(1993) 05 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD. APPELLANT

Vs

RAM PRASAD AGARWAL RESPONDENT

Date of Decision : 11-05-1993

Acts Referred:

Citation : 1993 0 CPC 692 : 1993 0 NCDRC 112 : 1993 1 CLT 449 : 1993 1 CTJ 648 : 1993 2 CPJ 196 : 1993 2 CPR 391

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

Advocate : SUMAN BAGGA , A.K.SINHA

Judgement

1. THE present Respondent was Complainant in the complaint filed by him before the District Forum, Burdwan against the present petitioner United India Insurance Co. Ltd. (for short Insurance Company). One more opposite party with whom the shop of the Complainant was mortgaged, was made proforma party but it is not now before us. The said shop including the xerox machine and all other equipment i.e. stock in process, Remington typewriter, generator set was got insured by the Complainant with the Insurance Company under policy No. 31800/01/01234. Lastly the policy was renewed for the period from 31st March, 1990 to 30th March, 1991. On the night intervening 26th and 27th June, 1990 the said xerox machine and other equipments were burnt. This fact was communicated to the Insurance Company on 28th June, 1990 by the Complainant. Subsequently, after receiving quotations towards repairing charge from competent agencies, formal claim of Rs. 60,300/- was lodged with the Insurance Company. After lapse of four months the Insurance Company sent a letter to the Complainant repudiating the claim on the ground that damage was not caused under the policy as per Exclusion Clause 6 of the Fire Policy. Thereupon the Complainant filed the complaint before the District Forum. According to the complainant the damage was caused due to fire which was accidental in nature. He prayed for compensation.

2. THE Insurance Company contested the complaint and filed a counter. The main ground was that the damage was caused to the xerox machine and other

appliances due to electrical short circuit and excessive heat which do not come under the scope of insurance cover. According to the Insurance Company it was not a case of fire. After discussing the case in detail the District Forum held that the case did not fall under the Exclusion Clause No. 6 of the policy and therefore, the Insurance Company was liable to indemnify the complainant in respect of the damage caused to his xerox machine. The damage was assessed at Rs. 44,000/-. Rs. 1,000/- as costs were also awarded to the Complainant. It may be mentioned here that while assessing the loss, the loss cussed by damage to the switch-board and electronic board of varisa transformer was disallowed as it was caused by electric short-circuit.

3. FEELING aggrieved against that order, the Insurance Company filed and appeal before the State Consumer Disputes Redressal Commission, West Bengal at Calcutta. From the order of the State Commission it appears that the only question that was raised before it by the Insurance Company was that the insurance service did not fall within the scope of Consumer Protection Act, 1986 and, therefore, the claimant was not a consumer. This question has also been raised before the District Forum but it was found against the Insurance Company. The State Commission confirmed the finding on that point and confirmed the order of the District Forum and dismissed the appeal. The Insurance company was also ordered to pay Rs. 2000/- as costs.

4. STILL not being satisfied the Insurance Company has come before this Commission by way of filing this revision petition. The only point that was raised before us is that the damage caused to the xerox machine is not covered under the policy. Reliance was placed upon Exclusion Clause No. Which reads as follows : "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 to the particular electrical machine, apparatus, fixture, fitting or portions of the electrical installation 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." The argument was that the damage was caused to the xerox machine by short circuit and over-heating and not by fire. We are of the opinion that the above argument has no force. The Insurance Company had filed a survey report prepared by Shri Bijoy Saha. The relevant portion of that report reads as follows : "During investigation, it is observed that there is a burn in the incoming wire from the main source of power to the switch board of the stabliser. High voltage surge through the incoming wire caused fire in the switch board and at the same time due to the high voltage the electronic board of the servo stabiliser got affected and it failed to regulate the output voltage. As a result a spark occurred in the Transformer of the xerox machine by Which some other parts of the xerox machine got burnt and damaged."

5. IT appears that the said Surveyor was also examined before the District Forum by the Insurance Company. Of course, the whole statement of the witness is not before us but it has been discussed by the District Forum in its order and the relevant portion reads as follows : "According to the O.P. No. 2, the next affected item was servo stabiliser and the third affected item was xerox machine. He has further stated that due to spark there was flame and as a result of that item Nos. 1 to 14 of his report, which are the servo stabiliser and the upper portion of the xerox machine above and including the transformer, were burnt." Hence from the above evidence it is clear the there was spark on account of failure of electronic board of servo stabiliser to control electrical surge. The spark is nothing but heat and flame. Therefore, it is futile to say that the damage to the xerox machine was not caused by fire. 7. The argument of the petitioner''s counsel that had there been fire the top of the xerox machine and the table on which the machine had been placed would have been damaged but according to the report of the Surveyor no damage was caused to them, has also no force. The continuity of the fire depends upon the nature of combustible articles placed near the spark and the amount of oxygen available in the closed space. Fire will not continue burning for a long time if combustible articles are not lying near the spark or the quantity of oxygen is limited.

6. FOR the reasons given above, we do not find any force in the present revision petition and the same is hereby dismissed with costs which we assess at Rs. 1,000/-.