(1999) 03 NCDRC CK 0059

In the National Consumer Disputes Redressal Commission

S.RAMAKRISHNAM RAJU APPELLANT

Vs

BRANCH MANAGER, ORIENTAL INSURANCE COMPANY LTD RESPONDENT

Date of Decision : 22-03-1999

Acts Referred:

Citation : 1999 2 CPJ 641

Hon'ble Judges : S.Parvatha Rao , T.Ranga Rao , Mamata Lakshmanna J.

Final Decision : Complaint dismissed

Judgement

1. THE complainants approached this Commission by way of the present complaint contending that there was deficiency in service on the part of the Oriental Insurance Company Limited (''Insurance Company'' for short), represented by the four opposite parties, in repudiating their claim for compensation by letter dated 18.7.1990 (marked as Ex. A-9). As the question involved is in a narrow compass, it is not necessary to trace out all the facts in detail to the minutiae. THE undisputed facts are that the complainants were engaged in pisciculture by forming six tanks in the land owned by them at Devaragopavaram village in West Godavari District. Of those six tanks (which are for convenience sake numbered as tank Nos. 1 to 6) tanks 1 to 4 of extents respectively of 9 acres, 8 acres, 8 acres, and 5 acres were fish tanks for growing fish and tanks 5 and 6 of extents of 1 acre and acres 2.27 cents were for fish seeds. On the eastern side of tanks 1 to 5 was a road about 20'' wide and on the eastern side of the road was Pandikodu drain. It was 4'' below the road level. THE bund of tanks 1 to 5 on the eastern side was about 5'' above the road level. It is the case of the complainants that there were heavy rains on 22nd and 23rd of August, 1989 consequent to which their tanks 1 to 4 were flooded by the water from Pandikodu drain resulting in the eastern bund of tanks 1 to 3 being cut at different places and escape of fish. Thus there was loss of bund as well as the fish of those tanks. It is not in dispute that the bunds of tanks were insured by the complainants with the Insurance Company; so also the fish in tanks 1 to 4 under separate policies. THE complainants informed the Insurance Company about the breeches consequent to the alleged floods on 22nd and 23rd August,

1989 and the losses suffered by them. A Surveyor was appointed immediately by the Insurance Company, who gave a report dated 1.12.1989 (marked as Ex, B-1. THEreafter the Insurance Company also appointed an Investigator who also submitted a report dated 28.3.1990 (marked as Ex. A-2). Based on these reports the Insurance Company repudiated the claims under Ex. A-9 letter dated 18.7.1990 stating, inter alia, as follows : "According to the Surveyor''s report no loss occurred to you payable under the policy. Since even according to your own letter due to increase in water level in fish tanks there was breach resulting in loss of fish. Since the policy does not cover the loss due to internal reise of water level and there being no inundation / flooding of fish pond area the alleged loss does not fall under purview of the policy. We regret for being of no help to you in this matter and we are treating the claim as ''Closed''."

2. THE learned Counsel for the complainants contends that there was in fact flooding of the tanks by the water from the Pandikodu drain and that therefore, the repudiation of the claim of the complainants was bad and would amount to deficiency in service. We find that the learned Counsel was desparately endeavouring to argue against the flood of evidence against him which establishes beyond doubt that the water from the Pandikodu drain could not have risen to a height of 9'' to cross the road and cross the bund of the tanks 1 to 3, for the obvious reason that on the eastern side of the drain there was no bund of good height and any rise in the water in the drain above its bunds would make the water escape further east into the fields and the villages beyond and that was infact what the Surveyor stated in his report (Ex. B-1) and also in his evidence as P.W. 3. In his cross-examination he stated as follows : "I had seen the policy and the Vysya Bank interest is shown on the policy. I did not probe further into the matter, as it became apparent at the outset that the claim is not tenable. Out of six tanks, four tanks are insured and two tanks are not insured I found out of four tanks insured, breaches were only to tank Nos. 1, 2 and 3. All the breaches were on the eastern side of the tanks. As per the sketch submitted alongwith the Survey Report, on the eastern side where there are breaches, there is a 20 feet wide road between the bunds of the insured tank and the Pandikodu drain. THE water level in Pandikodu drain is about four feet below the bifurcating road. THE bund on the eastern side of the tank from the road level is about five feet. So the total water level for Pandikodu drain, to breach the bunds of the insured tanks, should be above nine feet height. THE bund on the other side of the Pandikodu drain is on far (par ?) to the level of the fields of the village. If there were flash-floods above four feet of the Pandikodu drain, the adjoining villages would have been washed away. All the three breaches shown in the annexed plan to my survey report are uniform with about three metre width from tank to drain. THE breach has not only cut the bund, but also the twenty feet road. I recorded a statement from the insured that the water level in the tanks started rising between 23rd and 24th due to heavy rains. THE insured had not informed any flash floods to his tanks due to water rising from Pandikodu drain. THE insured should maintain the water level as per the policy condition.

