(2012) 03 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

T. Odelu APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LTD RESPONDENT

Date of Decision : 05-03-2012

Acts Referred:

Citation : 2012 0 NCDRC 766 : 2012 2 CPJ 665

Hon'ble Judges : R.C.JAIN , S.K.NAIK J.

Final Decision : partly allowed

Judgement

1. SINCE the facts of these complaints and the question of law involved is similar, we propose to deal all the above mentioned complaints by a common order.

2. THE above mentioned complainants are Beedi leaves contractors by profession and their work involves procuring Beedi leaves as a main raw material for the manufacturing of Beedis. The leaves are procured directly from the Government of Andhra Pradesh through its Forest Department in Andhra Region and the Andhra Pradesh Forest Development Corporation Ltd., in Telengana region. After the leaves are procured, they are cured in sun. In order to insure the stocks of processed and Beedi leaves under process, the complainants had obtained (i) Fire Policy No. 610 902/11/00/00032 effective from 30.4.2000 to 29.5.2000 in the sum of Rs. 70 lacs; (ii) 610 902/11/00/00035 effective from 28.4.2000 to 29.5.2000 in the sum of Rs. 35 lacs; (iii) 610 902/11/00/00034 effective from 28.4.2000 to 29.5.2000 in the sum of Rs. 68 lacs respectively, which covered stocks lying in the open fields/Khallas and the peril under the policy covered Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado. Flood and Inundation. According to the complainants on 17.5.2000 and 18.5.2000, i.e. during the validity of the insurance policies, the stock of Beedi leaves was in the process of "sun-curing " in open but due to stormy weather accompanied by gales and rains, the bundles of Beedi leaves got separated and leaves were blown off and washed away from the site. Some of the leaves which were found lying nearby were either broken or cracked and became unfit for use. As a result of the blowing of large quantity of Beedi leaves in process, the complainants suffered

loss to the extent of Rs. 52 lacs, Rs. 35 lacs and Rs. 40 lacs respectively for which claims were lodged with the Insurance Company. The Insurance Company initially appointed one G. Vasant Rao as the Loss Assessor and Surveyor who opined that no loss has been occasioned to the complainants, and thereafter appointed the second Surveyor Mrs. V. Laxmi Narsayya & Co. On joint inspections with Ms. Laxmi Narsayya & Co. and a certificate issued by the Forest Department, Government of Andhra Pradesh, the Loss Assessor made the assessment of net loss in the sum of Rs. 4,67,266, Rs. 55,913 and Rs. 1,20,691 respectively. Even that assessment was not accepted by the Insurance Company and lastlyvide a communication dated 24.12.2001, the Insurance Company repudiated the claims of the complainants, inter alia on the ground that the complainants have misrepresented the facts and adopted fraudulent means to exaggerate their claims, which was clearly in violation of policy condition Nos. 1, 6b, 7a, 7b, 7c, 7d and 8 of the terms and conditions of the Policy, besides several other grounds. Dissatisfied with the repudiation of their claims, the complainants have filed the present complaints claiming the following reliefs: (i) Direct the respondent Insurance Company to honour the claim of the complainants under the Policy amounting to their respective insured value; (ii) Award interest @ 16% p.a.w.e.f. the date of occurrence i.e. 17.5.2000 and 18.5.2000; (iii) Award a sum of Rs. 2 lacs towards mental agony caused due to the wrongful repudiation of the claim; (iv) Award a sum of Rs. 5 lacs towards loss of business on account of the delayed processing of the claim; (v) Award costs of the complaint; (vi) Pass any other order as may be deemed fit and proper in the present circumstances of the case.

Being noticed on the complaints, the Opposite Party/Insurance Company contested the claim by filing written versions raising preliminary objections about the maintainability of the present complaints, almost on the same grounds on which it had already repudiated the claim of the complainants. On merits, it is not denied that above referred Fire insurance policies were issued to the complainants having the coverage of the above perils but it is specifically denied that any loss of Beedi leaves occasioned to the complainants was on account of the alleged blowing of huge quantity of Beedi leaves due to high speed winds as was claimed on the date of the peril. Liability to pay any compensation much less the amount claimed by the complainants in the complaints is denied.

3. IN the rejoinder the complainants have controverted the objections and pleas raised by the opposite party in their written versions and have generally reiterated the averments and allegations already made in the complaints.

