

(1992) 12 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD.

APPELLANT

Vs

UNITED SILICATE INDUSTRIES

RESPONDENT

Date of Decision : 17-12-1992

Acts Referred:

Citation : 1992 0 NCDRC 5 : 1993 1 CLT 638 : 1993 2 CPJ 253

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

Advocate : VISHNU MEHRA , K.G.Sharat Kumar

Judgement

1. THIS is an appeal against the order of Kerala State Consumer Disputes Redressal Commission, Trivandrum passed in Complaint No. 63 of 1991. The complaint was filed by the present respondent M/s. United Silicate Industries. The complainant had got all its properties including its buildings, machinery and oil furnace insured with the present appellant-M/s. United India Insurance Co. Ltd. for an amount of Rs. 25,85,000/-. The policy were issued on 17th April, 1989. As per the policy, the insurers are liable to indemnify the insured for any loss caused by fire from 13.4.1989 to 12.4.1990. On 3rd January, 1990 at about 12.30 a.m. during the working hours there was an explosion in the furnace of the complainant and it became defective. This accident was reported to the insurer on 5th January, 1990.

2. IT is not necessary to go into the other allegations of the complaint in detail. Suffice it to say that till the filing of the complaint before the State Commission, the claim of complainant was not decided by the insured. During the pendency of the complaint the Insurance Company relying upon the report of the surveyor repudiated the claim on the ground that there was no explosion in the furnace. However, the case proceeded before the State Commission. Vide its impugned order, the State Commission allowed the complaint.

3. THE learned Counsel for the appellant argued that the State Commission had recorded the statements of three witnesses of the complainant on 7.9.1991 at the back of the appellant and no proper notice was given to the appellant

regarding the date of hearing. This contention of the appellant has been controverted by the respondent in the counter filed to the Memorandum of Appeal. According to the respondent, the appellant themselves had to blame for their absence on 7.9.1991 as they did not appear inspite of various notices and they were proceeded against ex-parte.

4. IT was next argued by the learned Counsel for the appellant that in the present case there is a dispute between the parties that whether damage to the furance was caused by an explosion or not ? He pointed out that the matter was placed for consideration before an Expert Committee constituted by the Insurance Company consisting of technical experts and legal advisers, whose names have been given in the memorandum of appeal. We are not concerned with the opinion of the said Expert Committee. However, the question remains that whether the damage caused to the furance by an explosion or not. The learned Counsel for the appellant vehemently argued that in the present case, the State Commission has placed reliance upon three witnesses of the complainant who are not experts in this field. We agree with the above submission of the Counsel for the appellant. We think in the present case the parties should be given an opportunity to lead expert evidence on the question whether damage to the furance was caused by an explosion.

5. ACCORDINGLY , we set aside the impugned order of the State Commission and remand the case to the State Commission for fresh decision. The State Commission will give an opportunity to the parties to lead evidence which they might like to produce and also give an opportunity to the appellant to cross-examine the witnesses already examined by the complainant, and then decide the case afresh. However, we order the appellant to pay a sum of Rs. 1,500/- as costs to the respondent of the present appeal as the remand has been necessitated on account of their (i.e. appellant's) default.