Water is fed into the tanks by lift irrigation from Pandikodu drain from southern side. For all the fish tanks, there will be slucies (sluices ?) to the drain excess water. THE slucies are on the western side. If the slucies were opened, the water level would have been maintained, even if there are rains. Ex. B-1, Ex. B-2, Ex. B-3 and Ex. B-5 is the Survey Report of the bunds. Ex. B-6 is the Survey Report of the fish tank. As the insured has failed to maintain the water level, there could be loss. If the insured has maintained the water level, there could not be any loss due to over-flow of water."

The Investigator examined as P.W. 1 also stated in his cross-examination that the fish tanks were provided with slucies to let out excess water. We also find that the Asst. Engineer (Drainage Section), Mr. P.V.V. Subba Rao stated in his cross examination as P.W. 2 that "in 1989 August floods, Pandikodu drain had over-flown by one foot above the top of the bank levels at lower levels". The 1st complainant examined himself as P.W. 4. He stated in his examination in-chief that the breaches to tanks 1, 2 and 3 were due to the water valocity in the Pandikodu drain and that the out-lets could not be operated at the time of flood of cyclone. He stated in his examination-in-chief that there were breaches at few points to Pandikodu drain resulting in inundation of the water to the lower levels of Deva Goparam village and that the inundation of water was approximately by two feet at lower levels and that the village was at about 200 metres away. In his cross-examination he denied that the loss to the fish was due to rising of water in the tanks due to heavy rains and he asserted that the loss was due to flood and cyclone according to him. He admitted in his cross-examination that between Pandikodu drain and the tanks there was a 20'' wide road on the eastern side and that the breaches to the tanks were also on the eastern side. He further stated as follows : "The Pandikodu drain flows 10 to 15 feet deep below the road level. When there are no floods the water level will be four to five feet below the road level. The eastern border of our tank or bund is at road level. The water level in Pandikodu drain had raised and breached the road at one place of each tank i.e., tank Nos. 1,2 and 3... I admit that either coconut trees or other vegetation will not grow on the bunds unless they are strong. Even strong bunds are susceptible for breaches due to valocity of water even if it is two feet high... I deny that uniform breaches of three metres at each tank it is tank Nos. 1, 2 and 3, are man made... We have fixed sluice for draining out the water towards eastern side and not on the western side."

From the evidence of P.W. 4 it is clear that the Pandikodu drain itself had breaches resulting in the flow of water towards Devara Gopavaram village on the eastern side of the drain. From this it follows that the water from the drain escaped towards the eastern side and it could not have risen much above the road level to its west. It is also clear that there could not have been much water valocity above the road level and towards the tanks of the complainants because the complainant (P.W. 4) admits in his cross examination that in Pandikodu drain water flowed ten to fifteen feet deep i.e., 20 feet away from the bunds of the tanks (the width of the road itself was 20'' and the road was 4 feet above the usual water level in the drain). The Assistant Manager, Rural Insurance Department, Regional Office of the Oriental Insurance Company at Hyderabad was examined as R.W. 1 for the opposite parties. He stated that he was trained in Fish Insurance. He stated in his examination-in-chief that as per Condition No. 14 of the fish policy the insured / complainant should maintain water level in the fish tanks and that there were sluices for each fish tank for letting out any additional water to maintain proper level of water in the tanks and that the sluices were constructed in such a manner that water alone flowed out of the tanks and that there was no possibility of fish escaping from the tanks. He further stated that "even as per claimants'' version in his letter dated 19.3.1990 the loss occurred due to heavy rains resulting in raising the water level in the tank". He was not cross-examined on these aspects. Ex. A-16 is the letter dated 19.3.1990 addressed by the 1st complainant Sri S. Ramakrishnan Raju to the 3rd opposite party i.e. Regional Manager, Oriental Insurance Company Limited, at Hyderabad. That letter is in Telugu. He stated therein that in August, 1989 on the 22nd and 23rd there were heavy rains and consequently the water in the tanks increased and the tank bunds were breached and all the fish in his three tanks escaped into the Pandikodu drain and he lost heavily. He also stated that inspite of heavy rains he tried his best with his men to protect his fish wealth in his tanks but it was beyond human effort because of heavy rains. The breaches were of 5 metres width and 4 metres depth. He also stated therein that the Surveyor, Mr. G. Srinivasulu (P.W. 3) inspected the fish tanks and that he was taken to the fish tanks by boat via the Pandikodu drain as the road was spoiled. This clearly supports what was stated by R.W. 1 in his examination-in-chief that the 1st complainant himself admitted in his letter dated 19.3.1990 that the breaches were caused due to the rise in the water levels in the tanks because of heavy rains.

3. EX. A-6 Insurance Policy establishes that the cover was only against accident inclusive of lightning, flood, famine, etc., so far as the fish are concerned. So also in the case of loss due to damage caused to the bunds. From this it follows that the policies taken by the complainants did not cover losses due to breach of bunds because of rise in the water level in the tanks caused not because of any flood from outside but only because of rain. The complainants could have reduced the water levels in the three tanks by letting out the water through the sluices. After carefully going through the evidence on record we find that the complainants were not able to establish that the repudiation of their claim by the Insurance Company was arbitrary or unreasonable on the facts of the present case. We, therefore, do not find any deficiency in service on the part of the Insurance Company.

4. THE complaint is, therefore, dismissed. No costs. Complaint dismissed.

