(1992) 04 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

SRI VENKATA PADMAVATHI RAW And BOILED RICEMILL APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 10-04-1992

Acts Referred:

Citation : 1993 1 CLT 529 : 1993 1 CPJ 104

Hon'ble Judges : V.Balakrishna Eradi , A.S.Vijayakar , Y.Krishan , B.S.Yadav J.

Final Decision : Petition allowed

Judgement

1. THE complainant insured stocks of rice in Mills, godowns and on the open drying platform of the Mill for Rs. 27.50 lacs under a policy taken out on December 29,1989. It covered risks rising from flood and cyclone. THE policy was operative for a period of one year i.e. from 31.12.1989 to 30.12.1990. In May, 1990 there was a cyclone and heavy rains and floods from the 8th to 13th which according to the complainant caused a lot of damage to the Mills and the stocks of rice and paddy, in the Mills, godowns and the open drying platform. On the 9th May, 1990 the Insurance Co. on notice, immediately appointed a Surveyor who submitted a preliminary report dated 10.5.90 (sic) (survey conducted on 11th and 12th May, 1990). According to the Surveyor the cause of damage was cyclone followed by heavy down-pour of rain (heavy gale blew off asbestos sheet roofing, the rain water fell directly on the paddy and rice bags and on the rice kept for drying. THEy were submerged in water and the entire paddy, rice and broken rice became wet, unsuitable for human consumption and started emitting foul smell. He gave an estimate of the quantities of paddy and rice damaged after verification with the relevant records.

2. THIS was followed by final survey by two Surveyors jointly who were appointed by the Insurance Company. The two Surveyors were: (a) M/s. Vardhman Insurance Services Pvt. Ltd. Madras and (b) Shri Nageswara Rao. Vardhman Insurance Service Pvt. Ltd. conducted their survey on 16,18, 28 to 31st May, 1990 and Shri Nageswara Rao conducted his survey on 30th and 31st May, 1990. Mr. Nageswara Rao submitted his report on the 5th November, 1990

and M/s. Vardhman Insurance Services Pvt. Ltd. submitted their report on the 12th November, 1990. M/s. Vardhman Insurance Services Pvt. Ltd. assessed the insurance liability at 23.30 lacs (round) and Shri Nageswara Rao, the second valuer assessed the loss at 5.25 (round).

Because of the division of opinion between the joint Surveyors, the Opposite Party Insurance Company appointed a fourth Surveyor M/s. Mehta and Padamsey Surveyors and Loss Assessors to undertake a survey, which was conducted on 9th, 10th of February and 14th, 15th of March, 1991, and they submitted their survey'' report on 18th March, 1991. It appears from the report that they only investigated and reassessed the loss and damage caused by the flood on the basis of records. These Surveyors stated that "it would not be wise to comment upon the report of Vardhman Insurance Services Pvt. Ltd.". They, however, made some critical comments about the report of the second joint Surveyor Shri Nageswara Rao. In particular they pointed out that the Surveyor Shri Nageswara Rao had not commented upon the destruction of paddy, that he made a report after the lapse of about 6 months from the date of occurrence of the event and made observations contrary to the certificates issued by the statutory authorities etc.

3. THE fourth Surveyor assessed the loss at 14.80 lacs and recommended full and final settlement at 14.16 lacs. The complainant insured agreed to accept the same on the 15th March, 1991.

4. APART from the surveys, on the 10th May, 1990 the Branch Manager and the Assistant Administrative Officer of the Respondent Insurance Company, Kakinada went to the rice Mill, took the stock position as on 9th May, 1990. The Executive Officer, Gram Panchayat, Turangi, on 13th May, 1990 sent notice to the complainant that paddy, rice, bran etc. stocked at the Mil had been wetted by cyclone and flood and were damaged and emitting foul smell and there was possibility of an attack of cholera spreading to the village. He, therefore, desired that paddy, rice etc. should be shifted immediately outside the village. The Executive Officer of the Gram Panchayat, Turangi on 29th May, 1990 issued the certificate about the dumping of damaged stocks in the Salt Canal from 16.5.1990 to 24.5.1990 in the presence of his staff. On 13th May, 1990, the Revenue Divisional Officer, Kakinada issued certificate of the damage to the paddy and rice stocks due to cyclone and floods .and added that it was for the Insurance Company to assess the loss and render assistance.

