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(1991) 12 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

SWARN COLD STORAGE AND ICE FACTORY — APPELLANT

Vs

New India Assurance Company Ltd. — RESPONDENT

Date of Decision : 09-12-1991

Acts Referred:

Citation : 1992 0 CPC 541 : 1992 1 CPJ 404 : 1993 1 CPR 699 : 1993 2 CLT 141

Hon'ble Judges : S.S.Dewan J.

Final Decision : Complaint dismissed

Judgement

1. M/s. Swarn Cold Storage and Ice Factory, Ali Pur, Tehsil and District Jalandhar (complainant) has filed this complaint under Section 12 read with Section 17(1)(a)(i) of the Consumer Protection Act, 1986 (for short, ''the Act'') against New India Assurance Company Ltd. on 7.8.1991 that a sum of Rs. 6,39,050/- may be awarded to it together with interest at the rate of 18 per cent per annum from 30.9.1988 upto the date of payment. The complainant also claimed Rs. 50,000/- for the harassment caused to it by the respondents.

2. THE material facts for the disposal of the case are as under: - THE complainant took a fire policy No. 1135080300278 from the insurer which was for the period from 30.9.1988 to 29.9.1989. THE sum insured was Rs. 25,000,00/-. It contained particulars of the insurance items as detailed in para 3 of the complaint. THE complainant paid the premium of Rs. 17,000/- for the aforesaid period. As disclosed in the complaint, the fire was caused in the cold storage due to burning of fire on the electric motors and wires in the first week of November 1988 and caused loss/damage to the building of the cold storage and the machinery fitted therein. It has been averred in the complaint that 4,150/- bags of potatoes out of the total bags of 13,300 which were lying in the cold storage, also become rotten due to the high temperature which resulted on account of fire. THE cause of fire was stated to be due to short circuit and fluctuation of electricity. According to the complainant, the services rendered by the opposite party-insurer suffers from deficiency inasmuch as the amount of loss had not been paid to him. THE complainant, therefore, filed the complaint as

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stated above. THE opposite party-insurer strongly resisted the complaint. It was stated that the claim of the complainant did not fall under the terms and conditions of the policy inasmuch as per the own version of the complainant, the damage to the stock of potatoes took place due to the fluctuation of electricity. It was pleaded that the damage, or loss caused due to fluctuation of voltage was not covered under the terms and conditions of the policy. We have heard Mr. Ashok Pruthi, Advocate, for the complainant and Mr. Pardeep Bedi, Advocate, for the opposite party and considered the record with requisite care.

The learned Counsel for the complainant has submitted that the case of the complainant is covered by Clause (1) of the fire policy ''C''. Clause (1) deals with Fire. He has strenuously urged that the damage was caused due to fire. The learned Counsel for the insurer has submitted that the coverage granted to the ensured is for the fire risk. The cold storage was covered for fire only but in fact no fire broke out in the cold storage of the complainant. Had the fire broken out, there would have been flames and in that case the insured would have sent for water tenders to extinguish the fire and also reported the matter to the police but nothing of the sort has been done in this case. The main contention put forward by the insurer is that it is not liable to make good the loss suffered by the insured as the case falls within the purview of Clause (g) of the Exclusions mentioned in the fire policy ''C'' (Anx. P.1) which reads as under: - "Loss of or damage to any electrical machine, apparatus, fixtures or fitting including electric fans, electric household or domestic appliances, wireless sets, television sets and radios or to any portion of the electrical installation, arising from or occasioned by over running, excessive pressure, short circuiting, arcing, self heating or leakage of electricity from whatever cause (lighting included) provided that this exemption shall apply only to the particular electrical machine apparatus, fixtures, fittings, or portion of the electrical installation so affected and not to other machines, apparatus, fixture, fittings or portion of the electrical installation which may be destroyed or damaged by fire so set up.

3. AT this stage, it will be useful to refer letter dated January 13, 1989, which was sent by the complainant to the insurer after the alleged incident. In the letter (Annexure R.3) it is written as under: - "We have to inform you that we have lodged a claim of potato bags in your branch. During the first week of November, 1988, there was so many times the fluctuation of "electricity. Due to the fluctuation of the electricity, the temperature raised and about 4000 bags of potatoes have been damaged. So you please consider the things and pay the claim."

In this letter, it has been clearly mentioned that the cause of loss/damage to the stock of potatoes lying in the cold storage occurred due to the fluctuation of electricity. The learned Counsel for the complainant has, however, submitted that the case of the complainant is covered by Clause (1) of fire policy ''C'' He says that even if Clause (1) is not attracted, the insurer is liable under Clause (g) of the Exclusions. According to him, Clause (g) says damage or loss to the property

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occasioned due to short circuiting, self heating or leakage of electricity etc. We regret our inability to accept his contentions. Exclusions have been provided in the policy but we are not concerned with them in this case. The complainant''s plea in the complaint was that due to fire in the cold storage machinery and the potatoes were damaged. Be that as it may, the complainant can not get out of its letter dated 13.1.1989, Annexure R.3, in which it has been clearly stated that due to fluctuation of electricity, 4000 bags of potatoes were damaged. Thus, it cannot be said that the loss/damage to the complainant''s potatoes occurred due to the effect of combustion. If we look up the case of the complainant from this angle, the fire policy ''C'' does not cover the damages or loss caused to the complainant. This conclusion of the Commission gets further confirmed from the reports of the Surveyors (Annexures R.1 & R.4) submitted by M/s. S.K. Mittal & Co. and J.S. Sodhi. These Surveyors were deputed by the Insurance Company to visit the spot and submit their reports. Both the Surveyors have unanimously opined in their reports that after the examination of the machinery fitted in the cold storage they found it in perfect working order and that the loss had occurred due to the cause which was not ensured. It is also mentioned in the reports of the Surveyors that the photographs taken by them did not show any fire damage to the machinery or the wires. It can, therefore, be safely held that there is no coverage of the complainant''s claim under the fire policy and therefore, the reliefs sought by the complainant insured cannot be granted.

4. ACCORDING to our finding, the complainant is not entitled to be indemnified for the loss suffered and no relief can be granted to the complainant under Section 14 of the Act. We dismiss the complaint on the aforesaid ground. The complainant is fully at liberty to pursue whatever remedies he may have under the law. There will be no order as to costs. Complaint dismissed.

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