(2001) 10 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

VIKRAM GREENTECH (I) LTD. APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 30-10-2001

Acts Referred:

Citation : 2001 0 NCDRC 7 : 2002 3 CPJ 111

Hon'ble Judges : J.K.MEHRA , B.K.TAIMNI , RAJYALAKSHMI RAO J.

Advocate : Aruna Chatterjee , P.K.SETH

Judgement

1. THIS complaint has been filed by the complainant Vikram Green Tech (I) Ltd. alleging deficiency on the part of the respondent, New India Assurance Co. Ltd. with a prayer to direct the respondent Company to settle the insurance claim preferred by the complainant along with interest @ 18% and compensation of Rs. 25 lakhs on account of mental agony, harassment and monetary loss.

2. FACTS as per complaint in brief are that the complainant Company set up a floriculture project in January, 1996, near Lonavla in Maharashtra - a 100% Export Oriented Unit (EOU) for which an insurance cover for Rs. 2 crores was taken. It was a comprehensive insurance policy. The project envisaged production under Green House/Poly house condition of high value floriculture crops. (According to the complainant they had purchased Survey/Gat/Hissa Nos. 163, 158, 157, 156, 148, 149, 147 and 164 for this project. It was to comprise of poly houses 1-7, 8A and 8B, while 1-6 were to come up with indigenous technology, the latter three 7, 8A and 8B were to come up with foreign technology. After series of discussions and protracted correspondence complainant Company sent proposal form on 1st January, 1996 along with the requisite premium and a policy was issued on 23rd June, 1996, providing policy cover for Rs. 2 crores of which Rs. 1.25 crore was for poly houses, Rs. 25 lakhs for saplings and inputs for Rs. 25 lakhs. Policy covers the risk of storm and cyclone. This project site was visited by two storms/cyclones on two different dates i.e. 23.5.1996 and 18/19.6.1996, which were reported to the Insurance Company, whose Surveyor assessed the loss at Rs. 31,82,580/- and Rs.

40,05,176/- (in all Rs. 71,87,756/-) respectively as a result of the two separate incidents of cyclone/storm mentioned earlier. The Insurance Company has not made any payment to the complainant causing great hardship to them. Thus alleging deficiency on the part of the respondent Company by not settling the claim even after 18-20 months of the incidence of loss, the complainant Company approached this Commission and praying for reliefs mentioned earlier. In their reply filed by the respondent-Company it is stated that this is not in dispute that the complainant had a policy cover but their mainstay is that it covered poly houses 1-6 only, as is clearly mentioned in the proposal form. Complainant, has already been informed about this during personal meetings/ discussions and also through their written communication. It was their case that neither the complainant nor his Bank co-operated with the second Surveyor. The first Surveyor had estimated the loss of Rs. 4,77,355/- and Rs. 95,443/- for damages to poly houses 1-6 on account of loss caused by cyclone etc. on 23.5.1996 and 18.6.1996 respectively and respondents are ready and willing to settle and pay the insurance claim in their terms. They refused the claim on account of damages to poly houses 7-8A and 8B as being not covered by the policy, hence not eligible.

3. IN its rejoinder, the complainant reiterated that all the nine poly houses were covered by the insurance policy. They also state that a wrong impression is sought to be created that policy covered only 2.8 ha. of area. Total area of the farm was 6.3 ha. but at the relevant point of time saplings had been planted over an area of 2.5 ha. and declaration to such effect had been made by the complainant/claimant. Such declaration did not limit the area covered by insurance to the 2.8 hac. Cost of indigenous poly houses was Rs. 69.20 lakhs and only by adding the cost of imported poly houses would the cost go Rs. 1.25 crores, the land covered under it being 163, 156 and 164 which are disclosed in the proposal form hence covered by the policy.

4. EVIDENCE was led by affidavits. On behalf of the complainant, affidavit was filed by one Shri R. K. Goyal, Director of the complainant Company, who while reiterating all the points made in the complaint and rejoinder also relied upon the first report of the Surveyor, assessing the total loss at Rs. 71,87,756/-. It is admitted by him that poly houses 7, 8A and 8B were completed in March, 1996. It is a comprehensive floriculture insurance policy, which means floriculture under cultivation. He also states that proposal form did not specify the number of poly-houses. It may be poly-house Nos. 1-6 and/or from any of 1 to 7, 8A and 8B. According to him poly-houses 7, 8A and 8B are very much covered by the insurance policy as they were very much in existence at the time of calamity. In the affidavit filed by Ms. Anjali Bansal - Assistant Manager of the respondent Company, she states that six poly houses covering an area 2.8 ha. were covered by the policy. Since the Surveyor appointed by them, first time assessed the loss for all the 9 poly houses, he was asked to rework and they submitted the revised report. Poly houses 7, 8A and 8B were not in existence at the time policy was taken and goes on to mention the factum of under-insurance by the complainant.

