

(2003) 07 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD.

APPELLANT

Vs

BHARAT CONSTRUCTION CO. LTD.

RESPONDENT

Date of Decision : 23-07-2003

Acts Referred:

Citation : 2003 0 NCDRC 48

Hon'ble Judges : D.P.WADHWA , B.K.TAIMNI J.

Advocate : S.M.SURI , RAJIV BEHL

Judgement

1. IT is the Insurance Company who is the appellant before us. It is against the order of the State Commission holding that there was deficiency of service in repudiating the claim of the respondent/complainant under a valid contractor's all risks insurance policy. State Commission by its order dated 6.4.1995 directed the appellant/Insurance Company to pay Rs.5,87,200/- to the complainant with interest @ 12% p.a. from 1.7.1988 till the date of payment. When the appellant came before this Tribunal stay was not granted of the impugned order of the State Commission and it was directed that Insurance Company shall deposit the entire amount payable under the impugned order with the Registry of the State Commission by means of Bank Draft in the name of the complainant. Record shows that this amount has since been paid to the complainant.

2. BHARAT Construction Company, a registered partnership firm was awarded a contract for the construction of earthen dam on the river portion of Dejala Devada Project. In order to cover the risk to the construction work Bharat Construction Company submitted a proposal on 10.12.1987 to the Insurance Company for taking a Contractor's all risks insurance policy along with he sent a cheque dated 10.12.1987 for a sum of Rs.44,550/- towards the first instalment of the premium. Insurance cover was for a period of 10.12.1987 to 25.12.1988 which was for a period of more than one year. Insurance Company issued an acceptance Advice on 11.12.1987 insuring the work for Rs.1.60 crores from 10.12.1987 to 25.12.1988. It was mentioned that the provisional premium was Rs.2,40,000/- and the cheque for Rs.44,550/- towards first instalment of the

premium had been received. The policy was accordingly issued. On the night of 11.12.1987, there was a flood at the construction site and damage was caused to the construction work. The following day, complainant informed the Insurance Company the estimated loss of Rs.9,28,959/-. Surveyor appointed by the Insurance Company assessed a loss of Rs.4.30 lakhs. Since no amount was paid, and the complainant pressed for payment, Insurance Company by letter dated 25.3.1991 repudiated the claim stating as under : We are in receipt of various correspondence sent to us, regarding delay in settlement of the above claim. We would like to inform you that :- 1. The said loss/damage occurred on 11.12.1987 and partial premium worth Rs.44,550/- was collected on 11.12.1987 and the balance premium was paid on various instalments subsequently. 2. The above delayed payments of premium show a violation of Section 64 v (b) of Insurance Act, which is binding on all insurance companies, due to which the admissibility of the claim cannot be considered. 3. However, we are awaiting some guidance from M/s G.I.C. of India in such matters and will revert to the claim if any relaxation is possible.

Complainant also represented that the total premium paid was Rs.2.40 lakhs and that as per guidelines of Tariff Advisory Committee the amount of premium was Rs.1.40 lakhs. Complainant, therefore, claimed for refund of such an extra amount of premium collected from it alongwith the amount due under policy of insurance. Since the complainant did not get any relief, the complaint was filed before the State Commission.

3. IT was the case of the complainant that he was entitled to receive Rs.4.30 lakhs as estimated by the surveyor along with Rs.1,57,200/- being the excess amount of premium payable under the policy of insurance with interest @ 12% from 1.7.1988 till the date of payment. It was not disputed by the Insurance company that it had collected Rs.2.40 lakhs as premium against an amount fixed by the Tariff Advisory Committee. On the points raised by the insurance company, the State Commission framed the following issues :- (i) Whether there was violation of provisions of Section 64 VB of the Insurance Act, 1938 which disentitled the complainant firm to claim any amount under the policy of insurance taken by the complainant firm? (ii) Whether there was suppression of any material fact by the complainant firm which vitiated the contract of insurance? (iii) Whether there was any deficiency in service on the part of the opponent-Insurance Company? (iv) Whether the complainant firm is entitled to any relief under the Act?

4. THE principal issue was the first issue. The State Commission referred to the provisions of Section 64 VB of the Insurance Company thereto and particularly the explanation thereto which is as under :- Explanation.. Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be :- (3) (3)
(4) (4)

(5) The Central Government may, by rules, relax the requirements or sub-section (1) in respect of particular categories of insurance policies.

State Commission also referred to a certificate issued by the Senior Divisional Manager of the Insurance Company stating that the first instalment of Rs.44,550/- was provisional as against the instalment premium of Rs.29,700/- to be collected as per the final rate approved by the Tariff Advisory Committee and that the provisions of Section 64 VB of the Insurance Act 1938 were complied with. State Commission found that the genuineness of this document was not disputed. It was contended that it was an internal communication. Then Rule 59 of the rules framed under the Insurance Act was referred to which reads as under :- In case of policies issued for a period of more than one year such as Contract Performance bonds or guarantees, Contractors' All Risk policies, Machinery Erection policies and the like, the premium may be staggered as necessary according to custom over the period of the cover provided that the first equated instalment is higher than any other instalment by atleast 5% of the total premium payable and each instalment is paid in advance.

5. PROVISION of Section 64 VB of the Act was, therefor, as such not applicable. No error has been pointed out in the reasoning of the State Commission. It has also not been pointed out that what material had been supplied by the complainant vitiating the contract of insurance. The finding on this issue has been against the Insurance Company by the State Commission and in our opinion rightly so. In fact, this issue has not been seriously pressed before us. As far as the third issue is concerned, the claim was made in December 1987 and decision came only in March, 1991 after a great deal of delay. State Commission in spite of that has not awarded any amount by way of compensation for delay in settling the claim of the complainant one way or the other. State Commission ordered refund of the extra premium paid by the complainant and also the amount of compensation as arrived at by the surveyor of the Insurance Company. Further, interest @ 12% was also awarded. We would uphold the order of the State commission and dismiss the appeal. Since whole of the amount as awarded by the State Commission has already been received by the complainant under the directions of this Commission there shall be no order as to costs.