinstatement Value Policies

3. This Memorandum shall be without force or effect if

a) The Insured fails to intimate to the Company within 6 months from the date of destruction or damage or such further time as the Company may in writing allow his intention to replace or reinstate the property destroyed or damaged.

b) The Insured is unable or unwilling to replace or reinstate the property destroyed or damaged on the same or another site."

5. It would thus be seen that as per the terms and conditions of the policy taken by it, there were three obligations on the complainant/insured. The first obligation was to give notice of the loss to the insurer, immediately on the said loss taking place. The second obligation on the complainant was to submit a claim for the loss or damage, giving all necessary particulars of the loss, within a period of 15 days or such other time as the insurer might allow. The third obligation on the insured was to intimate the insurer, within six months of the date of the loss, that it intended to replace or reinstate the property which had been destroyed or damaged.

6. It is not in dispute that the alleged loss despite having occurred on 04.08.2004 was reported to the Insurance Company only on 30.11.2004. Thus neither immediate intimation of the loss was given to the Insurance Company nor was a claim lodged with the requisite particulars within the time stipulated in the policy. The complainant Company, therefore, contravened clause 6 of the insurance policy taken by it on account of the above referred two defaults.

7. It is contended by the learned counsel for the complainant that the requirement of intimating the insurer and submitting a claim within 15 days of

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the loss stands superseded by clause 4(3) applicable to reinstatement value policies, which required the requisite intimation to be given within six months of the date of loss. I, however, find no merit in the contention. The obligation of the insured under clause 4(3) applicable to reinstatement value policies was independent of the obligation placed upon it under clause 3 of the said policy. Under clause 3 of the policy, the insurer was to be informed immediately on happening of the loss followed by lodging of the claim with necessary particulars within 15 days of the loss or within such further time as should be extended by the insurer, whereas under clause 4(3), which was applicable to reinstatement value policies, it has to express its intention to replace or reinstate the property which had been destroyed or damaged. There is no question of any supersession of clause 6 of the policy by clause 4(3), applicable to reinstatement value policies, the reinstatement of these clauses being distinct and separate from each other.

8. For the reasons stated hereinabove, I have no hesitation in holding that the complainant committed breach of clause 6 of the insurance policy, and therefore as stipulated in the said clause, no claim under the policy is payable. The complaint is, therefore, dismissed with no order as to cost.

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