(2009) 03 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

V. Satyamurthy APPELLANT

Vs

Reliance General Insurance Co. Ltd. And Anr. RESPONDENT

Date of Decision : 13-03-2009

Acts Referred:

Citation : 2009 3 CPJ 12

Hon'ble Judges : K.S.GUPTA , RAJYALAKSHMI RAO J.

Advocate : M.N.KRISHNAMANI , A.M.KRISHNA , Manohar Suri , K.L.NANDWANI

Judgement

1. COMPLAINT was filed, inter -alia, alleging that the complainant has been working in Civil Engineering construction field for the last about 30 years. He was awarded by the Government of Andhra Pradesh the work of formation of tank across Karlapalli Vagu near Karlapalli village, situated at Govindaraepet Mandal in Warangal District, Andhra Pradesh. Complainant got insured the contract work with opposite party - Insurance Company under the Contractor All Risk Insurance Policy'' for the period from 15.2.2005 to 14 8.2006 for a sum of Rs. 8,73,71,716.00. Memo 8 of the Policy provides thus: "Major Perils/AOG Perils The major perils/ Acts of God claims shall mean claims arising out of - (a) Earthquake/fire and shock (b) Landslide/Rockslide/Subsidence (c) Flood/ Inundation (d) Storm/Tempest/Hurricane/Typhoon/ Cyclone (e) Collapse (f) Water damage for wet'' risk i.e. contract involving works in rivers, canals, lakes or sea."

2. IT was alleged that the complainant carried out the work of formation of tank across Karlapalli Vagu as per the conditions and specifications of the agreement and as suggested by the Geologists. Work was inspected by the Departmental Engineers of the State Government and concerned Quality Control Engineers from time -to -time. Tank started receiving the water and on 3.8.2006 at 7.00 p.m. the level of water received in the tank was +182.50. Suddenly, in early hours on 4.8.2006 the tank breached at the gorged portion from ch. 22.75 to Ch. 2800 (1057 length) due to heavy rains. A letter sent by the Chief Planning Officer to the Executive Engineer on 11.10.2006 showed that on 4.8.2006 the rainfall

recorded at 8.30 a.m. was 272.6 mms. Complainant informed of the tank breach to the opposite party - Insurance Company by a letter dated 4.8.2006. Insurance Company was under a statutory duty under Regulation 9 of IRDA (Protection of Policyholder''s Interests) Regulations, 2002 to depute the Surveyor for assessing the loss/ damage to the insured tank within 72 hours of the receiving of intimation from the complainant. The Surveyor visited the site after 15 days on 22.8.2006. Surveyor was reported to have released its report on 2.1.2007. Regulation No. 9(5) provides that the insurer shall within a period of 30 days offer settlement of the claim. Despite receipt of the Surveyor''s report the opposite party did not settle the claim. It was alleged that the Superintendent Engineer I and CADD, Irrigation Circle addressed a letter on 21.8.2006 to the Chief Engineer, Hyderabad stating that the tank formation across Karlapalli Vagu was breached due to unprecedented heavy rainfall and the complainant was responsible to close the breach at his own cost. Complainant is, thus, under pressure to take the construction work immediately. Attributing deficiency in service, direction was sought to be made to the opposite party -Insurance Company to pay amount of Rs. 3,79,16,900.85 with interest @ 18% p.a. from 4.8.2006 as also the cost.

3. OPPOSITE party contested the complainant by filing written version. Purchase of the policy in question was not disputed. It was alleged that intimation from the complainant in regard to the breach of tank was received at Hyderabad office of the opposite party on 5.8.2006. Opposite party immediately appointed M/s. Professional Surveyors and Loss Adjusters Pvt. Ltd., surveyors to assess the loss. Vide e -mail dated 7.8.2006 the Surveyor informed the complainant of their appointment as Surveyors to assess the loss. Before sending the e -mail the Surveyors had talk on telephone with the complainant who informed that due to heavy loss suffered by the surrounding villages due to breach, the atmosphere was not conducive to visit the spot and conduct survey. Approach roads were also badly damaged and it would be difficult to reach the spot and visit to the spot could be arranged when the situation improves. Situation was reported to be still not conducive to conduct the survey as confirmed to the Surveyors on 11.8.2006 by the complainant. Complainant submitted the claim form on 21.8.2006. After receiving instructions from the complainant the Surveyors visited the spot on 22.8.2006 along with the representative of complainant. Interim report was submitted on 23.8.2006. Vide letter dated 20.9.2006, Surveyors asked the complainant to supply certain documents and details. Surveyors wrote on 20.9.2006 to the opposite party advising that it would be advisable to obtain report from an expert on various aspects mentioned in the letter. Along with the letter dated 28.9.2006, the complainant sent certain documents. Vide letter dated 5.10.2006, he gave further information as called for in the letter dated 20.9.2006. By the letter dated 10.10.2006 the Surveyors approached the Director, National Institute of Technology, Warangal to give their opinion on the following points: "(a) Design of the tank bund structure and whether it confirms to the normal civil engineering standards, taking into

