(2003) 09 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD. — APPELLANT

Vs

MAA CHANDI COCONUT STORE — RESPONDENT

Date of Decision : 16-09-2003

Acts Referred:

Citation : 2003 0 NCDRC 8 : 2003 3 CLT 529 : 2003 3 CPR 125 : 2004 1 CPC 307

Hon'ble Judges : K.S.GUPTA , B.K.TAIMNI , RAJYALAKSHMI RAO J.

Advocate : A.K.DE , A.C.PRADHAN

Judgement

1. THIS revision is directed against the order 31.7.2002 of Consumer Disputes Redressal Commission, Orissa, Cuttack allowing appeal against the order dated 11.8.2000 of a District Forum and directing the petitioner/opposite party to further pay an amount of Rs. 3,23,746.56 to respondent/complainant.

2. RESPONDENT was carrying business of coconuts and he used to store coconuts in the pucca building, straw thatched hall(s) and in open space. Respondent took Shopkeepers'' All Risk Policy covering the risk of fire upto Rs. 4 lakhs from the petitioner Insurance Company. Policy was effective from 31.7.1998 to 30.7.1999. On 12.8.1998, a fire broke out wherein the entire stocks at said three places was damaged. Since the respondent had availed credit facility from Union Bank of India, Baludhuda Branch, Puri, the Bank lodged claim for Rs. 6 lakhs with the petitioner. Surveyor appointed by the petitioner assessed the loss at Rs. 91,922/- and an amount of Rs. 91,600/- was paid to Bank. For Recovery of balance claims alleging deficiency in service the respondent filed complaint against the petitioner Insurance Company and relying on the Surveyor''s report the District Forum disposed of the complaint with the direction to the petitioner to pay Rs. 322/- being the balance amount assessed by the Surveyor as also compensation and cost. We have heard Mr. A. K. De for petitioner and Mr. A. C. Pradhan for respondent and have been taken through the record.

3. SURVEYOR ''s report dated 22.10.1998 (copy at pp 13-18) would show that

the balance stock held by the respondent on 12.8.1998 was 2,95,284 coconut pieces and out of it, the Surveyor did not take into account 1,92,722 pieces which lay in open space and in the straw thatched hall(s) at the time of fire. Surveyor found the selling rate per piece as Rs. 2.27 and assessed the loss at Rs. 91,922/-. Report notices that the hall(s) constructed of bamboo with thatched roofs and the open space where part of the stocks was kept, were not covered under the Policy issued by the petitioner-Insurance Company. In the impugned order, the State Commission held that the policy included the entire stocks of coconuts also stored in the hall(s) constructed of bamboo with thatched roofs and the open space as the policy was in regard to "all stocks of coconuts", that Sakhi Gopal Regulated Market Committee had certified on 18.9.1998 that the stocks of coconuts burnt was 1,49,728 pieces as found on verification done on 20.8.1998. Taking this quantity, the amount of damage was calculated at Rs. 4,14,746.56 @ 2.77 per piece. In regard to the former part of finding, under the heading ''Class A Construction'' in Section 1 of the policy in question (copy at pp. 10-12), it is stated that the building shall have external walls of stone/bricks/ concrete blocks/asbestos sheets cladding and/or metal sheets cladding glass panel partly or fully open-sided roof of RCC Masonary/Asbestos concrete sheets, metal sheets tiles wooden singles or bearing of RCC/steel/wooden framework. This Section 1 of the policy is part of the contract between parties. Stock of coconuts kept in halls(s) constructed of bamboo with thatched roofs and open space, thus was not covered under the policy. Turning to said latter part of finding, it may be noticed that in the complaint (copy at pp 20-22), the respondent has not mentioned as to what was the quantity of coconuts that was stored at different places, this fact was also taken note of by the State Commission in the order under challenge. It is also noticed in the order that in aforesaid certificate dated 18.9.1998 nothing has been mentioned as to what quantities of coconuts were there in the thatched hall(s) and open space. That being so, the said certificate dated 18.9.1998 could not have been made the basis of awarding damages to the respondent. Impugned order, therefore, deserves to be set aside being erroneous in revisional jurisdiction under Section 21(b) of the Consumer Protection Act, 1986. Resultantly, while allowing revision, the order dated 31.7.2002 is set aside and order of District Forum dated 11.8.2000 maintained. No order as to costs.

