
(1996) 11 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

TRESIA LILLY

APPELLANT

Vs

DIVISIONAL MANAGER, NATIONAL INSURANCE COMPANY

RESPONDENT

Date of Decision : 21-11-1996

Acts Referred:

Citation : 1997 3 CPJ 64

Hon'ble Judges : P.K.Shamsuddin , K.Balakrishnan Nair , K.M.Latha J.

Final Decision : Complaint allowed with costs

Judgement

1. THIS complaint is filed under Sections 12 and 17 of the Consumer Protection Act claiming compensation of Rs. 7,65,000/ for loss of vessel, which was insured with the Opposite Party.

2. SHORTLY stated allegations in the complaint are as follows: Complainant was the owner of a fishing troller with Registration No. NDK. 871, issued by the Port Officer, Neendakara, Kollam. The troller was insured with the Opposite Party as per policy covering the period from 5.2.1993 to 4.5.1993 on payment of a premium of Rs.9,800/ and it was renewed on 4.5.1993 for a further period of 3 months on payment of a premium of Rs. 7,200/ and again for another period of 3 months by paying Rs. 7,200/ on 4.8.1993. On 21.7.1993 while the troller was fishing in the deep sea, suddenly the sea became rough and several boats were capsized causing injury to several fishermen. Complainant's troller was one among them. Ext. P1 is the Press report relating to the accident to the vessels. After sinking of the vessel the crew were rescued and admitted to the District Hospital, Kollam. The discharge certificate issued is Ext. P 2. The complainant filed a complaint before the Police Station, Ochira regarding the incident on 22.7.1993 and the police registered a case with Crime No. C2/328/PTN/93 regarding sinking of the troller. Ext. P3 is the receipt issued by the police on 3.8.1993 regarding registration of case. The licence was surrendered to the Port Officer, Kollam, on 6.9.1993. The surrender certificate is Ext. P4. The Port Officer also issued a weather certificate of condition prevailing at Neendakara on 21.7.1993, which is evidenced by Ext. P5. The accident was duly intimated to the

Opposite Party and as per direction of the Opposite Party complainant submitted a claim petition before the Opposite Party and the Opposite Party conducted an enquiry. Finally the Opposite Party issued a registered letter Ext. P6 dated 10.10.1994 repudiating the claim stating that the complainant has not lost the trolley and the crew was not competent to operate the trolley. The complainant alleged that the reasons stated by the Opposite Party for repudiating the claim are not valid or genuine on these allegations the complaint was filed.

A version was filed by the Opposite Party denying the allegations and contending that the claim was repudiated for valid reasons and in good faith. It was further averred, that detailed survey and investigation through private agencies were conducted and the survey report and investigation report were considered in detail by the Opposite Party and it is on the basis of these materials the claim was repudiated. In the circumstances there is no deficiency on the part of the Opposite Party. It is further averred that on receipt of the claim intimation, the Opposite Party deputed a competent Marine and Insurance Surveyor and Loss Assessor M/s. Captain Krishnan & Company to survey and assess the loss. They collected all the relevant data pertaining to the alleged sinking of the vessel and another private investigator M/s. Scouts, Vyttila, Cochin was also deputed and it is based on the survey reports and investigation report of the Surveyors the claim was repudiated. It was further averred that an Express Warranty contained in the policy is that the vessel should comply with all local regulations and laws regarding registration of fishing licence, but the complainant has not complied with the warranty contained in the policy. As per the Kerala State Ports and Harbour Craft Rules, 1970, the Serang and Driver should possess certificate of competency. The vessel was registered at Neendakara on 11.11.1992 and the registration was valid till 31.8.1993. Apart from the aforesaid grounds there are also other grounds to show that the repudiation is valid. It is further averred that the cause and circumstances leading to the alleged mishap as contained in the statements of crew members and others are neither consistent nor made bona fide. Weather was seasonal and no weather warning was in force on the date of alleged mishap and this is clear from the certificate issued by the Port Conservator, Neendakara. Further, weather report issued by the Meteorological Department of Government of India also states that on the date of alleged mishap the wind warning direction was north westernly. The vessel in question was a newly constructed one and was proceeding north westernly direction and the predominant waves were south westernly as per the Serang and the effect of such waves would be to create rolling and pitching. It was absolutely improbable that the planks got broken near the stem and there is little change of the vessel experiencing heavy pounding leading to breaking of planks. The exact cause of the alleged loss is still a mystery. As per the statement of the crew they approached another fishing vessel at a distance for obtaining assistance. What was informed to the crew of the other vessel is that the complainant's vessel is temporarily disabled due to leakage in the injector pipe. The injector leak was rectified soon after and the crew of the rescue vessel reportedly refused to take