consideration of the local conditions and the other factors. (b) The quality of the materials used in the construction of the project at various stages and whether it matches with the original specifications. (c) Quality of construction of the tank bund structure and whether it is as per the standard specification laid out in the agreement. (d) The various reasons for such failures and the most probable reason for the breach and caving in of riveted structures on the upstream side."

Spot was visited by all the concerned parties. The Institute gave their report to the surveyors who based on this report and their own assessment submitted the final survey report dated 10.1.2007 along with the covering letter dated 16.1.2007, to the opposite party -Insurance Company Survey report also takes note of the letter dated 20.10.2006 submitted by the complainant. It was stated that on 18.11.2006, a letter was received in Hyderabad office of the opposite party wherein complainant made grievance about the non -compliance of IRDA Regulations which was replied to by the letter dated 21.11.2006. After perusing the surveyor''s report and due application of mind, the opposite party was of the view that claim was not payable. However, before repudiating the claim, the opposite party wanted to give a chance to the complainant to answer to the findings of National Institute of Technology, Warangal and the points raised in said survey report but the complainant chose not to reply and rush to this Commission. To give no chance of complaint, the opposite party obtained report from another expert engineer namely, N.C. Vij Jairaghvan. In his report dated 18 -20.3.2007, Shri Vijairaghavan confirmed the findings of the Institute. Claim has been repudiated vide letter dated 21.3.2007. It was alleged that the claim is not otherwise payable as the covered period had already expired at the time of incident and the claim was excluded by Exclusion Clauses 1(d), 1(e) and 1(h) of the policy. Complainant is not a consumer'' as the policy was taken for commercial purpose. It was stated that the policy in question is reinstatement policy. Amount will be payable only after reinstatement of the bund by the complainant. One of the pleas taken in written version which was strongly pressed by Mr. K.L. Nandwani for the opposite party - Insurance Company is that the policy period had already expired before the occurrence of peril on 4.8.2006. In support of the submission, attention was drawn to the condition concerning the period of cover of the policy and the letter dated 20.10.2006 (copy at page 56 in Vol. III). On the other hand, it is submitted by Shri M.N. Krishnamani for the complainant that the breach in tank bund had occurred during the currency of policy. Schedule of the policy at page 15 would show that it was for a period of 18 months from 15.2.2005 to 14.8.2006 and extended maintenance visits cover for 24 months was from 15.8.2006 to 14.8.2008. Superintendent Engineer, I and CADD, Irrigation Circle, Warangal is shown as the principal while the complainant as the contractor therein. Condition of policy in regard to period of cover at page No. 17, omitting immaterial portion, provides as under: "Construction Period - The liability of the company shall commence (notwithstanding any date to the contrary specified in the Schedule) only from the time of commencement of work after the unloading of the property specified in the schedule from any conveyance at the site specified in the schedule, whichever is earlier and shall expire on the date specified in the schedule. However, the company''s liability expires also for parts of the insured contract works taken over or put into service by the Principal prior to the expiry date specified in the policy whichever shall be earlier.

