(1993) 03 NCDRC CK 0090

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd. APPELLANT

Vs

ISHWARDAS ZABARMAL TRUST RESPONDENT

Date of Decision : 03-03-1993

Acts Referred:

Citation : 1993 2 CPJ 809 : 1993 2 CPR 145

Hon'ble Judges : S.A.Shah , R.K.Shah J.

Final Decision : Appeal dismissed with costs

Judgement

1. THE appellant is the original opposite party who has admittedly issued a fire policy while includes the solar water system installed by the complainant Trust. During the continuance of the policy, the complainant alleged that there was a storm in the city with the result the solar system which was hardly 1 year old was uprooted and was damaged so-much-so that the solar water system was thrown out from the terrace to the ground. Fortunately, the school which is in the same building was closed and nobody was injured. THE complaint was made immediately and the Insurance Company has sent Mr. Jaykant Bhatt, Surveyor to survey the damages. THE first para of the report reads as under : "Acting upon the instruction received from the United India Insurance Co. Ltd. Divisional Office No. Ill, Ahmedabad, we surveyed and assessed the loss and damage caused by reported swirling whirlwind which occurred at about 5 p.m. on Wednesday, the 24th August, 1988 to the Solar Water System belonging to M/s Ishwardas Jhabarmal Trust and fitted and/or installed and/or installed and/or arranged on the terrace of the Insured''s 1st class construction building known as "Ishwar Bhavan" situated near Commerce Five Rasta, Navrangpura, Ahmedabad."

THE building is used as school, dispensary and also as a marriage hall with rooms so as to earn some money for the maintenance of the Trust. THE Insurance cover was for Rs. 26,00,000/-. THE insured building is admittedly of three floors in height and was fitted with solar water system with fittings on terrace to provide hot water to the school as well as customers who occupy the hall with rooms on rental basis for marriages and such type of functions. THE building is built of 1st class construction. THE caption ''cause and occurrence'' read as under : "It is reported that the Insured''s premises was closed at the time. THE school was closed at about 4.00 p.m. Marriage hall and rooms were vacant at the time. It is further reported that since noon on 24.8.1988 wind was blowing heavily in the area. At about 5 p.m. swirling whirlwind (Dumry) was blown and at the same time, one of the pipes of the pipelines of the Insured''s solar system fitted on the terrace fallen on the ground in the compound. Fortunately, nobody was there at the time. On hearing the loud noise of falling of pipe, the watchman of the premises made inquiry and on inquiry, he noticed that the entire solar water system fitted and/or arranged on the terrace was separated/damaged/broken."

THE surveyor after examining the same has assessed the value of the Solar water system at Rs. 1,15,000/- less Rs. 23,000/- as depreciation and total value payable was assessed at Rs. 92,000/-. THEreafter he has assessed the damages of repairs and replacement cost of Rs. 67,500/- and again deducted 20% depreciation and value of the salvage and has arrived at the net figure of Rs. 49,000/-. He has further stated that as per the report of Metereological Center, Ahmedabad, on the day of incident the maximum wind speed was 30 kms./hr. Even the learned Counsel of the appellant admits that the Metereological Centre is at a distance of 12 kms. from Ishwar Bhavan, the insured premises. It cannot be disputed that unless there is a strong wind or storm a steel pipe fitted on the solar water system will be detached and fall on the ground which is at a height of 3 storeys. To our opinion there is a clear evidence which shows how violent the wind was. Even the Survey Report admits that there was a heavy wind as reported by Metereological Centre though the claimant is not admitting the speed of the wind at 30 kms./hr.

2. NOW, let us consider the policy. The wordings of the policy, as given by the learned Advocate of the appellant reads as under : (7) Storm, cyclone, typhoon, tempest, hurricane, tornado, flood and inundation. Considering the extent of damage and the blowing of the steel pipe from the terrace to the ground, it cannot be said that the damage is not ca used either on account of storm, cyclone, typhoon, tempest, hurricane or tornado. The repudiation letter itself states that it was caused by whirlwind and none of the terms has been defined by the Insurance Company. We shall also have to consider that a person takes insurance to save himself from the damages on account of storm, cyclone, typhoon, tempest, hurricane, tornado, flood and inundation and in common parlance whenever a damage is occurred due to a strong wind which causes such a destruction, then the risk is always believed to be covered particularly when the Insurance Company has not given any information as to the meaning of these words or the particular information that the damage due to whirlwind is not covered. The burden is on the Insurance Company to prove that there was no storm, cyclone, typhoon, tempest, hurricane or tornado when such extensive damage was done to the system. The District Forum has considered a11 these aspects including the oral evidence adduced by both the parties and has come to

the conclusion that there was a storm which has caused the damages to the system of the insured. We do not find any error committed by the District Forum in arriving at the conclusion. The complainant is a Trust in which nobody is interested to create any false evidence. It is on the record that nobody was present at the time when the damage occurred. We, therefore, find no merits in this appeal and the same is required to be dismissed with cost. ORDER The appeal is dismissed with cost. Since the respondent has not engaged any Advocate, we quantify the cost at Rs. 500/-. Appeal dismissed with costs.