(2003) 12 NCDRC CK 0078

In the National Consumer Disputes Redressal Commission

United India Insurance Company Limited APPELLANT

Vs

NARSINGH DAL MILL RESPONDENT

Date of Decision : 31-12-2003

Acts Referred:

Citation : 2004 1 CPC 456 : 2004 1 CPJ 339 : 2004 1 CPR 662

Hon'ble Judges : V.K.Agrawal , R.S.Awasthis J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal under Section 15 of Consumer Protection Act, 1986 (hereinafter called the ''Act'' for short) is directed against the order dated 28.7.2000 in Complaint No. 12/1996 by District Consumer Disputes Redressal Forum, Rajnandgaon (hereinafter called the ''District Forum'' for short) allowing the complaint of the complainant, respondent herein, and directing the appellant to pay the amount of Fire Policy ''A'' issued in favour of the complainant-respondent.

2. THE relevant facts not in dispute are that the complainant-respondent has a Dal Mill at Basantpur, Rajnandgaon. THE machinery and stock of the said mill was insured by the complainant-respondent for the period from 27.12.1994 to 26.12.1995 under Fire Policy ''A'' issued by the appellant. It is not in dispute that on 20.7.1995 the roof of the said mill had fallen down damaging the machinery of the mill. According to the complainant on 20.7.1995 there was heavy rain and adverse weather conditions resulting in subsidence of land, due to which the walls of the mill fell down damaging the machinery and stock of the mill. The complainant immediately informed the appellant No. 2 about the incident. The complainant alleged that machinery and stock to the extent of Rs. 93,600/- were damaged and, therefore, he laid claim for the said loss with the appellants insurer. However, the claim as above was repudiated by the appellants by their letter dated 26.10.1995. Hence, complaint was filed by the complainant/ respondent, before the District Forum.

Opposite party/appellant resisted the complaint. According to them they had appointed a Surveyor to investigate the claim of the complainant. It was found by the Surveyor that there was some damage on account of excessive rains. However, there was no evidence of subsidence of land. In view of the above the claim of the complainant/respondent repudiated by the appellants.

3. LEARNED District Forum in the impugned order held that the loss was on account of excessive rains and subsidence of land. It was accordingly covered under Clauses 7 and 8 of Fire Policy ''A''. Therefore, the claim of the complainant/ respondent was allowed and the appellants were directed to pay to the complainant/respondent the sum of Rs. 93,600/-, with interest thereon. The contention of the learned Counsel for the appellants in this appeal was that the learned District Forum erred in holding that the loss caused to the stock and machinery was covered by Clauses 7 and 8 of the Fire Policy ''A''. It was contended that there was no evidence of subsidence of land. According to learned Counsel for appellants the loss was possibly on account of falling of roof due to heavy rains as was reported by the Surveyor. Such a claim according to the learned Counsel for appellant was not covered by Clauses 7 and 8 of the Fire Policy ''A''.

4. AS against the above, the learned Counsel for complainant-respondent submitted that the terms of the Fire Policy show that losses due to storm, cyclones, typhoon, tempest, hurricane, tornado, flood and inundation, subsidence and landslide were covered under the policy. In the instant case the complainant averred and placed material on record to show that there was heavy rains and bad weather conditions resulting in subsidence of land at the site of the complainant''s mill, resulting in its roof and walls falling down causing damage to the stock and machinery lying therein. In the circumstances Clauses 7 and 8 of the Fire Policy issued by the appellants fully covered such loss, as has been rightly held by the learned District Forum. In view of the rival contentions as above, the material question arises for consideration as to whether the loss caused to the machinery and stock was covered by the terms of the Fire Policy ''A'' admittedly issued by the appellants and which was in force at the time of alleged incident dated 20.7.1995? The relevant Clauses 7 and 8 of the Fire Policy ''A'' reads- "In consideration of the insured named in the Schedule here to having paid to the United India Insurance Company Limited (hereinafter called the Company) the premium mentioned in the said Schedule. The Company agrees, (subject to the conditions and exclusions contained herein endorsed or otherwise expressed hereon) that if after payment of the premium the property insured described in the said Schedule or any part of such property, be destroyed or damaged by the following : 7. Storm, cyclone, typhoon, tempest, hurricane, tornado, flood and inundation. 8. Subsidence and landslide (including rockslide) damage."

It would, therefore, be clear from the above clauses that the risk was covered in case of destruction or damage of the property by storm, cyclone, typhoon, tempest, hurricane, tornado, flood and inundation as well as by subsidence and landslide.

5. IT was averred in the complaint that there was subsidence of land at the site of the mill on account of heavy rains and adverse weather conditions. The complainant also filed an affidavit of himself as well as Arun Kumar Michel, Principal of Higher Secondary School who has stated that there was subsidence of land at the site of the mill. No counter affidavit has been filed on behalf of the appellant to rebut the affidavits as above.

6. IT is also noticed in the above context that the appellant had appointed a Surveyor Er. Chhatrapal Sao, who submitted his report dated 7.10.1995, which indicates that the cause of loss and damage was as a result of heavy rains on 19th and 20th July causing damage to the building and the installed machinery therein. The report does not disclose as to whether the Surveyor conducted investigation regarding subsidence of land on the spot. Therefore, the Surveyor''s report as above would only indicate that the building fell down on account of heavy rains. There is no material on record to believe that the building of the mill was in dilapidated condition, so as to fall down merely on account of heavy rains. In the circumstances the averments of the complainant supported by his affidavit as well as that of an independent responsible person Arun Kumar Michel, Principal of the P.L. Singh Higher Secondary School, Rajnandgaon, that there was subsidence at the site of the mill, cannot be lightly brushed aside. From the above material on record, the allegation of the complainant that there was subsidence of land at the site of the mill deserves credence. Possibly heavy rains caused subsidence of land as above. In view of the above it appears that Clause 8 of the Fire Policy ''A'' issued in favour of the complainant would be attracted and the complainant''s loss was covered thereunder.

The learned District Forum, therefore, was justified in holding that the appellants were liable to compensate the loss caused to the machinery and stock of the complainant-respondent. The findings as above calls for no intervention. This appeal has no substance. It is accordingly dismissed. The parties however, shall bear their own cost of this appeal. Appeal dismissed.