the insured vessel to Neendakara and proceeded to north westward for fishing. While proceeding northwestward another vessel was said to have been seen proceeding to Neendakara and the first rescue vessel requested the south bound vessel to take the four crew members of the insured vessel to Neendakara. The crew of the insured vessel then boarded M.F.V. Ajimon and this vessel proceeded to Neendakara and took the crew to the shore. The insured vessel reportedly engaged two Mechanised Canoes St. John and St. Jude to search and locate her vessel on 22nd and 23rd July and another vessel M.F.V. Sachu on 25.7.1993. However it is alleged they could not find any trace of the insured vessel. Another vessel M.F.V. JoshyMol also was used for the purpose. Further no receipt was produced by the complainant in respect of the Mechanised Canoes reportedly hired by the complainant nor the search operations on 22nd July, 1993. It was further averred that the report of the police and the statement by the owner is not sufficient to establish that the vessel is lost in the deep sea. In the circumstances it was alleged that the claim is not genuine and it is validly repudiated and no deficiency what soever was committed by the Opposite Party. It is also, contended that the case involves complex question of law and facts and detailed oral and documentary evidence is necessary to come to a correct conclusion and in a case like this the rigours of rules of evidence cannot be dispensed with as otherwise it will end up in miscarriage of justice and, therefore, the parties are liable to be relegated to a Civil Court.

3. THE complainant was examined as PW 1 and Exts. P 1 to P 17 were marked .On behalf of the Opposite Party the Divisional Manager of the Insurance Company filed affidavit and Exts. R1 to R21 were marked. The following issues were raised for trial: (1) Whether this Commission is competent to entertain this complaint? (2) Whether there is any deficiency on the part of the Opposite Party and if so, what is the relief the complainant is entitled to ? (3) What is the order as to costs?

4. POINT No. 1: It is contended by the Opposite Party that the matter involves complex question of law and facts and, therefore, the matter cannot be determined by this Commission and that in the ends of justice the parties have to be relegated to a Civil Court in the nature of the pleadings and the questions raised in the case. An application also was filed alongwith the version to decide this preliminary point on first. However after hearing learned Counsel appearing for the appellant we are not satisfied that the matter involves such complex questions which would warrant relegation of parties to a Civil Court. Point No. 2: The most important question to be decided in the instant case is whether the repudiation of the claim is valid and whether the Opposite party has committed any deficiency in repudiating the claim. It is contended in the version that the vessel was not lost. However, a Surveyor and also one private investigator were deputed by the Insurance Company and the repudiation is stated to be the result of the consideration of the survey report and the report made by the investigator. It is also contended that there is violation of the Warranty conditions in the Policy and the Serang had no requisite qualification and certificate of competency

