(2002) 10 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD. — APPELLANT

Vs

N.H.TEXTILE PROCESSORS — RESPONDENT

Date of Decision : 25-10-2002

Acts Referred:

Citation : 2002 0 NCDRC 28 : 2002 3 CPJ 237 : 2003 1 CLT 261 : 2003 1 CPR 137

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

Judgement

1. THIS appeal has been filed by the opposite party before the State Commission having been aggrieved by its order passed in a complaint filed by the respondent/ complainant, N.H. Textile Processors.

2. BRIEF undisputed facts of the case are that the complainant had availed of an insurance policy cover for Rs. 17 lakhs - Rs. 50,000/- for building and Rs. 16.5 lakhs for Machinery and Accessories, for the period May 19, 1990 to May 18, 1991. On 23rd August, 1990 chimney of the factory - the insured premises, fell allegedly as a result of storm/strong winds, causing a loss, estimated by the complainant at Rs. 1.5 lakh for which claim was preferred by the complainant before the appellant Company who appointed a Surveyor. Disagreeing with the report of the Surveyor who had assessed the loss of Rs. 33,292/- the appellant repudiated the claim on the ground that though there was storm on the date of alleged incident but it was not storm or cyclone as per the standards of Indian Metrological Development (I.M.D.). Since there was no storm - the complainant is not entitled to any relief under the terms of the policy. It is in these circumstances that a complaint was filed before the State Commission who after hearing both the parties allowed the complaint and directed the appellant to pay Rs. 1 lakh under the policy along with interest @ 18% p.a. to indemnify the damage and Rs. 1,000/- as cost. It is against this order that this appeal had been filed. The respondent/complainant remained absent in spite of notice hence was proceeded ex parte vide our order dated 17.7.2002. On the day fixed for hearing the arguments, learned Counsel for the appellant was also absent. The written submissions filed by the appellant are on record and we proceed to deal

with the case based on material on record and the written arguments. It is the case of the appellant that the State Commission erred in not believing the statement of Mr. R. K. Vaghela - an officer of the appellant Company. Our attention is also drawn to the meaning of storm as given in Oxford Dictionary. The meaning given to storm by the State Commission is not correct. State Commission had no ground to award relief of Rs. 1 lakh as there is no basis for the same. Interest awarded is high, it should be 9% p.a. in-stead of 18%.

3. WE have seen the material on record. Suffice here to say that report received from I.M.D. is clear and categorical that there was "storm of rain with thunder storm and lightening - the roofs of the houses, sheds, chimney''s, notice board are badly damaged due to storm of rain". This was caused by "heavy rain with winds of storm and lightening, approximately 22 rain fall reported. The State capital recorded 15 rain fall ..".

4. IN our view the report of the IMD settles the issue and no ground exists to look for the meaning of storm in any dictionary or to rely on the report of Mr. Vaghela, who is not even remotely competent to comment on the word ''storm''. IMD is the sole authority in the country and their report more there satisfies this criteria. In our view the appellant had no ground to repudiate the claim on this ground. On the quantum of relief awarded by the State Commission what we see is, it is derived from the report of the Surveyor. We are unable to satisfy ourselves on two counts - one, like the State Commission, we see no material on record in support of the Surveyor jumping to the figure of Rs. 18.50 lakhs being the cost of machinery against insurance cover for Rs. 16.50 lakhs and secondly we agree with the State Commission that there was nothing on record to clarify the word D.F. before them. To deduct Rs. 25,000/- on that ground did not find favour with the State Commission. Before us ''D.F.'' is explained as "Deductible Franchine". According to the appellant this was part of the special conditions of the policy. We have gone through the policy on record filed by the appellant. We do not find any such special condition appearing in the policy issued in the instant case. Anything which is not part of the policy document has no relevance for purposes of this contract. The State Commission keeping in view the facts of the circumstances of the case in our view took a rather lenient view and did not award compensation for deficiency on the part of the appellant by way of taking 16 months to repudiate the claim. We are in full agreement with the rationable and basis of award given by the State Commission and see no ground to interfere with the well reasoned order except that we find the interest awarded @ 18% p.a. is on the high side which we reduce to 12% p.a. Only to this extent the appeal is allowed. No order as to costs.