(2011) 07 NCDRC CK 0038

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd. APPELLANT

Vs

Punjab State Agricultural Marketing RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Citation : 2011 0 NCDRC 466 : 2011 3 CPJ 510 : 2011 3 CPR 192

Hon'ble Judges : R.K.Batta , Anupam Dasgupta J.

Final Decision : Appeal dismissed

Judgement

1. THE delay of 27 days in filing these petitions is condoned for the reasons stated in the application for condonation. With the consent of counsel appearing on both sides, the matter was finally heard at the admission stage itself.

2. THIS batch of revision petitions filed by the United India Insurance Co. Ltd., (petitioner) challenges the order dated 03.05.2010 of the Union Territory Consumer Disputes Redressal Commission, Chandigarh (in short, "the State Commission") in that Insurance Company"s corresponding appeals. The operative part of the State Commission"s order is as under: "18. No other point has been urged or argued. In this view of our foregoing discussion, we affirm the findings arrived at by the learned District Consumer Forum and consequently the impugned order dated 29.09.2008 is maintained. 19. In the result, all the 276 appeals filed by the United India Insurance Company are hereby dismissed and at the same time five appeals bearing no. 2034/2008 to 2038/2008 filed by the Punjab Mandi Board are also dismissed, leaving the parties to bear their own costs. It is further observed that as per directions given in the impugned order the Secretary, Punjab Mandi Board would constitute a committee in which United India Insurance Company would also nominate its representative and this Committee shall finalise all the claims of claimants expeditiously whose names figure in Annexure P 1 annexed with each complaint. 20. Before parting with this order, it is observed that five complaints bearing no. 277, 342, 343, 345 & 437 of 1990 were dismissed by the District Forum for want of document " Annexure P " 1 (which contained details of injuries of the victims). Now in the absence of said

document we have also dismissed the five appeals arising out of the aforesaid five complaints. But at the same time we hope and trust that the committee constituted under the directions of the District Forum would also look into the genuine claims of these victims sympathetically, if the aforesaid document annexure P " 1 is produced before it. In case their claims are found to be genuine and justified thereupon, the committee shall be at liberty for awarding reasonable amount of compensation to the victims whose names figure in annexure P-1".

