

(1993) 04 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

UBALDO F.X. D'SOUZA

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD.

RESPONDENT

Date of Decision : 21-04-1993

Acts Referred:

Citation : 1993 2 CPR 560 : 1993 3 CPJ 1516

Hon'ble Judges : G.G.Loney , Atanasio Monteiro , Subhalakshimi Naik J.

Final Decision : Complaint dismissed

Judgement

1. THIS complaint is filed by the complainant against the New India Assurance Company Limited praying for the claim of Rs. 2.10 Lakhs. The complainant had insured his fishing trawler named "Perpetua Sucorre Mai" with the opposite party for the period from 3-8-1988 to 2-8-1989 for the amount of Rs. 2.10 lakhs. The complainant states that on 2-5-1989, the said trawler left for fishing, when the vessel drifted and ultimately sank off near Mormugao Harbour.

2. THE complainant filed his claim with the O.P. for full amount being the cost of total loss. THE O.P. appointed M/s. J.B. Boda Surveyors Pvt. Ltd., Vasco-da-Gama to assess the loss occurred due to sinking of the vessel. Surveyors on 17-7-1989 sub-mitted their report to the respondent wherein they calculated that loss of fishing trawler "Perpetua Sucorro Mai" shall be considered as that of total loss. The causes given in the surveyor's report were : (1) Failure of gear. (2) Adverse weather conditions due to which anchoring of vessel was not possible. (3) Subsequent drifting of vessel and stranding. Surveyors relied on the report from the Regional Director, Regional Meteorology at Centre Colaba, Bombay-5 which states that weather conditions prevailed on the relevant day and time were such that weather warning was issued to the fisherman of Maharashtra and Goa coasts.

The O.P., in its written version, has contended that there being adverse weather conditions at the relevant time, weather warning was issued by the Meteorological Department for fishermen of Goa coast. Further, O.P. has stated that weather warning was also broadcasted on All India Radio, Panaji, warning

the fishermen of bad weather from 30-4-1989 to 2-5-1989.

3. THOUGH the complainant has denied that weather warning was issued to the fishermen and that the same was broadcasted by All India Radio, Panaji, O.P. have produced sufficient evidence on record to establish that such warning was in fact issued by the Meteorological Department as well as it was broadcasted by the All India Radio, Panaji. It is evident that the complainant has committed breach of warranty as per the conditions of warranty stipulated in the Policy and provisions of the Marine Insurance Act.

4. THE O.P. states that on humanitarian grounds, they decided to settle the claim for Rs. 1.26 lakhs alongwith the Surveyor's fees of Rs. 1927.80 totalling to Rs. 1,27,927.60 as against the claim of Rs. 2.10 lakhs which is 60% of the sum insured. In view of the fact that the vessel was taken for fishing when there prevailed adverse weather conditions. This was conveyed to the complainant by the O.P. letter No. 22/89/019/PVM dated 16-1-1990. This offer was refused by the complainant and refuted the allegations that the trawler had gone for fishing in adverse weather condition. Arguments were heard on 15-3-1992 and directions were given to the O.P. to make payment of Rs. 1.26 lakhs (Which amount was admitted by O.P.) within a fortnight from the date of order. Accordingly, payment was made by O.P. The case was again put up for hearing on 10-4-1993 when the complainant denied that there was any breach of warranty and contended that there were several other trawlers which also went into the sea on the ill-fated day. The complainant has produced affidavits of workmen of the vessel "Perpetuo Succorre Mai" which was on board on the ill-fated day. The complainant has also produced affidavit of one Mr. Milagres Colaco who is supposed to be owner of another fishing vessel by name "Agnelo" which helped to rescue crew members of "Perpetua Succorre Mai" to establish the other Vessel "Agnelo" was also in the sea at the relevant time.

5. RELYING on the Surveyor's report and notes issued by the Meteorological Department and All India Radio, we are of the opinion that adverse weather conditions on the relevant day for fishing and necessary warning was issued to the fishermen. Action of the complainant to have ventured into inspite of warning amounts to breach of warranty. Under such circumstances, we are of the opinion that compensation paid by O.P. to the complainant i.e. amount of Rs. 1.26 lakhs is sufficient in view of the loss that had occurred. We are not inclined to consider to establish the delay since it is seen from the records that reasonable offer was made by the O.P. to the complainant on 16-1-1990 i.e. within six months from the date of Surveyor's report. Under these circumstances, there is no substance in the allegations made in the complaint to establish negligence on the part of O.P. Hence we pass the following order. ORDER The complaint stands dismissed. Complaint dismissed.