(1992) 11 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD. APPELLANT

Vs

PADHYAYULA MOHAN RAO RESPONDENT

Date of Decision : 16-11-1992

Acts Referred:

Citation : 1992 0 NCDRC 33 : 1993 1 CTJ 120

Hon'ble Judges : V.BALAKRISHNA ERADI , A.S.VIJAYAKAR , B.S.YADAV , Y.KRISHAN J.

Advocate : S.M.SURI , KISHORE RAWAT , RISHIKESH , K.C.BAMOLA

Judgement

1. THESE are two cross appeals against an order passed by the State Commission, Andhra Pradesh, in case No. 82/90. Hence both these appeals will be disposed of by a common order. 2. The facts of the case as found by the State Commission are : "The Complainant (herein the Respondent in First Appeal No. 262 of 1991 and Appellant in First Appeal No. 270 of 1991) Sri Upadhyayula Mohan Rao is a technocrat. He started a small scale industry under self-employment Scheme in 1975 at Ithakota of East Godavari District. At the beginning he invested a sum of Rs. 80,000/- from out his own resources and the Andhra Pradesh State Finance Corporation advanced a loan of Rs. 1.15 lakhs. In 1978 as the industry was about to be commissioned it was literally struck by lightening, as a result of which the factory''s kiln was badly damaged. The production schedule was, therefore, delayed. In addition to the funds raised by the entrepreneur, the industry required more money for its profitable running. In 1980, Indian Bank provided a working capital of Rs. 40,000/- which was subsequently increased to Rs. 1 lakh. In 1982, the Bank sanctioned a term loan of Rs. 19,000/-, and in 1983 yet another loan of Rs. 60,000/- was advanced towards working capital. As the industry was not able to make any profit, the entrepreneur diversified the production. After incurring losses for a considerable period, it made a nominal profit of Rs. 1,989/- in 1984-85.

2. BOTH the A.P. State Finance corporation and Indian Bank were obtaining insurance covers for the goods and properties under their hypothecation. In the

meanwhile, as the interest was getting accumulated, the A.P. State Finance Corporation issued a public auction notice to M/s. Ceramica and the unit had to pay Rs. 50,000/- from out of its working funds to word-off the threat of auction. India Bank also filed a suit against the unit in March, 1986 for a recovery of its dues, accumulated from March, 1984. Following intervention by the senior officers of the Industries Department of the Government of A.P., all outstanding loans advanced to M/s. Ceramica were rescheduled. The unit since then could pay the instalments till August 10, 1986. But, on August 16, 1986, Godavari was in spate and its flood waters inundated the area in which the unit is located. The unit suffered a very huge loss and was badly crippled. Both the A.P. State Finance Corporation and Indian Bank had written to the Insurance Companies from whom insurance covers were obtained for the properties under their hypothecation. While the claim by A.P. State Finance Corporation was duly and promptly settled by the Oriental Insurance Company, the claim forwarded by the India Bank was repudiated by the United India Insurance Company, the second opposite party herein, on the ground that the flood risk was not covered under the policy issued by them. Before a communication to that effect was sent, the United India Insurance Company, however, deputed a licensed surveyor to assess the loss suffered by the Complainant''s industry. The surveyor estimated the loss at Rs. 1,03,438/-. After protracted correspondence and negotiations at different levels, the United India Insurance Company paid to the bankers of the Unit, namely, the Indian Bank, a sum of Rs. 1,03,438/- i.e., the amount, estimated by the surveyor. While paying this amount, the United India Insurance Company made the party agree that the payment was towards full the final settlement of the claim. The Complainant signed the Voucher sent by the United India Insurance Company through the banker. The unit, however, remained closed from August, 16, 1986 the day the flood waters inundated the premises of the industry." The Complainant claimed Rs. 6,07,362/- under several heads, at the State Commission level. The State Commission held that there was negligence on the part of the Insurance Company in not including the flood risk in the insurance policy and therefore the Complainant Shri Upadhyayula Mohan Rao is entitled to 18% interest per annum on the sum of Rs. 1,03,438/- from September 22, 1986 till February 3, 1990. The State Commission have further directed that the Indian Bank pay Rs. 10,000/- to the Complainant for the failure on their part not to have checked the Insurance policy and specified the kind of coverage they wanted. Also Rs. 500/- costs were awarded. The Insurance Company, Appellant in First Appeal No. 262 of 1991, has come in appeal against the Order relating to payment of interest at the rate of 18% per annum on the sum of Rs. 1,03,438/-. The argument of the Insurance Company is that : "(i) On perusal of the Fire Insurance Policies it was observed that the flood cover was not granted by this Appellant Company, as such the claim was repudiated. (ii) When the Complainant for the first time brought to the notice of the Appellant that his unit comes under Small Scale Industry/Tiny Scale Industry, with less than 10 lacs capital, this Appellant as a gesture took up the matter with their Board of Directors and got their claim approved as assessed by the independent surveyor for a sum of Rs. 1,03,438/- (Exhibit No. 1 Survey Report). (iii) And accordingly the Appellant had settled the claim for Rs. 1,03,438/- in full and final amount payable to the Complainant and obtained his unqualified discharge duly signed by him and his financiers Indian Bank."

3. THERE is substance in this argument. The premium paid was not of the policy that has flood coverage as was evident at the hearing on 20.10.1992. The counsel for the Appellant Insurance Company produced the policy of insurance for 1986-87 and the connected papers which indicated that the Bank, in the proposal for renewal of the policy deleted the flood risk and the premium for that risk. In the result the Insurance policy did not cover flood risk. Thus the Insurance Company was not liable to pay anything more than what they had persuaded the Board of Directors to agree upon as a gesture towards helping a small scale industry.

4. IN the light of what has been stated above, we hold that the relief of 18% interest on the amount of Rs. 1,03,438/- given by the State Commission through the Insurance Company is not warranted and we set aside that part of the order only. In First Appeal No. 270 of 1991, the appellant asks for Rs. 1,75,662/- to be paid to him as the balance amount to cover the actual damage suffered, besides granting interest proportionately from the date of damage. We cannot agree to this for the reasons given above and the appeal is dismissed. We thus dispose of both the appeals with no order as to costs.