4. IN order to substantiate their respective pleas, parties have largely relied upon the documentary evidenceviz. the report of G. Vasant Rao and report of Mrs. V. Laxmi Narsayya & Co., as also the accompanying documents and the correspondence exchanged between the parties. Besides that the complainants have filed supporting affidavits of Sada Vijay Kumar, special attorney of the complainants in support of the complaints. Insurance Company has also filed

supporting affidavits by the surveyors and that of the Branch Manager. We have carefully gone through the entire evidence and material placed on record and have heard Mr. K.P. Toms, Counsel for the complainants and Mr. P.K. Seth, Counsel for the O.P./Insurance Company and have given our thoughtful consideration to their submissions.

5. IN the present case, the basis of repudiation of the claims of the complainants is manifold. However, the main ground on which the O.P./Insurance Company had repudiated the claim is set out in their letter dated 24.12.2001, which we would like to extract hereinbelow: "The New India Assurance Co. Ltd., Division Office, Punnamchander Complex, Hanamkonda Chowrastha, Warangal-506 011, 610900/ DO/Fire Claims/01 24.12.2001 ''Registered Post with Ack Due '' Mr. T. Odelu, C/o Mr. S. Vijaya Kumar, Beedi Leaves Contractor, 11-15-11/17, Laxmipura, Old Ice Factory Premises, Narsampet Road, Warangal-506 013. Sir, Ref: Repudiation of claim pertaining to Lakkavaram Unit. Policy No. 610902/11/00/0002 DOL. 16.5.2000, Claim No. 610902/11/00/00006. It is to inform you that our Khammam Branch Office has issued above fire policy to you for the period from 28.4.2000 to 27.5.2000 covering the risks of Beedi leave stock kept at various Hhallas of Lakkavaram unit. You have informed on 18.5.2000 to our Branch Office alleging that due to heavy rain with gale and high speed winds, there was heavy loss to the unit, insured by us. On receipt of information, our branch office at Khammam appointed Mr. G. Vasantha Rao, Surveyor for conducting survey and later Mr. A.V. Suresh, appointed for conducting joint investigation and final survey was entrusted to M/s. V. Laxmi Narsayya and Company. As per assessment made by Mr. G. Vasantha Rao, you have committed some irregularities and the claim petition is inconsistent with the facts present on the spot. The Khallas capacity is less than the stock which is 4 times more. The stocks transported is minimal i.e. 5% only and so on. It is also made clear that he alleged the heavy loss, there was no intimation to the MRO concerned nor the FRO which clearly proves your falsity of your claim. Any prudent man on the earth immediately inform the concerned officers i.e. the MRO or the Forest Officials to assess the loss, added to that the Surveyor has found that no complaint about the loss were received from the adjacent Khallas, which clearly establishes the malpractice adopted by you. It is further established that vigilance officers seized all your godowns during the July, 2000, when you have alleged that there was heavy loss occurred on 16.5.2001, which is two months before the seizure. Thus, what is left for seizure when you alleged the loss is beyond imagination. The final survey to assess the loss was done by M/s. V. Laxmi Narsayya and Co. As per the report, it is very clear that you have committed the fraud and misrepresented the facts as the competent officials residing in the Forest i.e. Chief Planning Officer, who is duty-bound to inform to the Government about the rain fall has clearly submitted report to the Government that on 16.5.2000 the rain fall received at Lakkavaram and the report is meant for the entire vicinity of the Mandal. Your contention that due to heavy rains with high speed winds, gale is nothing but a fraud misrepresentation