The main facts underlying the revision petitions are not disputed. Thus, it is admitted by the parties that the petitioner, by letter dated 10.03.1989 of its Branch Manager, wrote to the respondent (Punjab State Agricultural Marketing Board, Chandigarh " in short, "the Mandi Board") expressing willingness to accept Rs.15 lakh as premium for providing insurance coverage (i.e, graded payments) during the period 13.04.1989 " 12.04.1990 under a Scheme to all farmers, farm labourers and mandi workers in the State of Punjab against personal accidents leading to death or disabilities of specified types arising from the use of agricultural machinery/ implements, electricity while watering the field, snake bites and digging tube wells. The details of the terms of the insurance Scheme were furnished by the petitioner to the respondent under the aforesaid letter. It was further offered that the insurance Scheme would be implemented throughout Punjab through the Market Committees and the claims received during a month from eligible and covered persons by the Market Committees would be examined and settled by the petitioner at the office of the Mandi Board up to the 15th of each month. It is further admitted that the Mandi Board accepted the offer of the petitioner by its letter dated 13.03.1989 and remitted the amount of Rs.15 lakh towards the agreed premium by cheque no. 310026 dated 31.03.1989. The cheque was duly encashed by the petitioner on 06.04.1989. (ii) The Mandi Board, by its communication dated 04.12.1989, forwarded 433 cases, duly verified and checked, for releasing the claimed amount but no action was taken by the petitioner. Thereafter, the Mandi Board served notice of demand on 16.04.1990 calling upon the petitioner to expedite the release of the amounts claimed within 15 days from the date of receipt of the notice. When this notice was also not acted upon, the Mandi Board filed 298 complaints on behalf of various claimants before the District Consumer Redressal Forum II, Union Territory Chandigarh (in short, "the District Forum"). (iii) By its order dated 21.06.1990, the District Forum gave the following directions: "28. For the reasons recorded above we pass the following directions:- a) The complaints nos. 277, 342, 343, 344 and 437 of 1990 are dismissed for want of Annexure P-1 in them. Further, the claims of Gurmail Singh son of Mohinder Singh in C.C. No. 408 of 1990, Sewa Singh son of Bawa Singh and Gursab Singh son of Gurmej Singh in C.C. No. 373 of 1990, Chhotu Singh son of Gurdial Singh in C.C. No. 425 of 1990, Roshan Singh son of Sampuran Singh in C.C. No. 439 of 1990, Rai Singh son of Mani Ram and Chinder Singh son of Khairat Singh in C.C. No. 449 of 1990, Balwinder Singh son of Gurdev Singh in C.C. No. 465 in 1990, Kuldeep Singh son of Channan Singh in C.C. No. 472 of 1990 and Gurdip Singh son of Naranjan Singh in C.C. no. 514 of 1990 are dismissed as the same do not fall within the period of insurance. Similarly, the claim of Roor Singh son of Santa Singh in complaint case no. 307 of 1990, Nemri wife of David Masih in C.C. no. 365 of 1990, Satpal Singh son of Inder Dass in C.C. no. 366 of 1990, Bhajan Singh son of Ujaggar Singh and Baldev Singh son of Ujaggar Singh in C.C. No. 419 of 1990, Surat Singh son of Labh Singh in C.C. No. 448 of 1990, Jagtar Singh son of Gurbachan Singh in C.C. No. 450 of 1990, Ginder Singh son of Kahan Singh in C.C. No. 451 of 1990, Sham Singh son of Punoon Singh in C.C. No. 469 of 1990, Jagraj Singh son of Jagir Singh in C.C. No. 481 of 1990 are also dismissed as the date of injury on the victims has not been mentioned. b) The Secretary of the complainant Board is directed to constitute a committee under clause 8 of the insurance agreement in question and give its due intimation to the OPs who would nominate their representatives on the said committee to consider process and dispose of the cases of claimants whose name figure in Annexure P " 1 annexed with each complaint (except the cases of those claimants whose cases/ claims have been dismissed and are mentioned in sub para (a) above). The Secretary of the board shall constitute such committee within 15 days of the receipt of certified copy of this order while the OP Insurance Company shall nominate their representative in the said committee within 10 days of the receipt of intimation of constitution of committee from the complainant board. Such committee shall then assemble, undertake and complete the job assigned to it under clause 8 of the agreement within a period of six months from the date it holds its first sitting, which shall be held within two weeks of receipt of intimation of representative of the insurance company. c) For deficiency in service in the cases of persons/ claimants whose claim would be found fit to be allowed, the OPs shall additionally pay Rs.10,000/- in the cases pertaining to death claims and Rs.2500/- in cases of loss one/ two limb (s) to each such claimant. d) The OPs shall also pay a sum of Rs.1000/- to the successful complainant as litigation expenses in each complaint case. Similar directions are passed in the other connected complaints mentioned in para1 of this order". (iv) Aggrieved by this order of the District Forum, the petitioner went up in appeal before the State Commission, with the result already mentioned above.

We have heard Mr. A K. De, learned counsel on behalf of the petitioner and Mr. Vinod Kumar, learned counsel for the respondent/ Mandi Board and carefully considered the evidence and material brought on record before the Fora below.