and for these reasons also the repudiation is valid and there is no deficiency on the part of the Opposite party. The complainant was examined as PW 1 who deposed in terms of the averments contained in the complaint. She stated that M.F.V. Kuttu 1 fishing boat belongs to her and the vessel sunk on 21.7.1993 while the vessel was fishing in the deep sea. There were four persons employed as crew in the boat. They were Thankachan, Justin Babu, John and Robert. Thankachan was the Serang and Justin Babu was the Driver and all of them got injuries and they were admitted in the District Hospital, Quilon. The boat started at 1.30 a.m. and sunk at 8.30 a.m. Intimation was also given to the Ochira Police Station. The Insurance Company was also informed of the accident and also the matter was reported to the Port Officer. An attempt was made to salvage the boat and one Sachu and Malvin made investigation but nothing could be found out. The Insurance Company did not settle the claim and when approached the staff of the Insurance Company told her that she should not go there. The boat was built and launched for fishing operation on 20.7.92 and the boat was sunk on 21.7.1993 and the cost of the boat would come to Rs. 8 lakhs. She also stated that Ext. P1 is the report which appeared in the News Papers about the incident and Ext. P2 is the discharge card of the employees. Ext. P3 is the photocopy of the G.D. entry of the Ochira Police Station and Ext. P4 is the surrender certificate issued by the Port Officer, Quilon. Ext. P5 is the Weather Certificate, which showed that the climate was moderate. Ext. P6 is the letter received from the Insurance Company and Ext. P7 is the licence issued by the Port Officer, Neendakara. Ext. P8 is the licence of the boat. Ext. P10 series are the correspondence received from the Insurance Company. She further stated that she was not given any compensation. In the cross examination she stated that it was after Edavappathi the accident occurred and stated that she had paid higher premium to cover the risk of Edavappathy. She had also stated that all the norms provided by the law have been satisfied in the case of the fishing boat. She also stated that in Ext. P8 registration certificate issued by the Port Officer it is stated that the Serang and Driver should obtain certificate of competency as per Kerala Harbour Craft Rules and that has been satisfied and the Serang had an experience certificate for 6 years. To a suggestion that the Serang and Driver had no certificate of competency but only had experience certificate and a certificate of training to the Serang, she said that all the required certificates were produced. To another suggestion that according to the survey report if the driver was efficient the accident could have been avoided she replied that the Surveyor had not seen her. She had received letters from Capt. Krishnan & Co., she was aware of the survey but she did not get any notice. She stated that the boat has been registered as per Kerala Ports & Harbour Craft Rules and Merchant Shipping Act. Registration has also been made before the Director, Department of Fisheries and her reference was about Ext. P7 issued by the Port Officer. She further stated that her employees were called and threatened and without her knowledge some statements were taken from them. She denied the suggestion that St. John and St. Jude made search on 22nd and 23rd and she also denied the suggestion that the search operation was only a drama. To a question that

the sea was not rough she replied that it happened all of a sudden and the boat sunk at 8.30 a.m. on 27.1.93. She denied the suggestion that the sinking of the boat was not due to marine peril. She also stated that Ext. P10 is the original certificate.

