(1998) 06 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

SR. DIVISIONAL MANAGER, ORIENTAL INSURANCE CO. APPELLANT

Vs

PHARMCHEM LABORATORIES RESPONDENT

Date of Decision : 23-06-1998

Acts Referred:

Citation : 1998 2 CLT 559 : 1998 2 CPC 72 : 1998 2 CPJ 710 : 1998 2 CPR 296

Hon'ble Judges : S.A.Shah , Leelaben Trivedi J.

Final Decision : Appeal dismissed

Judgement

1. THE respondent is the original complainant who has admittedly insured for fire with the appellant Insurance Company. That the District Forum has accepted the claim of the complainant-respondent and passed an order directing the Insurance Company to pay the insurance amount with 15% interest and cost. Being aggrieved by the aforesaid order, the Insurance Company has filed this appeal.

2. MR. Thakkar, the learned advocate appearing on behalf of the Insurance Company has vehemently urged that the cover note given by the Insurance Company contained a typographical mistake. According to MR. Thakkar the risk expired on 18.12.89 whereas the fire has taken place on 25.12.89 and since the same is not covered under the policy, the Insurance Company was not supposed to make the payment. Curiously, though the Insurance Company has alleged a typographical mistake in the cover note issued by the officer of the Insurance Company which in terms states that the risk commences from 11.1.89 to 10.1.90 i.e. for the period of 12 months. The Insurance Company has not called MRs. S.V. Thakore too says that she had committed any typographical mistake and submit herself to cross-examination. We are told by the learned advocate of the respondent that since the Insurance Company was not inclined to examine Mrs. Thakore, he has made an application and got the summons issued against Mrs. Thakore as his witness. Even then Mrs. Thakore has not stepped into the witness box. So there is sufficient reason to come to the conclusion that had Mrs. Thakore appeared as witness, she would have testified against the Insurance Company. Apart from that since there is a cover note which is a preliminary

contract between the parties and if there is any mistake, the same ought to have been corrected immediately. The burden to prove the mistake is on the Insurance Company and the Insurance Company has failed to prove the same.

Secondly, Mr. Thakkar admits that the premium recovered by the Insurance Company was for 12 months'' risk. That the risk commenced from 11.1.89 and it therefore necessarily follows that the risk must end after 12 months i.e. on 10.1.90. We are now satisfied that Mrs. Thakore has committed no nustake. She has correctly noted both the dates of commencement of risk as well as date of expiry.

3. THIRDLY, the Insurance Company has not produced the original proposal signed by either the complainant or the GSFC. What is produced is merely regarding loan and there is no request for taking any insurance. It has also not been proved by the Insurance Company that the policy which they have produced has ever been sent to the complainant. The learned advocate for the complainant-respondent states that they have never received the policy otherwise they could have drawn the attention of the Insurance Company that the policy contains mistake.

4. WE are satisfied that the policy has not been issued by the Insurance Company. It has been kept in their possession which contained mistake of expiry of risk. This policy, as Mr. Thakkar submits is not even for 10 months. It is for 11 months and some days which does not tally with any argument. The arguments made by Mr. Thakkaris, therefore, not only illogical but made for the sake of making. The Insurance Company ought to have paid the amount covered under the policy. The learned Judge has also not awarded 18% interest or any amount regarding pain and suffering. Unfortunately, the complainant has not filed any cross appeal. Therefore we are not in a position to add anything by way of compensation. The appeal, therefore, shall have to be dismissed. ORDER The appeal is dismissed with cost. The order of the District Forum is confirmed. The cost is quantified at Rs. 2,000/-.The Insurance Company shall pay the seamounts within 8 weeks from today. Appeal dismissed with costs.