5. ON the 15th May, 1990, the Health Supervisor, Primary Health Centre, Panduru issued notice that paddy and rice stocks wetted in floods and emitting foul smell posing threat to the public health should be shifted therefrom. He issued a certificate of dumping of damaged stocks on 26.5.90.

6. THE Essen & Co. Analytical Chemists, Assayers Surveyors Consulting Chemists & Geologists issued a certificate on 7th May, 1990 that the sample of paddy and rice given to them by the first surveyor for examination was found to be unfit for

human consumption or even as cattle feed and was emitting foul smell. On an application from the insured complainant on 11th September, 1990, the Food Inspector, Kakinada, submitted a report after enquiries and verification of the Mill Register regarding the quantity of paddy and rice damaged and gave his assessment about the quantity of paddy and rice fully or partly damaged. In pursuance of the direction from the Food Inspector, the Grain Purchasing Officer, Kakinada on 14th September, 1990 issued a certificate a bout the quantities of paddy and rice damaged. He also added that he had inspected the site, seen the drenched stocks and that the damage caused to the stocks was colossal.

On 27th June, 1991, the Opposite Party Insurance Company stated that the matter was pending settlement as a complaint was reported to have been received by their head office and was under investigation by the Vigilance Department. On the 14th July, the complainant filed a complaint before this Commission alleging deficiency in service in settling the claim on the part of the Opposite Party Insurance Company. In his complaint the complainant also stated that he was no longer bound by his agreement to the full and final settlement of the claim at 14.16 lacs and that he was entitled to the actual loss of Rs. 24.50 lacs (round) which was the amount estimated by the complainant''s own Surveyor Shri N.P. Ramakrishna Reddy in his report of 27.9.90 and as established by the certificates given by the Revenue Divisional Officer, Kakinada, the District Collector of East Godawari District, the Health Supervisor of Panduru.

7. THE Opposite Party in its reply has stated that the claim could not be settled on account of the complaint from the C.B.I. (Central Bureau of Investigation) to the Vigilance Department of the Respondent Company to make investigation in the matter before settling the final claim of the complainant, as they suspected some foul play in the claim of the complainant. According to the Opposite Party, as a result of this investigation it was revealed that the claim of the complainant was false and the same was repudiated on the 18th September, 1991 as not being payable. It took the stand that the letter of the complainant insured dated 10th May, 1990 intimating about the loss and for a Surveyor being appointed and said to have been sent or delivered by the complainant to the respondent''s Branch Manager is forged and fabricated by the complainant, that the respondent received only telephonic communication from the complainant and appointed the first Surveyor to undertake preliminary survey. The Opposite Party also stated that the Revenue Divisional Officer had no occasion or official responsibility to inspect the mill premises and to issue the said certificate and the same was got fabricated by the complainant. Further, that the certificates from the Gram Panchayat and from the Health Officer were got issued by the complainant so as to remove the goods alleged to have been damaged by floods in collusion and connivance with the said Gram Panchayat and Health Officer so that the condition of goods and the loss might not be got properly checked, verified and assessed by the Surveyors. The Opposite Party Insurance Company averred that this action of the complainant in removing and destroying the damaged goods by throwing them into canal was unjustified, unreasonable and illegal.

8. THE investigator appointed in the wake of the communication from C.B.I, by the Insurance Company. Shri Ratna Rao, Retd. Superintendent of Police, to investigate the matter stated on 3rd September, 1991 that there could not be any damage to the roof of the godowns because the core of the cyclone was only at Machilipatnam, when it crossed the coast and affected the coastal parts of Krishan and Guntur Districts, and that Kakinada only experienced heavy rains under the influence of the cyclone inundating certain area and that the recorded highest wind velocity was only 40 kms. as against 150/200 kms. velocity claimed by the complainant. He further stated that thee was no falling of trees and collapse of huts in the nearby area that level of floods varied from 2 to 3 feet and therefore only rice bags lying up to this level could have been damaged by flood water; that there was only limited damage in the four godowns of Civil Supplies Corporation identically situated and having rice stocks. He also made other comments casting doubts on the authenticity of the flood damage sustained. THE Investigator''s finding was that there were no hurricane winds to blow off roof top asbestos sheets, for rain water to pur in from above and drench the stocks from above, and that the dumping of stocks in the canal was an out and out fabrication. THE Opposite party Insurance Company stated that the complainant was trying to play fraud on the respondent company by submitting exaggerated and false details, that the complainant was not entitled to receive any amount of the claim in question. The stand taken by the Insurance Company is incomprehensible to us. What it amounts to is that the certificates of damage issued by the Revenue Divisional Officer, Turangi, the Executive Officer, Gram Panchayat, Panduru, the reports issued by the Surveyors appointed by the Insurance Company (four Surveyors) are all false. The notice issued by the Executive Officer of Turangi and Health Supervisor of Panduru etc. for removal of decaying stocks which posed health hazards were also false. The stock register of the complainant was verified by the Branch Manager of the Opposite Party on the 19th May, 1990. According to the last survey report "during the discussion and final assessment of the loss Shri K.V. Rao, the Divisional Manager of the New India Insurance Co. Ltd,. Kakinada was present throughout."

