(2004) 07 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

VASALAKSHMI ENTERPRISE APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD. RESPONDENT

Date of Decision : 20-07-2004

Acts Referred:

Citation : 2004 0 NCDRC 34 : 2004 4 CPJ 51 : 2005 1 CLT 78

Hon'ble Judges : S.N.KAPOOR , RAJYALAKSHMI RAO J.

Advocate : V.GOURISANKARA RAO , SUMAN BAGGA , M.SINGH

Judgement

1. THE complainant, Vasalakshmi Enterprises has filed this petition claiming compensation amounting to Rs. 16 lakhs along with interest @ 20.75% with quarterly rests from 3.9.1996 till the date of realisation along with compensation of Rs. 2 lakhs towards inconvenience, hardship and mental agony and costs of Rs. 10,000/-. This claim is based on the three insurance policies, taken by the complainant. The complainant has got tobacco store at several places and in that connection he had taken three policies. The first policy is for the sum of Rs. 25 lakhs taken on 10th May, 1996 to cover the risk and perils relating to stock of all varieties of tobacco in all forms stored at premises No. 13/45/1, GNT Road, Tangutur, Distt. Prakashan. The second policy was taken on 16.7.1996 for a sum of Rs. 5 lakhs to cover the risk and perils relating to stock of all varieties of tobacco in all forms stored at premises of M/s. Allied Tobacco Packers Pvt. Ltd., Tangutur, from 16.7.1996 to 11.9.1996. The third policy for a sum of Rs. 10 lakhs covered the risk and peril relating to stock of all varieties of tobacco in all forms stored at premises of M/s. Allied Tobacco Packers Pvt. Ltd., Tangutur from 19.8.1996 to 18.11.1996. Thus, the complainant had taken three policies to cover the peril and risk to the tune of Rs. 40 lakhs in all. The fire took place on the night of 2/3.9.1996 at the insured premises. The complainant company lodged FIR No. 83/96 dated 3.9.1996 and informed the insurer. One, Mr. D. Satyanarayana was appointed the Surveyor to estimate the loss sustained by the complainant. The Surveyor estimated the loss of Rs. 14,13,455/- on 29.10.1996. On 25.2.1997, Branch Manager recommended the claim for a sum of Rs. 14 lakhs. However, on 18.8.1997, the Insurance Company offered a sum at Rs.

6,90,918/- towards full and final settlement subject to payment of premium of Rs. 2,779/-. A representation was made on 29.11.1997. The Andhra Bank, the Bankers of the complainant, who had advanced a huge sum of about Rs. 80 lakhs or so against the stock kept and stored at the premises also requested the Insurance Company to settle the claim for Rs. 14 lakhs as was mentioned in the previous letter. Since the matter was not settled despite notice dated 4th April, 1998, the complainant filed the complaint for the recovery of the aforesaid amount and compensation and costs.

2. THE United India Insurance Company, inter alia, contested the matter on three grounds, Firstly, that since the present complaint was in respect of quantum of claim, as per the terms and conditions of the policy the matter should be got redressed through arbitration proceedings. The second objection is that it was a non-standard claim for there was breach of certain conditions. Third objection is that the Surveyor has appropriately calculated the loss suffered in view of the under insurance. It was also pointed out that the complainant by letter dated 16.7.1996 had transferred the risk of the extent of Rs. 6,10,000/- from the insured premises to their godown at M/s. Padamja Enterprises at 13/48/2, Western Side of GNT Road, Tangutur. The Andhra Bank supported the case of the complainant to the extent that Andhra Bank had taken three separate rover notes for total sum of Rs. 40 lakhs to cover the Bank''s interest in the complainant stocks. It was stated in para-3 of their reply/written version as under : "It is admitted that the respondent No. 1 has taken three separate cover notes for a total sum of Rs. 40.00 lacs, to cover the respondent No. 2 Bank''s interest in the complainant. The cover note No. 56591 dated 9.5.1996 was issued by the respondent No. 1 for Rs. 25.00 lacs against which a sum of Rs. 7,731/- was paid towards premium. The said cover note was issued for a period of one year i.e., from 10.5.1996 to 9.5.1997. Similarly two other cover notes - (i) cover note No. 62026, dated 16.7.1996, for Rs. 5.00 lacs; and (ii) another cover note No. 62042, dated 18.8.1996, for Rs. 10.00 lacs - were also issued by the respondent No. 1 which were in force on the relevant date against which the premiums of Rs. 889/- and Rs. 1,237/- respectively were paid."

3. THIS indicated as if they had received only cover note. The Bank also supported the complainant about their recommendation to pay Rs. 14 lakhs.

4. THERE is no dispute in between the parties that a sum of Rs. 6,90,918/- was deposited in this Commission and it was paid to the complainant on 21.1.2004. Having heard the parties'' Counsels and after going through the record, there is no dispute about the following facts between the parties : (1) Fire took place on the night of 2 and 3.9.1996 at the insured premises of the complainant as mentioned in the policy. (2) The total number of bundles burnt/destroyed as per Surveyor''s report were 308 weighing 3492 kgs. (IBF). (3) Admittedly, the total loss suffered by the complainant was to the tune of Rs. 14,13,455/-.