for the purpose of illegal claim. Thus, the CPO report is a public report which is authenticate document submitted to the Government on request by anybody, as such, your claim proved to be false one, on the face of the report and the claim is liable for repudiation. From the above facts it is clear that you have resorted to misrepresentation of facts and adopted to fraudulent means to exaggerate the claim which is clearly violation of policy conditions 1, 6b, 7a, 7b, 7c, 7d and 8, etc., and according to these conditions the policy becomes void ab-initio and the Insurance Company has no liability of any nature. It is further informed to you that you have voluntarily submitted an unconditional letter withdrawing the claim in toto on your own accord on 8.9.2000 (by your SPA holder Mr. K. Sada Vinay Kumar) handed over the same in the office at Khammam Branch. Having admitted the falsity of your claim and all the necessary correspondence was treated to the closed by the company and the closure of the entire claim was duly intimated to youvide our letter dated 14.9.2000, which as duly acknowledged by you. In view of your unconditional, withdrawing letter, no joint inspection was taken up at Lakkavaram godown, which would have once again proved that all your records, statements, etc., are baseless, even the alleged notarized affidavit is an afterthought developments and full of inconsistencies. The alleged notarized affidavits reveals that some unknown people forced you to submit withdrawal letter which is clear that the facts are not true and inconsistent. The alleged affidavit is not legally valid as there is no sanctity in the eyes of law and but is a nature of threatening which is not proper. The copy of the affidavit which is not binding is not having any notarized stamp with document number which is material to be submitted to the District Registrar, to have any validity. Thus the alleged affidavit is second man-over and full of false allegations which is not at all binding in the eyes of the law. The unconditional letter is itself sufficient to be treated as full and final foreclosure of claim and all the fake documents submitted along with the letter will not be considered by the company. In view of the above facts, we once again confirm repudiation of your claim by our Khammam Branch Office. Yours faithfully, Sd/- Divisional Manager "

6. MR . Seth emphatically persisted with the above grounds of repudiation. On the other hand, Mr. Toms has invited our attention to certain documentsviz. weather certificate dated 3.7.2000 issued by the Mandal Revenue Office, Chintur of the Revenue Department of Government of Andhra Pradesh, thereby giving a weather certificate which is to the following effect: "On due inquiry in the villages and in consultation with the Forest Range Officer, Lakkavaram Range, this is to certify that there was stormy weather with rain and speedy winds heavily on 17th and 18th May, 2000 and the Beedi leaves in the following khallas have been damaged. 1. Tulasipaka 2. Dabba Gudem 3. Nelakota 4. Devarapalli 5. Kothapalli 6. Kothapeta of Kothapalli (v) 7. Sukumamidi 8. Vemularai 9. Lakkavaram 10. Polluru 11. Mothugudem 12. Godlagudem 13. Thulugonda 14. Sirasanapalli 15. Forebey camp 16. Mittawada "

Reference has also been made to a certain communication dated 21.5.2000 issued by the Forest Department, Government of Andhra Pradesh issued under the signature of Forest Range Officer, Lakkavaram, which reads as under: "Certificate of Loss and damages due to Stormy Weather and speedy winds This is to certify that the Beedi leaves on the following Khallas of Unit Lakkavaram 2000 season have been hit the natural calamity i.e., stormy weather and speedy winds with a speed of 70 to 80 km per hour and caused a great loss to the contractor on 17th and 18th, May, 2000, hence this certificate is issued as a confirmation of the said tragedy on request of the contract. Name of the Khallas: 1. Tulasipaka 2. Dabba Gudem 3. Nelakota 4. Devarapalli 5. Kothapalli 6. Kothapeta of Kothapalli (v) 7. Sukumamidi 8. Vemularai 9. Lakkavaram 10. Polluru 11. Mothugudem 12. Godlagudem 13. Thulugonda 14. Sirasanapalli 15. Forebey camp 16. Mittawada "

7. ON the strength of the above documents, Mr. Toms strongly argued that so far as the weather conditions prevailing on 17.5.2000 and 18.5.2000 is concerned, there could possibly be no doubt that there was stormy weather and speedy winds blowing 70 to 80 kms. per hour and caused loss to the contractors of Tendu leaves on 17th and 18th May, 2000 in the above Khallas.

