(2012) 04 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

Thirumagal Mills Ltd APPELLANT

Vs

UNITED INDIA INSURANCE COMPANY LTD RESPONDENT

Date of Decision : 16-04-2012

Acts Referred:

Citation : 2012 0 NCDRC 781 : 2012 2 CPJ 565

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

Final Decision : dismissed

Judgement

1. AFTER hearing the Counsel for the parties vide an order of even dated, we had dismissed the complaint of the complainant leaving the parties to bear their own costs. We give reasons for making the said order.

2. IN nutshell, the case of the complainant is that it is a spinning mill and manufacturer of different grades of cotton yarn. They had taken insurance policies form the opposite party/Insurance Company to cover the risk of fire and allied perils in respect of their aforesaid mills including the stocks of finished and unfinished goods. A fire accident took place in the complainant ''s factory on 14.11.1999; thereby destroying building, machinery, cotton stocks, stock-in-process and finished goods for it an insurance claim amounting to Rs. 11.34 crores was made by the complainant company to the opposite party-Insurance Company in respect of the loss suffered by it. Based on the survey report and assessment of damage, the respondent company offered full and final settlement of the claim at Rs. 3,75,92,533, which was received by the complainant. The case of the complainant is that in settling the claim of the complainant, the opposite party/Insurance Company had illegally and arbitrarily withheld/deducted a sum of Rs. 14,52,240 and has also not paid a claim of Rs. 30,53,440 in respect of the loss of 38,168 kgs. of cone yarn estimated at the rate of Rs. 40per kg. The complaint was filed seeking the following directions on the opposite party: "It is, therefore, most respectfully prayed that this Hon ''ble Commission may graciously be pleased to - (a) Pass an order directing the respondent to pay to the complainants an amount of Rs. 14,52,240 arbitrarily withheld by the

respondents, and (b) Pass an order directing the respondent to pay to the complainants the compensa-tion claim amounting to Rs. 30,53,440 for the loss of cone yarn with interest thereupon @ 24% per annum will the actual date of realization of the said amount; and (c) Pass such other order to orders as this Hon ''ble Commission may deem fit and proper on the facts and in the circumstances of the instant case. "

On being noticed on the complaint, opposite party/Insurance Company filed written version raising preliminary objections about the maintainability of the present complaint before the Commission on the ground that as per the complainant ''s own admission, the claim of the complainant has been fully and finally settled at Rs. 3,46,40,293 and, therefore, the complainant cannot lay any further claim. It is denied that the opposite party has committed any deficiency in service by not settling the insurance claim of the complainant fully and finally. In regard to the deductions of a sum of Rs. 14,52,240 from the assessed amount of loss, it is explained that both the surveyors had confirmed that there was a breach of construction warranty attached to the policy, which has resulted in short collection of premium amount by the Insurance Company. Since the material fact had not been disclosed to the opposite party, an amount of Rs. 13,14,819 was collected by the opposite party as per GIC guidelines and Rs. 1,37,420 towards the reinstatement of premium after the loss under the heading ''other premium collection ''. In regard to the 38,168 kgs. of cone yarn, it is pleaded that the said quantity of cone yarn was not at all affected by fire as at the material point of time, as the claimed quantity was shifted from the fire affected place to the doubling department of mill. Reference has been made to the special report of the surveyorviz. M/s. S. Raghunathan Associates in this behalf. Liability to pay any further amount much less sum of Rs. 30,53,440 and Rs. 14,52,240 is specifically denied.

3. IN the rejoinder, the complainant has controverted the objections and pleas raised in the written version and has generally reiterated the averments and allegations made in the complaint.

4. IN order to substantiate their respective pleas parties have mostly relied upon the documentary evidenceviz. copies of the preliminary and final surveyor reports and correspondence exchanged between the parties, besides filing their supporting affidavits. We have heard Mrs. Vimla Sinha, Advocate, learned Counsel representing the complainant company and Mr. Brijesh Bagga, Advocate, learned Counsel representing the opposite party/Insurance Company and have given our thoughtful consideration to their respective submissions.

5. THE factual position about the opposite party/Insurance Company having already settled the claim of the complainant by paying a sum of Rs. 3,46,40,293 not being in dispute, the only question which needs consideration is as to whether the complainant is entitled to any further amount from the opposite party/Insurance Company towards the settlement of their insurance claim. In other words, the first question for consideration is as to whether the opposite