(Emphasis supplied)

4. AFORESAID letter dated 20.1.2006 being material, is reproduced below: "Government of Andhra Pradesh Irrigation and CAD Department From: To Sri K. Sudhakar, M.Tech., The Manager Claims, L.L.B. M/s. Reliance General The Executive Engineer Insurance Co. Ltd. Irrigation Division 6.3.666/B Somajiguda Mulugu. IV floor, Deccan Chamber Hyderabad - 500 082. Lr. No. EE/LDMulg./ DB/03/1634 On 20.10.06 Sub: Natural calamity -Tank breach -Tank formation across Karlapalli Vagu near Karlapally village, Govindaraopet (M), Warangal (dist) -Particulars -Reg. Ref: (1) LS AB No. 14/2004 -05 dated 15.2.2005 (2) Policy No. 18 -2211 -000251 -04 dated 5.3. 2005 (3) Sri V. Satyamurthy Contractor Lr. Dated 16.10.2006. Sir, In connection with the subject, I am to report the following information on request of the contractor vide ref. 3rd cited The tank starts receiving water from first week of July and the water level raised gradually according to inflows in the tank. The following water levels are observed during our visits. The lowest level in the streambed is +168.000. The storage level of water in the tank - As on 16.7.2006 +178.000 As on 21.7.2006 +179.500 As on 24.7.2006 +181.200 As on 28.7.2006 +182.000 As on 3.8.2006 +182 500 Further the work was physically completed by 7.7 2006 and final measurements are taken and got check measured. The Completion Certificate is issued to the contractor. Some finishing works are to be carried out, which can be tackled after passing the rainy season. The work was not taken over from the contractor as he has to maintain the site for two years period after completion of the work and the whole responsibilities lies with the contractor as per the agreement conditions. This is for favour of Information. Yours faithfully, sd/ - Executive Engineer Irrigation Division Mulugu. Copy to: Mr. P.K. Narayanan, Surveyor."

5. IN para No. 8 (d) of the written version, it was alleged that the report of Surveyors is also based on the letter dated 20.10.2006 submitted by the complainant wherein it is clear that the work was physically completed by 7.7.2006 and final measurements were taken and got checked; the completion certificate was issued to the contractor and the tank had been put to use in the first week of July itself and it started receiving water. In corresponding para of the rejoinder or in any other para thereof the complainant did not deny the averments made in said para No. 8(d). From the said letter dated 20.10.2006, it is established beyond any shadow of doubt that the work of formation of tank across Karlapalli Vagu was physically completed by the complainant by 7.7.2006, final measurements of the work were taken and got checked, completion certificate was issued and the tank started receiving water in early July, 2006. Though the work period of 18 months as given in Schedule was to expire on

14.8.2006 but the opposite party''s liability under the condition referred to above came to an end in July when the tank was put into service by the said Principal. Maintenance cover was to start only from 15.8.2006. Policy is a contract and conditions thereof are binding on both the parties. Thus, for the peril occurring on 4.8.2006, the opposite party -Insurance Company under the policy will not be liable to compensate the complainant. Decision in United India Insurance Co. Ltd. v. Kiran Combers and Spinners, I (2007) CPJ 1 (SC)=IX (2006) SLT 367=(2007) 1 SCC 368, relied on behalf of complainant has no bearing to the issue on hand.

6. AT the cost of repetition it may be mentioned that with the approval of the opposite party - Insurance Company, the National Institute of Technology was approached by Professional Surveyors and Loss Adjusters (Private) Ltd., Surveyors to elicit opinion on the points noticed in para No. 8 of the written version. In its report dated 20.11.2006, the Institute concluded: "1. The compaction control of hearting and casing soils is found to be satisfactory. A slight variation in the calculated degree of compaction, if any, is possible in view of the inevitable natural variabiability of materials.

2. The most probable cause of failure is believed to be due to inadequacy of foundation treatment by grouting in such a highly fractured rock which allows seepage through soil -rock interface. Such a seepage leads to catastrophic piping failure.

3. The U/S slope failure is due to sudden draw -down condition of reservoir water level that occurred by the breaching of dam.

4. Some of the finishing works mentioned in the previous are yet to be completed during maintenance period.

5. Promising seepage control measures are to be incorporated in the restoration work of the dam without which its stability remains questionable."

7. IN their final report dated 10.1.2007, the Surveyors have heavily placed reliance upon the said conclusions reached by the Institute. Complainant by taking objections and filing the report of R. Madhusudan, Surveyor, has challenged the veracity of the said reports. Attention has also been drawn to the letter dated 8.5.2007 of the concerned Superintending Engineer, C and AAD Circle, Warangal, addressed to the opposite party - Insurance Company mentioning that the work including grouting was carried out as per the standard specifications as stipulated in the agreement and the work was executed as per the designs and drawings of the agreement. In our view, as the claim is not payable as held in the preceding para the correctness of the two reports need not be examined

8. ACCORDINGL Y , the complaint is dismissed. No order as to cost. Complaint dismissed.