3. (i) Mr. De has drawn our attention to the letter dated 11.04.1999 written by the Senior Divisional Manager, Chandigarh of the Petitioner to the Secretary of the Mandi Board. This letter is reProduced below: "Ref: SPK : 89 11.04.1989 The Secretary Punjab State Agricultural Marketing Board Sector 17 Chandigarh. Dear Sir, Re: Personal Accident Insurance of Farmers, Farm Labour and Mandi Workers. This refers to corresPondence exchanged on the caPtioned subject. In this connection, we are to inform you that the matter for rating of the caPtioned

Policy was Put uP before Public Sector Business Rating Committee of subsidiaries comPanies of General Insurance CorPoration by your existing insurers. Based on the claim exPerience communicated by your existing insurers i.e., National Insurance Co. Ltd., the Committee has fixed the net Premium of 1.25 crores for underwriting the caPtioned risk commencing from 13.04.1989. In view of the foregoing, we would request you to either remit us Rs.1.10 crores towards balance Premium to enable us to assume the risk or advise us so that Rs.15 lakh already Paid by you may be refunded to you. Thanking you, Yours faithfully, S. P. KaPoor Sr. Divisional Manager"

(ii) It is also seen that the said letter has an endorsement dated 12.04.1989 written in hand by the Manager Marketing of the Mandi Board to the effect, "Received today". In other words, the above-mentioned letter was received before the agreed date of commencement of the insurance Policy, i.e., 13.04.1989. Based on this communication, Mr. De has argued that the insurance contract had not at all come into effect, though the Scheme of insurance was signed by the rePresentatives of the Parties well before the said date and the cheque of Rs.15 lakh towards the Premium was also encashed by the Petitioner on 06.04.1989. (iii) On the other hand, Mr. Kumar, learned counsel aPPearing on behalf of the Mandi Board has suPPorted the reasoning given in the orders of the Fora below and contended that the Scheme of insurance having been accePted in writing by the Parties and the insurance comPany having accePted the Payment of the agreed Premium of Rs.15 lakh, all the legal elements necessary for effectiveness of the contract of insurance commencing from 13.04.1989 had already been effectuated and the letter dated 11.04.1989 could not uPturn the contract of insurance.

However, considering the contents of the letter dated 11.04.1989 written on behalf of the Petitioner, it is quite clear that the Petitioner"s underwriting office had initially mis-judged the level of risk involved in offering the kind of insurance coverage that the Scheme of insurance envisaged and, accordingly, assessed the Premium at a much lower amount. It is also clear that the letter reviewing the initial offer was issued well before the agreed date of commencement of the insurance Policy, i.e. 13.04.1989. The Petitioner"s letter of 11.04.1989 also clarified the reasons for demanding a much higher Premium for the insurance coverage that it had offered. In other words, the Petitioner did not resile from undertaking the agreed insurance coverage but revised the amount of Premium that had already been accePted, as it was re-assessed to be inadequate for the nature and extent of the risk. It is also quite clear that the Mandi Board received this communication one day Prior (i.e, 12.04.1989) to the date of effect of the Scheme of insurance and was fully aPPrised that the contract of insurance would not materialise unless the additional amount of Premium was Paid.

4. ON careful consideration of the entirety of facts and circumstances of the case, we are, therefore, inclined to agree with Mr. De that the contract of insurance could not be said to have been concluded in this case, in view of the petitioner"s

explicit communication dated 11.04.1989. The petitioner could have been held guilty of serious deficiency in service had this letter not been received by the Mandi Board before the agreed date of commencement of insurance coverage, i.e., 13.04.1989. However, the letter was indeed received by a responsible officer of the Mandi Board one day prior to that date. The letter was also quite clear in offering two options to the Mandi Board, viz., either to pay the additional amount to enable the petitioner to assume the risk or advise suitably so that the amount of Rs.15 lakh accepted earlier towards the premium could be refunded. Nothing has been brought on record before us to show the response of the Mandi Board to this communication except the fact recorded in the impugned order that the Mandi Board forwarded the claims in 433 cases much later in December 1989. This action of the Mandi Board cannot be termed bona fide. In this view of the matter, the impugned order of the State Commission cannot be sustained and is accordingly set aside. Consequently, the order of the District Forum is also set aside and the complaints are dismissed. The petitioner is, however, directed to refund the amount of Rs.15 lakh to the respondent/Mandi Board with interest @ 9% per annum from the date of realisation of the amount (06.04.1989) till the date of actual payment to the Mandi Board. Given the facts and circumstances of the case, the parties are left to bear their own costs.