8. MR . Seth on the other hand, referring to the reports of Meteorological Department annexed with the report of the Surveyor M/s. V. Laxmi Narsayya & Co. submits that the weather conditions were normal, inasmuch as the wind speed was around 4 km per hour in the area of Narsampe between the dates 14th to 16th May, 2000. It is to be noticed that these reports pertain to the Meteorology Observatory situated at Narsampe and, therefore, strictly speaking will not be relevant to the specific area where the Khallas were situated, as found mention in the certificate issued by the Forest and Revenue Authorities. In our view, the certificates issued by Forest and Revenue Authorities, who were present and had the occasion to observe the situation, should prevail at least as regards the weather conditions prevailing in that area. Even the Surveyor, M/s. V. Laxmi Narsayya & Co. in their report has assessed the net loss subject to the verification of the said weather conditions from the Meteorology Department though in the first survey report dated 7.9.2000 the surveyor G. Vasantha Rao after making spot inspection came to a certain conclusion and gave the following opinion: "Conclusion: After a thorough verification of the records, facts findings, enquiries at various levels and insured ''s reply to my letter and corroboration of insured submitted records with the facts, we conclude that - As per the records the collection upto 18.5.2000 was 4530.658 and bagging was 1745.310, hence the stock at khalla as on 18.5.2000 was 2785.348 SBs. As per the records and my physical verification the loose stock at Khalla on 21.5.2000 was 2671.784, and bagged stock is 2724.51, hence total bagged plus loose stock at Khalla was 5396.294 SBs and whereas the collection upto 21.5.2000 was only 4996.241 SBs, it shows that insured was having more stock compared to the collection and hence there was no loss of stock due to missing. "

Opinion: The insured preferred the claim by submitting false records, certificates and virtually the insured peril was not in operation. There were breach of policy conditions (late intimation and furnishing of false information) and insured had deliberately misrepresented the facts to take advantage, hence the insurer has no liability to entertain the claim. "

The report of M/s. V. Laxmi Narsayya and Co., in their final survey report dated 29.11.2000 have, however, come to the following conclusions and assessed the loss in the following manner: In Consumer Complaint No. 156 of 2002: "8.0 Amount claimed by the insured : 52,00,000.00 9.0 Loss Assessment 9.1 Indemnity rate: Collection charges as per notification No. 10.1.2000 : 540.00 per SB 9.1.1. Sale consideration or Royalty As per agreement dated 28.2.2000 : Rs.1,824.00 ï¿ 1/2 ï¿ 1/2 ï¿ 1/2 ï¿ 1/2 ï¿ 1/2 If the quantity collected is excess to the targeted quantity, the sale consideration would be 50% of the original royalty on the excess of the targeted qty. Total collected quantity : 5039.283 Less Target : 2400.000 Excess collected : 2639.283 Royalty/SB: (2400 x 1824 + 2639 x 0.5 x 1824)/5039.283=1346.00 Expenses : During the minutes of the meeting of all the Surveyors held at National Insurance Company RO, Hyderabad, it was decided that all the expenses would be restricted to Rs. 180.00 per SB. Accordingly the indemnity rate is arrived as 540 +1346+180=2066.00 per SB 9.1.2: Quantity at Risk : 672.70 SBs Rate : 2066.00 Value at Risk : 13,89,806.00 Sum Insured : 70,00,000.00 The Policy is adequately covered. 9.1.2 Net Loss: Quantity lost arrived as per No. 7.2 : 251.30 SBs Indemnity rate : 2066.00 per SB Value of the loss : 5,19,185.00 Less policy excess 10% of the CA : 51,918.00 Net loss : 4,67,266.00 ï¿ 1/2 ï¿ 1/2 ï¿ 1/2 ï¿ 1/2 The net loss works out to be Rs. 4,67,266.00 subject to terms and conditions of the policy and also subject to the confirmation of the wind velocity to be known from REC, Warangal. Issued without any prejudice. Surveyor "

9. IN Consumer Complaint No. 157 of 2002, the above mentioned surveyor assessed the net loss at Rs. 55,913 as under: 8.0 Amount claimed by the insured : 32,00,000.00 9.0 Loss Assessment: 9.1 Indemnity rate: Collection charges as per notification No. 10.1.2000 : 540-00 per SB 9.1.1. Sale consideration or Royalty: Royalty paid to the Forest Deptt. : Rs. 1,60,000.00 Total collection for the 2000 season 3453.160 SBs Royalty per SB Rs. 46/SB ï¿ 1/2 ï¿ 1/2 ï¿ 1/2 ï¿ 1/2 ï¿ 1/2 Expenses:During the minutes of the meeting of all the Surveyors held at National Insurance Company RO, Hyderabad, it was decided that all the expenses would be restricted to Rs. 180.00 per SB. Accordingly the Indemnity rate is arrived as 520+46+180=746.00 per SB 9.1.2 Quantity at Risk : 371.81 SBs Rate : 746.00 Value at Risk : 2,77,370.00 Sum Insured : 35,00,000.00 The Policy is adequately covered. 9.1.2 Net Loss: Quantity lost arrived as per No. 7.2 : 83.28 SBs Indemnity rate : 746.00 per SB Value of the loss : 62,126.00 Less policy excess 10% of the CA : 6,212.00 Net loss : 55,913.00 The Net loss works out to be Rs. 55,913.00 subject to terms and conditions of the policy and also subject to the confirmation of the wind velocity to be known from REC, Warangal. Issued without any prejudice. Surveyor "

