(2014) 05 NCDRC CK 0017

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD. — APPELLANT

Vs

National Heart Institute — RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Citation : (2014) 05 NCDRC CK 0017

Hon'ble Judges : VINAY KUMAR J.

Final Decision : Appeal dismissed

Judgement

1. THE matter in this appeal arises from the letter of 27.3.2000 in which the appellant/United India Insurance Co. Ltd. repudiated the insurance claim of complainant/respondent, All India Heart Foundation, New Delhi. The claim itself had arisen from an alleged incident of fire on 18.6.1999 in the Cardiac Catheterization Lab, resulting in damage to the HT Transformer and four connected Printed Circuit Boards (PCBs). In the consumer complaint before the State Commission, the complainant claimed indemnification of loss of Rs.12,23,750/ - with compensation of Rs.1 lakh. The claim comprised Rs.3,43,750/ - for the four PCBs and Rs.8,80,000/ - for replacement of the transformer.

2. THE State Commission, in its decision of 2.12.2008, held that the claim for the transformer was not admissible under the policy and only the claim for four PCB/ PCs was covered. Therefore, it allowed Rs.3,43,750/ - with 9% interest and Rs.50,000/ - as compensation. The claim for Rs.8,80,000/ - towards the transformer was disallowed. The United India Insurance Co. Ltd. filed this appeal against the above order of the Delhi State Consumer Disputes Redressal Commission with delay of 79 days. Considering the explanation in the application, the Commission condoned the delay on 22.1.2010. The appeal was dismissed for non -prosecution on 9.9.2013, restored on 17.1.2014 and finally heard on 25.2.2014. The two sides have been heard and the records carefully considered.

3. THE main ground of challenge to the impugned order is that - Because the Ld.

State Commission did not consider that on inspection by the surveyor, there was no evidence of fire as such was found. The damage, if any, was only due to the breakdown caused by electric faults (sparking or short circuit) within the transformer. This is specifically excluded under exclusion no.6 of the policy, which states that ''loss or damage to any electrical machine, apparatus etc. arising from or occasioned by over running, excessive pressure, short circuiting, arching, self heating, or leakage of electricity from whatever cause etc.'' is not covered under the policy.

From the wording itself it is evident that the reference is to the manner in which damage to the transformer had occurred. It ignores the fact that the claim for indemnification of loss/damage to the transformer has already been disallowed by the State Commission and the respondent/complainant has not challenged the decision. Therefore, the scope of this appeal gets limited to the remaining part of indemnification i.e. for loss/damage to the Printed Circuit Boards, for which the claim has been allowed by the State Commission.

4. THE Memorandum of Appeal says that the photographs taken by the Surveyor clearly showed "that there was no sign of external fire on the transformer or the PCB or at the location where these were installed". The report of the Surveyor, J N Sharma & Co. itself shows that the fire/loss had occurred on 18th June 1999 while the visit of the Surveyor was on 24.6.1999 i.e. after one week. Yet, it says "The report of M/S Siemens No. MED/378564 dated 26.7.1999 does not speak about any "Fire" but only a burning smell which was certainly not there when we visited the Lab on 24.6.1999". This is a strange argument. We wonder what smell was required to continue at the site, one week after the incident, for the surveyor to acknowledge the loss. More so, when the same report, mentions that "while the angiography on Mr Naresh Kapoor was in progress, a loud blast was heard and some smoke was allegedly seen coming out from the Switch Board enclosure located next to the Transformer in the monitoring room of Cath Lab. In this behalf, learned Counsel for the appellant referred to the letter of 26.5.2000 addressed to it by to the Divisional Manager, United India Insurance Co in which it was stated that the case was of "damage in the Cardiac Catheterisation Lab due to short circuit in the HT Transformer". He therefore forcefully argued that the case was one of internal short circuit within the transformer and hence covered under Exclusion Clause 6. The counsel relied heavily on the report of the Surveyor where it was claimed that there was no fire and no fire brigades.

5. IT was argued on behalf of the respondent/complainant that claim under the policy was made for two indemnifications - i. the High Tension Transformers, and

ii. the PCBs

The report of the surveyor also mentions these two items in the claim. But, neither this report nor the counsel for the appellant, have explained how the claim for the PCBs could be treated as inadmissible.

6. THE impugned order has placed considerable reliance on the Technical report

of 26.7.1999 from M/S Siemens Ltd, while examining the applicability of Exclusion Clause 6 to the claim and arrived at a finding that while claim for the HT Transformer was not available under the insurance policy, it was available for replacement of the four PCBs. The Siemens report clearly stated that - On 18th June 1999 at 11.45 A.M., it was reported to us that Cath Lab is not working and smoke coming from the High Tension Transformer. On checking, it was found that there was a burning smell and smoke coming from the High Tension Transformer. The Transformer had gone defective and it is irreparable. Due to the burning of the High Tension Transformer and 4 nos. of PCB Boards have also been damaged. The Boards are also irreparable. We have replaced the High Tension Transformer and the PCB Boards. Cath Lab is working satisfactorily now.

Thus, it is clear that damage to the PCB Boards was caused by burning of the Transformer and that the PCB Boards had also become irreparable. The Transformer and the PCBs had both been replaced.

The Exclusion clause, relied upon by the appellant reads - 6. Loss or damage to any electrical machine, apparatus, fixture or fitting, (including electric fans, electric household or domestic appliances, wireless sets, television sets and radios) or to any portion of the electrical installation, arising from or occasioned by over -running, excessive pressure, short circuiting, arcing, self -heating or leakage of electricity from whatever cause (lightning included), provided that this exemption shall apply only to the particular electrical machine, apparatus, fixture, fitting or portions of the electrical installations so affected and not to other machines, apparatus, fixtures, fittings, or portions of the electrical installation which may be destroyed or damaged by fire so set up.

However, it is not the case of the appellant that damage caused to the four PCBs was due to any reason independent of the burning of the Transformer. There is nothing in the report of the Surveyor to show that the PCBs had not suffered damage and had not become irreparable, as opined in the Siemens Report. For this reason, the claim for damage to the PCBs would be clearly covered under the proviso contained in the Exclusion Clause. Therefore, in our view, the State Commission was right in allowing the claim for damage to the PCBs.

7. YET another ground raised in the Memorandum of Appeal is that the State Commission has wrongly allowed Rs.3,43,750, while the Surveyor had assessed the loss at Rs.2,61,250 only. This contention is not factually correct. The Surveyor''s report refers to the claim of Rs.3,43,750 for the four PCBs and of Rs.8,80,000 for the Transformer. While recording its assessment of the loss, the report makes a deduction of Rs.4,40,000 i.e. 50% for the Transformer, on the express ground of being second hand. No reduction is proposed for the PCBs. With the adjustment of 50% for the Transformer, the total loss is assessed at Rs.7,83,750. The State Commission has referred to this assessment of the Surveyor. The figure of Rs.2,61,250, relied upon by the appellant, is after reduction for under insurance. It is not the assessed loss for PCBs, as argued. We therefore, reject this argument as being factually wrong.

8. FOR the reasons detailed above we hold that the impugned order is based on complete and correct appreciation of the evidence before the State Commission. FA No 350 of 2009, filed by United India Insurance Co Ltd, is therefore held to be devoid of any merit and is dismissed for the same reason. No orders as to costs.

