(2013) 09 NCDRC CK 0040

In the National Consumer Disputes Redressal Commission

Tilda Riceland Pvt Ltd APPELLANT

Vs

UNITED INDIA INSURANCE CO LTD RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : 2013 0 NCDRC 852 : 2013 4 CPJ 135 : 2013 4 CPR 1

Hon'ble Judges : VINEETA RAI , VINAY KUMAR J.

Advocate : S.M.TRIPATHI , KISHORE RAWAT

Judgement

1. DELHI State Consumer Disputes Redressal Commission (hereinafter referred to as the State Commission) had dismissed this case at the admission stage on the ground that since this is a case of charging of extra premium and seeking refund of the same, it is not a consumer dispute and, therefore, does not fall within the ambit of deficiency in service on the part of Insurance Company and the complaint, if any, pertains to a breach of contract between the parties for which remedy lies in the Civil Court. Being aggrieved by this order, M/s Tilda Riceland Pvt. Ltd., Appellant herein and Original Complainant before the State Commission, have filed the present First Appeal.

2. BRIEFLY stated, the facts of the case as per the Appellant/Complainant are that it is a company in the business of buying, selling, distributing and dealing in import and export of rice. It also carries on research and development in all spheres of production, processing and DNA testing of rice etc. It had obtained an Erection All Risk (EAR) Policy from the Respondent/Insurance Company by paying a premium of Rs.66,76,171/ - which was payable in installments over a period from 01.04.1999 to 01.10.2002. It was contended that on a subsequent date, while examining the insurance policy and the endorsement, the Appellant/ Complainant came to know that under the EAR Policy and subsequent extensions the premium charged for the Earthquake risk had not been in accordance with the Memorandum of Understanding (MoU) entered into between both parties from time to time and that the Respondent/Insurance Company had wrongly charged the full premium whereas since the coverage for this risk was only 20%

of the sum insured Respondent/Insurance Company could not have arbitrarily charged full premium against a limited liability and Appellant/Complainant was entitled to 50% refund which amounted to Rs.17,09,679/ - with 18% interest apart from 1,00,000/ - on account of harassment and mental agony and Rs.50,000/ - as litigation costs. As stated earlier, the State Commission dismissed the complaint at the admission stage itself holding it not to be a consumer dispute and observing that the Appellant has a civil remedy. Hence, the present First Appeal. Learned Counsels for both parties made oral submissions.

3. COUNSEL for the Appellant/Complainant contended that the State Commission had wrongly dismissed the complaint on the ground that the issue involved relates only to breach of contract and not deficiency in service. It was stated that the Appellant had obtained EAR Policy from the Respondent/Insurance Company effective from 01.04.1999 to 31.03.2003 in respect of his business. Before obtaining the insurance policy, a Memorandum of Understanding was entered into and signed by the parties in 1999 specifying the coverage required by the Appellant/Complainant. As per the MOU in 1999, which was confirmed by subsequent MoUs in 2001 and 2003, the earthquake risk in the policy would be on first loss basis by which the insurance liability under the claim would be limited to 20% of the project sum insured and for this limit on liability a discount of 50% on earthquake premium would be admissible under the Tariffs. Later, Appellant/Complainant came to know that the Respondent/Insurance Company had not granted 50% deduction in respect of the earthquake premium and as soon as it came to know of the same, Appellant/Complainant wrote a letter dated 14.02.2005 to the Respondent/Insurance Company seeking refund of Rs.16,77,608/ - charged in excess from him. Since no response was received, Appellant/Complainant filed a complaint before the State Commission seeking refund and other reliefs as stated earlier. Counsel for the Appellant/Complainant contended that there was clearly deficiency in service and unfair trade practice on the part of Respondent/Insurance Company in not honouring the commitment made in the MoU/insurance policy. During the course of arguments, Counsel for the Appellant/Complainant brought to our notice the first MoU wherein it was stated in Para -B that the EAR covers earthquake risk on first loss basis and also the renewed MoU dated 28.03.2003 where in Clause -VII it is reiterated that the coverage for earthquake risk shall be on first loss basis for which 50% discount on the premium towards this head is there and insurance liability under a claim shall be then limited to only 20% on the project sum insured. Since the premium was not bifurcated under different heads in the policy, there was some delay on the part of Appellant/Complainant in detecting this unfair trade practice. The State Commission without appreciating the fact that there was clearly an unfair trade practice on the part of Respondent/Insurance Company dismissed the complaint in limine without even issuing notice to the Respondent/Insurance Company and thereby depriving them of an opportunity to cross -examine the Respondent/Insurance Company.

4. COUNSEL for the Respondent/Insurance Company on the other hand contended that the State Commission had rightly held that the dispute is not a consumer dispute because what should be the premium and whether the premium has been rightly charged or that the premium has to be refunded or not, are purely questions of breach of contract where no service per se is involved and, therefore, the same would not fall within the purview of the Consumer Protection Act, 1986. Further, a perusal of the MoU entered into between the parties in the year 1999 would clearly show that there was no clause with regard to discount in the earthquake premium. The policy was issued on the basis of a proposal form submitted by the Appellant/Complainant and a perusal of the policy would also show that normal excess had been provided and the policy document nowhere stated that the Insurer would be liable only to the extent of 20% in case of earthquake claim. Since a normal policy without any stipulation was issued, the Respondent/Insurance Company was right in charging 100% premium without discount. Further, the MoU in question was entered into between the parties in the year 1999 and the claim for refund of premium was raised in the year 2005 and, therefore, the claim, if any, was time barred. We have heard learned Counsels for the parties and have also carefully gone through the evidence on record, including the MoU and the insurance policy. Clearly from the order of the State Commission it is evident that since the case was dismissed in limine, the State Commission has not gone into the details of the MoU of 1999, the insurance policy as also the subsequent MoUs including those dated 28.03.2003 which deal with various details and specifically the earthquake risk covered. The State Commission has also not considered the premium chargeable as laid down in the tariffs by the Tariff Advisory Committee appointed under the Insurance Act, 1938, which have a bearing in this case. We are also not in agreement with the finding of the State Commission that this is not a consumer dispute since the case pertains to a breach of contract. In SyncoTextiles Pvt. Ltd. Vs. Economic Transport Organisation & Ors. [I (1999) CPJ 40] this Commission had held that the mere fact that the default or deficiency on the part of the carrier may also amount to a breach of contract under the general law will not in any way affect the jurisdiction of the forums set up under the special law namely the Consumer Protection Act, 1986 and once it is found that there is hiring of service for consideration and that loss has been caused to the complainant on account of any deficiency in rendering the service, the aggrieved consumer is entitled to seek his remedy under the Consumer Protection Act. In the instant case, the State Commission instead of going into all these aspects erred in dismissing this case at the admission stage.

5. IN the interest of justice, we, therefore, remit the case back to the State Commission to hear it afresh in accordance with law by affording opportunity to both parties to lead their evidence and other arguments. Nothing said in this order should be construed to be an opinion on the merits of the case. Parties through their Counsels are directed to appear before the State Commission on 02.12.2013.