5. IN the affidavit filed by the Senior Divisional Manager of the National INsurance Co. Ltd., he stated that the claim was repudiated on the basis of the survey report and loss assessment in compliance with the legal requirements and Capt. Krishnan & Co., reputed Surveyors and Loss Assessors were engaged for the purpose. A detailed investigation was also conducted through a professional insurance claim investigator and the claim was repudiated after evaluating all the facts and circumstances. There is no deficiency in service on the part of the Opposite Party. It was further averred therein that the claim was repudiated mainly for breach of express warranties contained in the policy and as per the provisions of the Marine INsurance Act an express warranty has to be exactly complied with. Since the express warranties are not complied with by the complainant the Opposite Party has no liability to settle the claim lodged by the complainant. It was further averred that the licence issued by the Port Officer, Neendakara contains a stipulation endorsed on the back of the licence that the Serang and Driver should obtain certificate of competency as per Kerala Harbour Craft Rules, 1970. It was admitted that the fishing boat was registered as NDK, 871 under the Kerala State Port & Harbour Craft Rules, 1970 by the Port Officer, Neendakara. It was also stated that as per the Survey report furnished by Capt. Krishnan & Co., dated 22.10.1993, Serang is not in possession of certificate of competency. It was further stated that the Surveyor has remarked that the Serang did not exercise the competency and apparently does not possess sufficient knowledge to carry out his duties properly, and the circumstance of the loss is also highly suspicious and the statement made by the crew and other connected persons are inconsistent, self contradictory and suspicious. There is also an allegation that the search operation alleged to have been conducted by the complainant is not bona fide, the receipts produced are undated and the two vessels/Canoes St. John and St. Jude is said to have been sent for search operation on 22nd and 23rd July and no receipt was produced for hiring of these vessels. It is further stated that there is no mention in the document that any of the crew members accompanied the vessels deputed for search operation, and the whole thing is only created for record purpose and is lacking in bona fides. It is further stated that the vessel is not registered for the purpose of fishing operations as required under the Kerala Marine Fishing Regulation Act though the vessel is registered before the Port Officer as per registration certificate and there is also no registration under the Merchant Shipping Act. As per the provisions of the Marine Fishing Regulation Act, the vessels are liable to be registered with the Deputy Director, Department of Fisheries. Another major factor to be reckoned with which constitutes is the breach of this express warranty and no registration to this effect has been produced by the complainant. The Opposite Party has not done anything deliberately or

intentionally and all allegations and aspersions to the contrary do not appear to be bona fide. It was admitted that the complainant's boat was given insurance coverage by waiving the monsoon warranty. Though the policy permits fishing operations during monsoon time, it is all the more important that the crew should take more care while taking out the vessel during this period. IN those circumstances, the complaint has to be dismissed. The deponent was not made available for cross-examination.

6. EXT. P1 series are the paper reports of the prominent Malayalam Dailies Mathruboomi, Kerala Kaumudi and Malayala Manorama have reported the incident and those reports have not been disputed. The report in Mathrubhoomi show that alongwith this boat there were 3 other boats in the sea. The Kerala Kaumudi and Malayala Manorama have also reported the sinking of some other boats alongwith the disputed boat. The reports indicate that the vessel Sherin was also lost in the sea on similar circumstances on the same day alongwith the vessel Kuttu. It has come out in evidence that the driver and Serang of Sherin had no qualifications other than their past experience and to the owner of the boat, Sherin was given a compensation of Rs. 3 lakhs by the Insurance Company and not being satis fied with that the owner of the vessel Sherin filed a case before the Sub Court, Kollam, as O.S.314/ 95 claiming enhanced compensation. EXT. P2 series are the discharge certificates in respect of Justin, John, Thankachan and Robert, who were members of the crew of the disputed boat, issued by the District Medical Officer, Kollam and it is stated therein that they were admitted in the hospital on 21.7.1993 and discharged on 22.7.1993, and they sustained injury on account of the boat accident. EXT. P3 is the receipt issued by the Sub Inspector of Police, Ochira stating that though they enquired about the fishing boat Kuttu on 21.7.1993 at about 8.30 a.m. and thereafter they could not trace out the fishing boat. EXT. P4 is the surrender certificate issued by the Port Officer, Kollam stating that the complainant/owner of M.F.V. Kuttu has surrendered the licence of the above boat to his office on 6.9.1993 and the licence stands cancelled and as per the statement of the crew the boat was lost in the sea on 21.7.1993 due to accident. EXT. P5 is the weather certificate issued by the Port Officer, Neendakara stating that the weather condition prevailed at Neendakara on 21.7.1993 was moderate and there was no weather warning. From these documents and from the evidence of PW 1 it has been established beyond doubt that M.F.V. Kuttu fishing boat belonged to the complainant sunk on 21.7.1993 while engaged in fishing. EXT. P6 is the letter dated 10.10.1994 sent by the Opposite Party to the complainant in which it is stated that the survey and investigation conducted by them revealed that the loss of the vessel as stated by the complainant is not genuine, that the crew of the vessel who was on Board on the crucial date was not competent to operate the vessel and hence they are not liable to compensate the complain ant for the alleged loss and that the circum stances of the alleged loss are highly suspicious and the statement made by the crew and other connected persons are inconsistent, self contradictory and highly suspicious. Thus it is stated that the