9. REGARDING the factum of cyclone as distinct from mere flood, the notification published by the Collector, East Godawari, Kakinada in District Extraordinary Gazette of 5th June, 1990 notified that the Mandals and Villages in Kakinada Mandal including Turangi Village were affected by cyclone, heavy rains and floods in May, 1990.

10. SO the stand of the Opposite Party Insurance Company is that declaration of this Mandal and Village being affected by cyclone and flood was false and exaggerated, that the first survey report of the Surveyor appointed by the Opposite Party Insurance Company giving the estimate of damages to the stocks of paddy and rice, which he had undertaken on the 11th and 12th of May, 1990 and after vertificati on of the records, was also false. The C.B.I, in its letter of the 18th April, 1991 to the Vigilance Department of the New India Insurance Co. states that it was "reliably learnt that the Senior Divisional Manager, New India

Insurance Co. Ltd. and some of his staff at Kakinada have deliberately managed to order a second survey of cyclone damage for the Units of M/s. Ramakrishna Traders, M/s. Venkata Padmavathi Rice Mills and M/s. Ramalingeswara Rice Mills with a view to show undue favours in settling the claims of the said units at much higher rates than the actual damage". It advised enquiries into the claim of the three parties and to take necessary remedial/disciplinary action against the concerned.

As this letter from the C.B.I. led to the appointment of a Special Investigator, Shri Ratna Rao, which eventually led to the repudiation of the claim, the Commission found it necessary to enquire from the Counsel for the Opposite Party at the earlier hearing as to what investigation had been done against the officers and staff after April, 1991. He could give no satisfactory answer whatsoever. He could not even say whether any investigation had been done by the Vigilance Department and the truth or falsity of the allegations against the officers and staff has been established. It was also pointed out to him whether it would not be premature for the Opposite Party Insurance Company to repudiate the claim without having established the collusion and fraud whereby the insured is alleged to have made a false and inflated claim. It appears to the Commission that the communication of 18th April, 1991 from the C.B.I, to the Vigilance Department of the Opposite Party, which was primarily directed against the Officers of the Opposite Party, has been used to make fresh investigation and raise suspicion of collusion and fraud by the insured, and repudiate his claim. The Commission has come to the inescapable conclusion that the Opposite Party has adopted unfair means to defeat by claim of the claimant which had been established by four surveys by the Opposite Party none of which smelled any mischief and fruad. We are, therefore, satisfied that the complaint is bona fide and the re has been deficiency in service on the part of the Opposite Party in settling the claim.

11. THE next question that a rises is whether the claimant is entitled to a sum of Rs. 14.16 lacs as recommended by M/s. Mehta Padamsey Surveyors or he could justifiably and legitimately press for his claim of Rs. 24.50 lacs. We recognize that since the Opposite Party did not settle the amount the claim on the basis of the last Surveyo''s report in March/April, 1990, and later repudiated it, the complainant is no longer bound by his consent to full and final settlement at 14.16 lacs. In that context we have to examine the correctness of his claim for the balance amount.

12. ON going through the reports of the Surveyors appointed by the Insurance Company, we find that there is very wide variation in the assessment of the quantum of loss as covered by the insurance policies by different Surveyors: (i) M/s. Vardhaman Insurance Services Pvt. Ltd. Rs. 20.00 lakhs (ii) Mr. B. Nageswara Rao Rs. 5.25 lakhs (iii) M/s. Mehta & Padanisey & Co. Rs. 14.16 lakhs