5. AS regards the objections relating to the arbitration about the claim, it is felt that it is too late in the day to ask for arbitration. There are various reasons for

it. Firstly, from the circumstances as are being mentioned hereinafter only the cover note was issued and not the policy. The complainant is relying on the cover note. The Andhra Bank is also relying only on the cover note. The learned Counsel was unable to produce any document to show that either of these three policies was sent by registered post to either the complainant or to the Andhra Bank. Besides, the claim of arbitration is not supposed to debar the complainant from pursuing these proceedings for this complaint was filed on 18th September 1998; the reply/written version itself was filed on 2nd September, 2003 but no application was moved to stay the proceedings and to direct the complainant to seek relief in arbitration proceedings. If the Insurance Company was so serious about arbitration they could have easily moved an application before the Commission for directing the complainant to approach Arbitrator and seek arbitration. The fact that the Insurance Company has not done so, would indicate that they were not serious about the arbitration proceeding. Consequently, this plea must fail.

6. NOW the only dispute which would require consideration is the question of under-insurance and how the under-insurance is to be calculated. There is no dispute about the fact none of the policies (leave aside cover note) filed by the Insurance Company indicate that only so-called compartmentalized risk was covered by all the 3 policies. None of the 3 policies refer to any plot or any specified portion of the insured premises. Consequently, insofar as the first policy of Rs. 25 lakhs is concerned, alone could not be considered from the point of view assessing under-insurance and for reduction on the ground of under-insuranee accordingly. However, there is virtually no answer with the complainant about the transfer of peril and risk of Rs. 6,10,000/- out of the policy of Rs. 25 lakhs to their godown at 13/48/2 at the premises of M/s. Padamja Tobacco Enterprises, Western side of GNT Road, Tangutur. Since this is not disputed, this amount has to be reduced from the policy of Rs. 25 lakhs. Interestingly, this letter also refers to cover note No. 56891 and not to the policy. A photocopy of the letter dated 16.7.1996 was produced by the learned Counsel for the respondent and it has not been disputed. Consequently, after deduction of the aforesaid amount, the policy of Rs. 25 lakhs would stand reduced to the extent of 18,90,000/- insofar as the premises in question is concerned. In this policy, amount of Rs. 15 lakhs relating to other two policies is required to be added to find out the total amount of insurance or under-insurance. There is also no dispute between the parties that the total stock stored at the entire premises as per the report of the Surveyor was as under : IBF 308 Bundles - 34932 Kgs. of NRS ICF 603 Bundles - 64453 kgs. of NRS IS2 229 Bundles - 21243 kgs. of NRS ---------------- ------------------- 1140 Bundles - 120628 kgs. of NRS

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7. IT is interesting to note that Survey did not take into consideration the latter of transfer of peril and risk to the extent of Rs. 6,10,000/- vide dated 16.7.1996. The Surveyor has mentioned that the total sum insured by all the three policies

was Rs. 40,00,000/-. There was no under-insurance. But as it is apparent in view of the letter dated 16.7.1996, there was some under-insurance for the total insurance cover on the date of fire was Rs. 33,90,000/-, while the stock was Rs. 38,21,978/- as per the Surveyor''s report. Consequently, there was certainly some under-insurance. Accordingly, the data to assess the loss in given below : Actual loss suffered = Rs. 14,13,455.00 Value of risk = Rs. 38,21,978.46 Sum insured = Rs. 33,90,000.00 Total loss assessed = Rs. 12,53,699.00 (after taking into account reduction on account of under-insurance) Less excess = Rs. 2,500.00 --------------------- Rs. 12,51,199.20 -------------------

8. THE complainant and the insured Bank is thus entitled to recover Rs. 12,51,199.20 p. with interest at the rate of 10%. This amount shall be paid to the respondent No. 2, Andhra Bank, for they are the insured. As regards claim of compensation of Rs. 2 lakhs, there are two ways to look at it. One is to compensate the petitioner by way of enhanced interest and another is to award compensation as much as has been prayed. Since we have not awarded interest @ 20.75% as claimed by the-complainant and at the rate at which he was paying interest and the complainant has demanded compensation only to the tune of Rs. 2 lakhs, a much lesser amount than the amount of interest calculated @ 20.75% p.a., we feel that the complainant should get compensation to the tune of Rs. 2 lakhs with interest @ 10% p.a. on this amount also. In the aforesaid circumstances it would be appropriate and it is awarded accordingly. This amount shall also be payable to the Bank, respondent No. 2.

9. IT would also appear from the evidence on record as if the Bank officials were never interested in getting the policies. It was expected in such circumstances from the Bank that they would have ensured that the policies were received in time to avoid any dispute, which is arising in this case relating to warranty clause. It is another thing that we are rejecting that plea of the Insurance Company for insurance policies were not supplied but the Bank officials have also failed to perform their duty well in failing to procure the insurance policies. Had we accepted the contention that there was breach of condition, then there might have been added problem to the complainant and the Bank might have also not been able to get the amount, which it is getting. At the time of final settlement, Andhra Bank should take into consideration the deficiency in service on their part in their failure, to ensure the receipt of policies as has been mentioned earlier.

10. THE complainant shall get cost of Rs. 10,000/- from the United India Assurance Company Limited.

