

(1996) 07 NCDRC CK 0017

In the National Consumer Disputes Redressal Commission

SRI SUBBARAYA SETTY

APPELLANT

Vs

Divisional Manager, Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 30-07-1996

Acts Referred:

Citation : 1997 1 CPJ 136 : 1997 1 CPR 127

Hon'ble Judges : D.R.Vithal Rao , Susheela Cheluvaraju J.

Final Decision : Complaint dismissed

Judgement

1. IN this complaint, under Section 17, read with Section 12 of the Act, the complainant has sought compensation in a sum Rs. 9,99,000/- from the opposite party, M/s. Oriental INSurance Company Ltd.

2. THE complainant, M/s. Manjunatha Tiles Factory was established for manufacturing the tiles. THE complainant obtained a Fire policy as per Ex. C1 from the opposite party. THE insured amount was a sum of Rs. 10,23,000/-. THE property covered under the insurance was the Factory Building, Plant & Machinery pertaining to tiles manufacturing unit. THE sum insured was a sum of Rs. 4,28,000/-for the factory building and Rs. 5,95,000/- for plant & machinery. THE period of the policy was from 16.11.90 to 15.11.91. It is the case of the complainant that on the night of 10.2.91, the factory building got damaged by explosion. The complainant immediately informed the occurrence to the Police, Fire brigade authorities and the opposite parties.

The opposite party deputed its Surveyor Mr. B.S. Jagadish who hold the survey and filed the survey report. The Police and the fire brigade authorities also inspected the factory permises, and on finding a fuse wire under the debris suspected that the damage to the building was due to explosion. The Surveyor Mr. B.S. Jagadish also opined that it was due to explosion.

3. THE complainant further averred that the said wire that was seized was sent for laboratory test and the said report also revealed that the said material was a safety fuse. THE complainant due to this occurrence sustained a loss in a sum of

Rs. 6,20,000/-. THE opposite party subsequently deputed another Surveyor one Mr. R. Nair of M/s. J.B. Boda Surveyors who also assessed the loss at Rs. 4,00,000/-. The complainant furnished all the documents and other relevant materials required by the opposite party for assessing and settling the claim, but the opposite party by its letter on 12.12.91 as per Ex. C20 repudiated the claim of the complainant stating that the collapse of the building does not fall within the perview of the policy issued. The complainant thereafter made further representation to the opposite party to reconsider their view taken as per Ex. C20. But the opposite party by its letter on 19.12.91 as per Ex. C22 declined to accept and settle the claim of the complainant. So, the complainant filed the complaint seeking compensation of a sum of Rs. 9,9,000/- from the opposite parties.

4. THE opposite parties filed their version. Admitted the fact that the complainant had obtained a fire Policy for the period from 16.11.90 to 15.11.91 as per Ex. C1 for the property M/s. Manjunatha Tiles Factory including the factory building and the Plant & Machinery contained therein. The opposite party also admitted the fact that the complainant made the claim with it after the said factory building collapsed. But it averred that the collapse of the building insured under the policy was not due to any explosion and so, the collapse of the building was not one of the risks covered under the policy. The opposite party further averred that it had deputed the Surveyor Mr. B.S. Jagadish who recorded a preliminary survey and made reports as per Exs. C- 3, C-3(a), C-8, C-8(a) and Ex. R-20. The opposite party nextly averred that M/s. J.B. Boda Surveyors who made the final survey filed their Surveyor Report as per Ex. R 2 and on consideration of that material and other materials like, the Police Report, Fire brigade report etc., found that the collapse of the building was not due to any explosion, and so, as the collapse was not one of the risks covered under the policy, the claim of the complainant was repudiated.

5. THE opposite parties, on the basis of these averments, submitted that it had not committed any deficiency in service in repudiating the claim of the complainant.

6. DURING enquiry, the complainant examined himself as CW 1 and four other witnesses as CWs 2 to 5. Got Exs. C 1 to C 38 marked in evidence. Opposite party examined its Administrative Officer as RW 3 and the two Surveyors Mr. Nair of M/s. J.B. Boda Surveyors and Mr. B.S. Jagadish, Surveyor as RWs 1 & 2. Got Exs. R 1 to R 22 marked in evidence. We have heard the learned Counsel for the parties. Perused the pleadings and the material on record.

Having regard to the pleadings and the submissions made by the learned Counsel for the parties, the points that arise for our consideration are: (1) Whether the building, that is, M/s. Manjunatha Tiles Factory building collapsed due to explosion ? (2) If so, to what relief the complainant is entitled to ?