party/Insurance Company was justified in deducting a sum of Rs. 14,52,240 on account of ''other premium deductions ''. In this regard, we may refer to the letter of the Opposite party dated 11th December, 2000, addressed to the complainant company giving out the break-up of the net claim approved, the payment already made and the deduction of sum of Rs. 14,52,240 under the heading ''other premium collection ''. We would like to produce the letter herein: "United India Insurance Co. Ltd. Branch Office: 17, G.P.M. Chetty Street, Cudiyatham - 632 602 11th December, 2000 Kind Attn.: Mr. T.V. Govindarajan, Chief Executive To, Thirumagal Mills Ltd., Katpadi Road, Gudiyatam Dear Sir, Re: Fire loss on 14-15 the November, 1999 -Thirumagal Mill Ltd. With reference to the above, we have pleasure to enclose herewith a cheque No. 433321 dated 11th December, 2000 for Rs. 1,66,88,053 drawn on IDBI, Chennai towards full and final settlement of the claim. We furnish below the details of claim assessment for your kind information Net Claim approved Rs. 3,46,40,293.00 Less: for ON Account Payment Already made Rs. 1,50,00,000.00 Rs. 1,96,40,293.00 LESS: for salvage value deposit Rs. 15,00,000.00 Rs. 1,81,40,293.00 LESS: for other premium collection Rs. 14,52,240.00 Net Amount Payable Rs. 1,66,88,053 (Rupees one crore sixty six lacs eighty eight thousand and fifty three only) Kindly acknowledge receipt. Thanking you, Yours faithfully, Sd/- Divisional Manager (Camp At Madras) "

6. LEARNED Counsel for the opposite party contended that the deduction of Rs. 14,52,240 made by the opposite party/Insurance Company is fully justified on the strength of Clauses 10 and 15 of the terms and conditions of the Fire ''C '' (LR) Policy, which reads as under: "10. If the property hereby insured shall at the breaking out of any Insured Peril, be collectively of greater value than the sum Insured thereon, then the insured shall be considered as being his own insurer for the difference and shall bear a retable proportion of the loss accordingly. Every item, if more than one, of the policy shall be separately subject to this condition. " "15. At all times during the period of insurance of this policy the insurance cover will be maintained to the full extent of the respective sum insured, in consideration of which upon the settlement of any loss under this policy pro-rata premium for the unexpired period from the date of such loss to the expiry of period of insurance for the amount of such loss shall be payable by the insured to the Company. "

A bare reading of the clauses should not leave any doubt in anybody ''s mind that at the time of settlement of net loss under the policy, the Insurance Company was entitled to charge/deduct pro-rata premium for the unexpired period from the date of the loss to the expiry of period of insurance for the amount of such loss. Since the complainant wanted the policy to continue for the remainder period of the policyviz. for 5-6 months, opposite party/Insurance Company was entitled to reinstatement charges as referred to above. Therefore, in our view, the Insurance Company has done no wrong by deducting a sum of Rs. 14,52,240 under the heading ''other premium collection '' from the amount of net assessed loss.

7. NOW coming to the next claim on account of damage to 38,168 kgs. of cone yarn, the surveyors M/s. Raghunathan and Associates have fully explained the position in the report by observing that this claim could not be admitted by giving the following detailed reasons/grounds in their special report: "Finally it could be stated that 38,168 kgs. of your cone yarn could not be taken for Assessment due to - (i) This quantity has been shown as damaged only by correcting the records whose veracity is not established; (ii) The first two surveyors had not closed the stock records and initiated the closing stock figures in any of the records. No physical verification of balance sound stocks inside the mills was not found to have been done as of 14/15.4.1999. Hence the yarn reconciliation exercise was not possible to arrive at the residual stocks quantity and volume in the affected godown. The entire assessment had to be done on the basis of records only, as the physical verification of the demanded stocks was not done (due to the collapses of the building) and including the 38,168 kgs. (iii) The RG-1 for cone above were seen and certified by Central Excise officials and the same for banks maintained separately did not show such scrutiny and hence the physical verification of the stocks, if any, for 14.11.1999 (closing) could not be effected; (iv) On pointing out the missing records and the collections therein, the insured were not able to substantiate this claim for this quantity of 38,168 kgs. The records duly effecting the re-entry of returned goods, could also show the stocks taken for concession, which was not the case. "

8. IN view of the above observations, we have no manner of doubt that the surveyors have not recommended for the payment of the loss of 38,168 kgs. of cone yarn. We have no reasons to disagree with the grounds/reasons given by the surveyors for rejecting this claim. Consequently, the Insurance Company cannot be held guilty of any deficiency in service by not making the payment on account of the alleged loss of 38,168 kgs. of cone yarn which in our opinion was not established on record. Thus having considered the matter in its entirety and for the foregoing reasons, we must hold that the complainant has miserably failed to establish any act of deficiency in service either by not paying the claim for the remainder quantity of 38,168 kgs. of cone yarn or by deducting a sum of Rs. 14,52,240 on account of reinstatement of policy charges and premium.

9. IN the result the complaint fails and is accordingly dismissed leaving the parties to bear their own cost. Complaint dismissed.