ON perusal of the survey reports, we find that these wide variations appeared to arise primarily from two factors: (a) The extent of damage; and (b) The rate at which the insured goods were valued. (a) According to the first preliminary survey report of Mr. M.V. Subha Rao, 6,677 quintals of paddy was damaged to the extent of 70%; Remaining stocks of paddy, rice (boiled, raw & broken) damaged fully i.e. 100%. According to M/s. Vardhaman Insurance Services Pvt. Ltd., all stocks (paddy, rice boiled, raw or broken) were completely damaged (i.e. 100%) and unfit even as cattle feed except for 5,784 quintals of paddy damaged partly. According to M/s. Mehta & Padamsey Co., damage to paddy varies from 50 to 60% indifferent locations, to rice 50 to 75% and broken rice 100%. The assessment of loss made by Shri B. Nageswara Rao could not be compared with the other survey reports because of the radical difference in the basis of assessment viz., flood water level not exceeding two feet in height, absence of loss of stocks under roof sheets and the extent of under insurance of stocks. It is also noted that the Surveyor appointed by the complainant petitioner, Shri N.P. Ramakrishna Reddy, also indicated the extent of damage to stocks full (100%) except for 5,784.10 quintals partly damaged. (b) The rates for valuation of damaged stocks also differ.

In view of these differences in the extent of damage caused to the stocks and its valuation as per the reports of Surveyors appointed by the Insurance Company, we find it necessary to hear the parties again and this was done on the 26th of March, 1992. The Counsel for the respondent Insurance Company''s attention was invited to these differences in the quantum of damage sustained by the stocks and he was requested to clarify as to the basis on which the last Surveyor M/s. Mehta and Padamsey & Co. Surveyors Pvt. Ltd. had computed the damage as partial except in respect of broken rice. We also brought to his notice that the first Surveyor in his preliminary report had on the contrary assessed the extent of damage at 100% except for 6,677 quintals of paddy which were deemed to have been damaged to the extent of 70% only. It was also pointed out to him that the insured stocks were hit by cyclone, heavy rain and floods from the 8th to the 13th May, 1990 and the first preliminary survey was carried out on the 11th and 12th of May, 1990. In other words, the first Surveyor was in the best position to see the situation on the ground rains and floods and the damage to the insured property. M/s. Vardhaman Insurance Service Pvt. Ltd. conducted their survey on certain dates from the middle to the end of May, 1990 and Shri Nageswara Rao in the last two days of May, 1990. M/s. Mehta & Padamsey Surveyors Pvt. Ltd. conducted the survey on the 9th and 10th of February and 14th and 15th of March, 1991. There appeared to be little scope for examination of stocks at the time they conducted the survey.

13. SIMILARLY, the second factor, viz. the rate at which the damages have to be quantified. M/s. Mehta and Padamsey Surveyors Pvt. Ltd. had adopted the rate of Rs. 300/- per quintal in respect of the rice whereas the Surveyor of the complainant petitioner had adopted a rate at Rs. 335.65 per quintal. M/s. Vardhaman Insurance Services Pvt. Ltd. had adopted the rate of Rs. 288/- per quintal.

14. IT may be noted that M/s. Vardhaman Insurance Service Pvt. Ltd. had stated in their report that the average cost of rice was taken as Rs. 288/- per quintal on the basis of actual expenditure (exclusive of overheads, management expenses, depreciation etc.). The Counsel for the respondent Insurance Company was not able to explain the wide variation in the extent of damage to stocks and the difference in rates for valuation of the stocks in the survey reports inspite of the ample opportunity afforded to him to do so.

After remaining the record and the sub missions at the hearing on 26.3.1992, we arc of the view that the assessment of the extent of damage to the stocks made by M/s. Mehta and Padamsey Surveyors Pvt. Ltd. is arbitrary and does not justify the substantial variation therein from the extent of damage indicated in the first preliminary survey report and that it would be only just and fair to accept the valuation of the loss is made by M/s. Vardhaman Insurance Services Pvt. Ltd. viz., Rs. 23,30,203/as the insurer''s liability.

15. IN the light of our findings above, we allow the petition and direct the INsurance Company to pay to the complainant Rs. 23.30 lakhs towards the loss sustained against the insured stocks. This amount will be deemed to have become payable to the insured four months after the report about the damage by cyclone, heavy rains and floods etc. on the 10th May, 1990. Interest will be payable on the amount of insurance as payable under the insurance policy from the 10th September, 1990 onwards till the date of full payment at the rate of 18% per annum.

16. THE complainant petitioner is also allowed costs amounting to Rs. 2,500/-. Petition allowed with costs.