7. REGARDING Point No. I, it is not disputed that the factory building of the

complainant collapsed in the night of 10.2.91. It is the case of the complainant that this was due to the explosion and on the other hand, the opp. party has averred that the collapse of the building was not due to any explosion. Admittedly, the complainant CW-1 was not present at the factory building at the time of its collapse. He came to know of the occurrence only at about 10.00 or 10.30 p.m. when he was in his house at K.R. Nagar. The complainant has stated that one Sannalinga Shetty CW 5 came and informed him about the occurrence. CW 1 has further stated that it was his brother CW 4, Papa Shetty who was present at the time of occurrence at the factory premises.

8. CW1 made the report of the occurrence to the police at about 11.00 p.m. after he came to the spot, saw the occurrence and wrote a report and gave it to the police at K.R. Nagar, as per Ex. C 37. In the said report, Ex. C 37, CW 1 has not stated that it was CW 5 Sannalinga Shetty who had come and informed the occurrence and he has also not stated in the said report, Ex. C37, his brother Papa Shetty, CW 4 was present at the time of occurrence at the factory premises. CW, 1 has of course in the said report, Ex. C37, has stated that the people gathered there at the factory premises, informed him that they heard a "Dum" sound and found the smoke covered the place. Cw 4, Papa Shetty, brother of Cw 1, with regard to the occurrence, has stated thus: "On one day when I was sleeping at the factory premises by about 9.40 p.m. I heard sound as if a dynamite was burst. I saw smoke there. I also felt a gun powder smell. I bawled out. Neighbouring persons gathered there. One Sannalingappa consoled me and told me that he would go to my brother and fetch him. Sri. Sannalingappa brought my brother."

Cw5, Sannalinga Shetty, with regard to the said occurrence has stated thus: "The said factory is about 500 fts away from my village. By about 9.30 p.m. on one day about 3 years ago, I heard a big sound as if it was a tyre burst. Many people began to go that side. I also went to the place of factory premises. I saw the factory wall had fallen down and gun powder smell was emanating. I found Cw 4 Papa Shetty standing at the gate weeping. I enquired Papa Shetty whether anybody was hurt. He told me that nobody was hurt."

9. EX. C2 is the Mahazar drawn by the police. With regard to the place of occurrence 11.2.91. It has described that the southern wall of the factory building to the extent of 65" had fallen down. Due to this fall of the wall the roof of the building has collapsed and the roof material, the tiles, wooden rafters, along with iron poles had fallen down.

10. THIS would clearly go to show that no material gave any sign of burning nor any material was found charred. The wooden beams were used for roofing, wooden reapers for racks, wooden pallets were used for putting wet tiles. No burnt marks were found on any of these wooden material. The complainant has stated that the Fire Brigade Authorities also visited the said place on 11.2.91. But no material has been placed on record to show that fire brigade people visited the place and had drawn any mahazar.

On receipt of the information of the occurrence, that is the collapse of the building insured, the opposite party deputed its Surveyor, RW 2 Mr. Jagadish to survey and make report. RW 2 also went to the spot on 11.2.91. RW 2 surveyed the place and made his preliminary report as per Ex. C 8 on 23.2.91. The said report Ex. C8 does not show that any material, i.e. wooden beams, rafters, etc., did show any sign of burning/ charring or blackening. He has stated that the building was found constructed by using fine bricks, wood and cement, but it collapsed. PW 2, has in this regard, stated thus: "I went to the spot on 11.2.91 and again I visited the spot at about 9.30 a.m. on 12.2.91. The representative of the Insured was present. I found the factory building had collapsed on Mysore - K.R. Nagar Road side. I found the bricks scattered all over. No crater was visible. There was no sign of explosion. There was no black powder. I found only building debris."