loss of vessel is not genuine and the circumstances are also suspicious: We do not find any ground to accept those contentions. In the first place paper reports and all other documents produced clearly show that the complainant's boat was sunk on 21.7.1993 while fishing. EXT. P7 is the certificate of registry of fishing boat issued by the Port Officer, Neendakara which shows that the complainant is the sole owner of MFV Kuttu which was built in the year 1992 and it was duly registered at the Port Office, Neendakara under the Merchant Shipping Act. EXT. P8 is the detailed description of the boat which shows that the disputed boat was built in the year 1992 and was in good condition. Then the remaining question to be considered is whether driver and Serang had competency qualification as required under the Act. EXT. P9 is the Certificate issued by the Director of Fisheries, Department of Fisheries, Government of Kerala stating that Sri Justin K.K. has undergone a course of training in Principles of Navigation, Operation of Fishing, Gears and Motor Boat management for a period of thirty eight weeks from 30.12.1974 to 21.9.1975 at the Fishermen Training Centre, Neendakara, Quilon (sic.) in the year 1975. EXT. P13 is the certificate issued by the Superintendent, Fishermen Training Centre, Neendakara, Department of Fisheries, where it is stated that Shri Justin, K.K. had completed the training at that centre for a period of 38 weeks from 30.12.1974 to 21.9.1975. During this course he was given training in theory and practical in the following subjects: 1. Gear Technology and Fishing Methods. 2. Fishing Biology and Processing Technology. 3. Operation and maintenance of Marine Engines. 4. Navigation and Seamen ship.

These certificates would clearly indicate that Shri Justice K.K. who was the driver of the disputed boat had undergone the course of training conducted by the Fishermen Training Centre and passed in the year 1975 and in view of this we are unable to accept the contention that the driver had no certificate of competency. Similarly, Ext. P 15 is the certificate issued by one Vincent stating that Mr. Thankachan, S/o Bennan, residing at Thoppil Kochu Veedu, Karithara, Chavaram was working as Serang in his fishing boat from 1986 on wards and that he is having a very good experience in the field and his conduct and character are good.

Ext. P12 series receipts issued by Shri N. Vincent, Laurenz Bangalow, Puthenthuruthu, Sakthikulangara stating that the boat belonged to him in the name of Suchy was engaged for the investigation of the disputed sunk boat Kuttu No. 1 on 25.7.93 and has received a sum of Rs. 6,500/ towards all expenses and another receipt issued by Lilly Kaithari, owner of fishing boat Joshu Mol, for Rs. 5,000/ for the searching operation of the fishing boat Kuttu No. 1 which sunk on 21.7.1993.

7. THE learned Counsel for the Opposite Party vehemently contended that the certificates produced are not sufficient to establish that the Driver and Serang had competency. We are unable to accept the contention in the light of the above documents. In the matter of the Serang only experience certificate is produced,

but the Opposite Party has not that certificate is insufficient and that under the law some other qualification is required for a Serang. As a matter of fact that the evidence of PW 1 shows that the qualifications of the Driver and Serang of fishing boat shown are also similar and still the Insurance Company settled the claim. No doubt, it is seen from the Ext. P16 produced by the complainant in relation to the vessel, Sherin it was United India Insurance Company which insured the vessel and that they offered Rs. 3 lakhs towards full and final settlement of the claim in respect of the vessel.