10. IN Consumer Complaint No. 158 of 2002, the Surveyor assessed the net loss of the complainant as under: "8.0 Amount claimed by the insured : 40,00,000.00 9.0 Loss Assessment: 9.1 Indemnity rate: Collection charges as per notification No. 10.1.2000 : 520-00 per Sb 9.1.1. Sale consideration or Royalty: Royalty paid to the Forest Deptt. : Rs. 4,66,676.00 Total collection for the 2000 season : 5176.400 SB ''s Royalty per SB Rs. 90/SB Expenses:During the minutes of the meeting of all the Surveyors held at National Insurance Company RO, Hyderabad, it was decided that all the expenses would be restricted to Rs. 180.00 per SB. Accordingly the Indemnity rate is arrived as 520 + 90 + 180=790.00 per SB 9.1.2 Quantity at Risk : 643.14 SBs Rate : 790.00 Value at Risk : 5,08,080.00 Sum Insured : 68,00,000.00 The Policy is adequately covered. 9.1.2 Net Loss: Quantity lost arrived as per No. 7.2 : 169.75 SBs Indemnity rate : 790.00 per SB Value of the loss : 1,34,102.00 Less policy excess 10% of the CA : 13,410.00 Net loss : 1,20,691.00 ï¿ 1/2 ï¿ 1/2 ï¿ 1/2 ï¿ 1/2 ï¿ 1/2 The net loss works out to be Rs. 1,20,691.00 subject to terms and conditions of the policy and also subject to the confirmation of the wind velocity to be known from REC, Warangal. Issued without any prejudice. Surveyor "

Mr. Seth on the strength of the terms and conditions of the policy, in particular Clause Nos. 1, 6b, 7a, 7b, 7c, 7d and 8, has vehemently contended that the complainants having breached the said condition of the policy have disentitled themselves for any claim whatsoever because their claim was based on misrepresentation, fraud and exaggerated many times than the actual loss, if any, suffered by the complainants. It is true that on giving a strict interpretation to Clause 8, any violation of the terms and conditions, in particular, making any fraudulent claim by an insured would exonerate the Insurance Company from its liability to settle the claim for insurance. However, this Commission has been of the consistent view in many cases that where the claim filed by the insured was exaggerated, the insured should not altogether be deprived of the indemnification of at least the actual loss suffered by him, as per the assessment of the Surveyor and Loss Assessor. In our view, it would be quite harsh on the complainants/insured to deprive them of their legitimate right of indemnification of actual losses suffered by them.

11. ON a consideration of the evidence and material brought on record, this Commission is of the view that the total denial of the claim by the Insurance Company cannot be justified. The Insurance Company ought to have settled the claim of the complainants at least commensurate with the net loss, which has been quantified by the Surveyors i.e. Rs. 4,67,266 in complaint No. 156/2002, Rs. 55,913 in Complaint No. 157/2002 and Rs. 1,20,691 in Complaint No. 158/2002 respectively. As even these amounts were not paid, the complainants are also entitled to a reasonable interest say 9% per annum on the above said amounts with effect from the date of the complaint till payment by way of compensation.

12. IN the result the complaints are partly allowed and the Opposite Party/

Insurance Company is directed to pay the sum of Rs. 4,67,266, Rs. 55,913 and Rs. 1,20,691 to the complainants in Consumer Complaint Nos. 156/2002, 157/2002 and 158/2002 respectively towards the settlement of the claim of the complainants under the above referred policies along with interest @ 9% per annum with effect from the date of filing of the complaints till payment. The amount shall be paid within six weeks from the date of this order, failing which the rate of interest shall stand enhanced @ 12% per annum from the date of default. Parties to bear their own costs. On request, copy Dasti by 6.3.2012 to Mr. P.K. Seth, Counsel for the O.P./Insurance Company. Complaints partly allowed.