11. RW 2 asked the complainant to clear the debris. The clearing of debris continued. It is the case of the complainant that while debris re-moving work was going on on 8.3.91, a fuse wire was found. The complainant informed the finding of the fuse wire to the police on 11.3.91 as per Ex. C 10. The complainant also informed the said occurrence to the Fire Brigade Authorities at Mysore. The Fire Brigade Authorities in their letter dated 16.3.91, as per Ex. C9 informed the complainant that one blackened material about one meter in length is found in the debris. It looks like a material used for dynamite. The complainant has also produced a report of the Controller of Explosives, as per Ex. C11 dated 31.7.91. This is a letter addressed by the Controller of Explosives to the Deputy Superintendent of Police, Hunsur which reads as under: "1. The following is my report on examination of the contents of a sealed packet, duly marked as "Article No. 1" and received in this Office together with relevant papers under cover of your letter No. V.V. 37-91 dated 26.6.91 through Sri. Krishna Shetty, P.C. No. 556 of Krishnarajanagar Police Station on 27.6.91 in connection with the subject crime matter. Seals on the packet were intact and found to tally with the specimen seal sent. 2. The sealed packet, on opening, was found to contain one piece of burnt black cord of jute twine having hollow core - about 50 cms in length. 3. On examination, the burnt black cord was identified as "safety Fuse" as explosive belonging to Class-6 Division-1 as defined under Schedule-1 of Explosives Rules, 1983 manufacture, possession, sale, use etc., of which are governed by Rules 87 and 113 of aforesaid Rules save as provided under Rule 114(1)(c) of aforesaid rules. 4. The exhibit in question, after the test, was returned to you through the same police constable in a sealed packet for use as Court exhibit in future."

It shows the controller of Explosives examined on opening, a sealed packet sent by the Police, found to contain one piece of burnt black cord of jute twine. The police mahazar, from where it was seized, who seized, at what time it was seized, has not been placed on record. No Police Officer has been examined to show that this report Ex. C-11 pertained as to the material alleged to have been found in the debris. No material has been placed on record to show that the

debris that was cleared for nearly 15 to 20 days did contain any burnt or charred material in it.

12. THE complainant, CW 1, has in this regard stated thus; "THE Surveyor arranged for the clearance of the debris which took about 25 to 30 days. During the clearance of the debris, Surveyor found some suspected material. It was found in the debris."

RW-2, the Surveyor, has in this regard, stated thus: "I was asked to clear the debris, I used to visit the spot on every day from 25.2.91 to 11.3.91 to supervise the clearance of the debris. On 8.3.91 while the debris were being removed fuse wire was found. THERE was no crater in the debris. No explosive material was found the in the debris."

RW 2 has in the cross-examination stated thus: "I had found the burnt fuse wire in the debris and on that basis I had suspected that it was used to blast the wall of the building, which I had mentioned in my report Ex. C8."

This would go to show that he had found a burnt wire in the debris. But the report of the Controller of Explosives as per Ex. C11 shows that he had examined a piece of burnt black cord of jute twine. From this material on record, it is very difficult to say that the collapse of the building was due to any explosion. The complainant has further stated thus: "The factory is situated about 4 km. away from K.R. Nagar town. At the time of occurrence about 30 employees were working in the said factory."

Not even a single worker has been examined to show that such an occurrence of explosion had at all taken place. It is an admitted fact by the complainant in his report. Ex C37 that no person was found injured in the said occurrence.

13. THESE circumstances make it highly improbable that the collapse of the building was due to any explosion. 29.Ex.CI is the Policy. Risk covered under the policy is the loss or damage due to explosion, fire or lightening. The loss or damage sustained due to collapse of the building is not one of the risks covered under the said policy. 30. The learned Counsel for the complainant submitted that the survey report submitted by RW 2 as per. Exs. C8 and C8(a) did show that the collapse of the building was due to explosion. RW2 has submitted four reports Exs. C 3, C3(a), C 8(a) and R-20, Ex. C 8(a) is the "Fire Survey Preliminary Report which is dated 23.2.91. It does not show any indication found at the place of occurrence regarding the explosion. 31. Ex. C 3 and C 3(a) are the supplementary Fire Survey Preliminary reports dated 13.3.91. They show that a fuse wire was found on 8.3.91 under the debris while the debris was being removed. 32. Ex.R20 is the Addendum submitted by RW 2 his Survey Report dated 23.2.91. He has clearly stated at para (1) thus: I. First visit on 11.2.91 at 6.00 p.m. and again on 12.2.91 at 9.30 a.m. I observed the following things: (a) There is no crater visible. (b) There is no sign of explosive. (c) There is no black powder or black smoke. (d) Only building debris scatter around the collapsed wall."

33. THESE facts and the circumstances make it quite clear that the unfortunate occurrence of the collapse of the factory building of the complainant was not due to any explosion. 34. Having regard to these facts and in the circumstances of the case, we are constrained to hold Point No. (1) in the negative against the complainant. 35. Having regard to our finding on Point No. 1, the consideration of Point No.2 does not arise. 36. Having regard to these facts, we hold that the opposite party did not commit any deficiency in service in repudiating the claim of the complainant. 37. In the result, therefore, this complaint fails and it is dismissed. The parties are directed to bear and pay their own costs. Complaint dismissed.