8. EXT. P 17 is the certificate issued by Sri M.K. Raju, B.Sc. (Engg.) approved Loss Assessor and valuer which showed the present value of the boat is Rs. 5 lakhs. EXT. P 2 is the survey report prepared by Capt. Krishnan & Company at the instance of the Opposite Party. It is stated therein that the Serang is not in possession of certificate of competency but it is admitted therein that the Driver K.K. Justin is in possession of certificate issued by the Fishermen Training Centre, Neendakara. Though some reasons are attempted to show that the claim is not genuine, we do not find any justification to disbelieve the case of the complainant in view of the paper reports and other records available, which clearly indicate that the boat was sunk. The evidence relating to the search operations is also acceptable. It was admitted in EXT. R2 report that the insured has complied with the terms and conditions as well as the Warranties of the policy except that the Serang is not in possession of any certificate of competency. But what certificate is required for Serang has not been mentioned. In the absence of any material we feel that the only requirement so far as the Serang is concerned is the certificate of experience and that the certificate produced would indicate that the Serang had sufficient experience and we do not find any justification in the criticism levelled by the Surveyor that the Serang did not exercise reasonable competence expected of a Serang and that apparently he does not possess sufficient knowledge to carry out his duties. It has been highlighted in the report that there are discrepancies in the statements of members of crew as regards the occurrence alleged discrepancies are very minor and do not materially affect the case. It is also clear that sea became rough unexpectedly leading to the sinking of vessel and one cannot expect the members of the crew to describe the occurrence in the same way in regard to all its details. The conclusion arrived at in EXT. R2 is based on such variations and nobody has got a case the vessel did not sink. The Surveyor only recommended that the claim may be processed based on the final report of the police after completing their investigations and that a thorough investigation may be made by professional investigator, if necessary. Perhaps on the basis of this, an investigation was made by "Scouts", insurance claims investigation/ consultancy. We have also gone through the report and it is pertinent to note there following statements as made therein: "The news that M.F.V. Kuttu had sunk in the seas had gained wide currency and many men whom I had enquired about the vessel had informed that the vessel had sunk sometime during the recent season. The collectors of toll at Neendakara and Sakthikulangara have also let it known that

the vessel was lost in the seas and no salvage could be recovered. Some of the boat owners at Sakthikulangara had also admitted that "Kuttu" owned by the Kins men of "Bakery Sunno" had sunk some time during the last rainy season. One of them have revealed that some owners had drowned their vessels after removing the engine, in the back waters and have at tempted to claim compensation. One such attempt was detected by the authorities and he had been brought to book. He then added that the case of "Kuttu" was different and it had really sunk in the seas". Finally they have stated that there were conspicuous inconsistencies in the timing of the sailing and the number of members who had sailed in the fishing operation on the material day and concluded that under the circumstances there is something more than what meets one's eyes, in the whole episode which the insured had at tempted to conceal. If the mishap was true and genuine the persons involved in the mishap should have recalled the event without any sort of inconsistency and the statements should have been alike and identical. But the apparent inconsistency in the statements given by the persons involved in the event leadone to conclude that there was something more than what has been made out by the insured. We find significantly there is no allegation that the crew purposely made the boat to sink. As a matter of fact it can be seen from the paper reports that alongwith this fishing boat 3 or 4 other fishing boats had also sunk and it has come out in the case of one boat Sherin, the claim was settled by the Opposite Party at Rs. 3 lakhs and not being satisfied with the compensation awarded the party approached the Civil Court for enhancement of compensation. In the circumstances we feel that there is no proper justification to repudiate the claim. In the report of the Surveyor or Investigator nothing has been mentioned to indicate that there is no sinking of the boat or the vessel was deliberately made to sink in order to put forward a false claim. We are therefore, of the view that repudiation of the claim would amount to deficiency in service. Coming to the amount of compensation we find that the boat is insured for an amount of Rs. 5 lakhs. Ext. P17 is the report made by the approved Surveyor and according to him the market value of the fishing boat is Rs. 7.5 lakhs. In the circumstances we find that the complain ant is entitled to get a compensation of Rs. 5 lakhs together with interest @ 15% from 21.7.1993, the date of accident. The complainant is also entitled to get her cost which we fix at Rs. 1,000/. Complaint allowed with costs. _____