(2002) 02 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

SVL FOODS PRODUCTS PVT. LTD. APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

Citation : 2002 0 NCDRC 12 : 2002 3 CPJ 93 : 2003 1 CLT 568 : 2003 1 CPR 8

Hon'ble Judges : D.P.WADHWA , B.K.TAIMNI , J.K.MEHRA J.

Advocate : M.N.KRISHNA MANI , C.S.PANDA , S.PANI

Judgement

1. THIS appeal has been filed by the appellant, M/s. SVL Foods Products Pvt. Ltd. against the order of State Commission dismissing the complaint.

2. BRIEF facts of the case are that the complainant had obtained a policy to cover his loss of fish in 7 tanks which was lost during the cyclone in August, 1989. A claim was preferred by the appellant before the respondent Company claiming Rs. 4,20,000/-. Damage was assessed through two Surveyors, who gave different assessments. The claim was also got investigated. As a result of all this, the claim was repudiated by the respondent Company on the ground that some fish had already been disposed of before the cyclone; the terms of policy excludes settlement of claim arising out of partial sale or harvesting. On the complainant''s filing a complaint before the State Commission, the complaint was dismissed on the ground that the complainant has not been able to rebut the contention of the respondent based on report of one of the Surveyors and the Investigator that the complainant had indeed sold off some of the fish in Howrah before the date of incident of cyclone. It is in these circumstances, that the complainant has filed this appeal. The respondent vide our order dated 16th October, 2001 has directed both parties to file their written arguments on the next date of hearing which was fixed for 3rd January, 2002. Both the parties did not file their written arguments by this date. They were given an opportunity to do so and case fixed for 1.2.2002. The respondent neither filed the written arguments nor was present while the appellant had filed his written arguments. It was decided to proceed ex-parte vis-a-vis the respondent.

3. IT was argued by the learned Counsel for the appellant, Mr. Krishnamani that the State Commission erred on two counts. Firstly non-appreciating the report of two Surveyors in a proper perspective. Senior Surveyor, Mr. P. M. Mohan Rao had properly investigated the case from all angles and had recommended payment of Rs. 2.85 lakhs whereas the Junior Surveyor B. Nageshwar Rao after a short investigation came to the conclusion that there was indeed disposal of fish by the appellant before the date of cyclone. The State Commission erred in relying upon the report of the junior Surveyor which itself was based on wrong premises. On this ground alone, the order of State Commission need to be set aside. Secondly, reliance of the respondent Company on the report of the Investigator Deshpande is also misplaced. This report was never shown to the complainant, hence cannot be relied upon. The appeal need to be allowed and the claimed amount be awarded to him with costs.

4. ON perusal of material on record and on hearing of arguments, we find that report of Investigator Deshpande is not on record before us, hence we are not going to rely upon it. Since at the appeal stage, we need to go to questions of fact and law, non-availability of the report on record does not help us in the matter before us. We are left with two reports of the Surveyors. One Surveyor P. M. Mohan Rao after proper inquiry and investigation found there was no sale of fish before the incident of cyclone, the other Surveyor came to the opposite conclusion based on material before him. According to the second Surveyor one K. Satya Narayana sent 10 tonnes of fish on 18.4.1989 by Truck No. AIC 4365 and another Truck No. AAI 2799 carried 10 tonnes of fish on 21.6.1989, consignor being S.V.L. Ganapavram; inquiries from check-post reveal that a truck on 21.6.1989 carried 52 baskets of whole fish belonging to SVL Ganapavram. We see no corroborative evidence with regard to any transportation of fish on 18.4.1989, which movement of fish on 21.6.1989 is corroborated by the entries in check-post records, It is the name of the consignors which is material for our purpose. We are inclined to agree with the contention of the appellant that their unit is SVL Foods Products Pvt. Ltd. and are located in Chanamilli village of West Godavari District and are in no way connected with any SVL Ganapovram. It is the latter who had sent fish to Howrah. It definitely is a different unit. No effort is made by the respondent to solve this key variant. Similarly called SVL Gonapovram selling fish in Howrah cannot be equated with the appellant selling fish. Rejecting the claim of the appellant appears to us a flimsy and unsubstantiated ground. State Commission in our view erred in reading SVL Gonapavram as identical with SVL Foods Products Pvt. Ltd. based in Chanamilli Village. State Commission has relied upon this sole ground - corroborated by the report of Investigator Deshpande. Even though this report is not on record but in our view State Commission has erred in reading the two names, as of one and the same entity, which on the face of it does not appear to be correct. The order of this State Commission is set aside and the respondent Company is directed to pay Rs. 2,85,600/- as assessed by their Surveyor P. M. Mohan Rao alongwith interest @ 9% from 1st February, 1990 till the date of payment which must be

made within eight weeks of the order failing which rate of interest shall be 15% p.a. No order on costs.