While the fist Surveyor estimated the cost of poly houses 1-6 at Rs. 69,20,000/- excluding the cost of foundation, the respondent Company appointed another Surveyor, M/s. Jupiter Claims Consultants, who got no co-operation from either the complainant or the Bank in the absence of which, valuation of the poly house could not be finally ascertained. There is no deficiency on the part of the respondent Company.

5. IT was argued by the learned Counsel for the complaint that the complainant Company obtained comprehensive floriculture insurance for the respondent Company and paid the requisite premium. In all 6.3 ha. of land was acquired for the project out of which 2.8 ha. of land, comprising plot Nos. 158, 157, 148, 149, 147, 163, 156 and 154 were dedicated for plantation and poly houses were existed there. According to him main grounds of the respondent Company to not to accept the full claim of the complainant is based on two points. (i) That poly houses 7, 8A and 8B came into existence only in March, 1996 i.e. two and half months after the date of issue of policy, and (ii) Cost disclosed in the Company''s letter dated 22.11.1995 was Rs. 50.42 lakhs per ha., so the construction cost for 2.8 ha. works out to Rs. 1.42 crores against insurance cover taken for Rs. 1.25 crores, hence was under insured.

6. IT is his contention that the policy covers all the poly houses as per Sections I and II of the proposal form. Number of poly houses are not mentioned in the policy. Insurance is on the basis of material used for poly houses according to which all the poly houses were covered. Correspondence between the parties support this contention. Plots 163, 156, 164 are covered by poly houses 7, 8A and 8B. Even if the figure of cost of poly houses arrived at by the respondent Company amounting to Rs. 1.42 is accepted, it is near to Rs. 1.25 crores i.e. amount of policy cover. Letter dated 22.8.1995 conclusively proves that policy was not drawn on the basis of number of poly houses but cost of poly structure per ha. He also drew our attention to the clause relating to ''condition of average''. Keeping in view the material on record the respondent Company should be directed to pay Rs. 71,87,756/- as assessed by the Surveyor with interest and cost thus allowing the complaint. On the other hand it was argued by the learned Counsel for the respondent that Surveyors did not properly appreciate the insurance policy and erroneously included poly houses 7, 8A and 8B in the estimation of loss in spite of the fact that they were not covered by the insurance policy. The proposal form which is an integral part of the policy does specifically mention the figure of poly houses as "six" i.e. the other three poly houses 7, 8A and 8B came later and cannot be deemed to be included in the policy. There has been under valuation of property by the complainant of the items to be covered by insurance policy. When differences arose about the valuation i.e. Rs. 69.20 lakhs as assessed by the 1st Surveyor, the respondent Company appointed another reputed Surveyor, who could not give report on account of non co-operation by the Bank and the complainant. The amount prayed for by the complainant amounting to Rs. 71,87,756/- cannot be paid to the complainant as non-payable on account of the simple fact that it included

losses to poly houses 7, 8A and 8B which are not covered by the insurance policy. The respondent Company are willing to pay for losses sustained in poly houses 1-6 covered by the insurance policy assessing by the Surveyor amounting to Rs. 5,71,798/-. There has been no deficiency on the part of the respondent Company hence the complaint be dismissed with costs. We have heard the arguments and perused the material on record. It is not disputed that the complainant Company had a valid insurance policy to cover the risk of cyclone/ storm to the poly houses. The crux of the problem is whether the policy covered all the 9 poly houses as contended by the complainant Company or only six, as contended by the respondent Company. The starting point for us is the proposal form. We see that in spite of denials in the affidavits and rejoinder by the complainant, we see that (C) (1) of the proposal form clearly mentions "No. of Green houses : 6 poly houses". We also see that Section ''A'' Applicable for Sections I + II forming part of the policy, makes it clear that "written proposal .. is the basis of the contract". We also see that the (C) (ii), D(i) and (ii) of the Proposal Form mentions - Survey/Gat/Hissa Nos. : 163, 158, 157, 156, 148, 149, 147, 164 and the total area is 2.8 ha. It is the contention of the complainant, at this stage of arguments, that the three survey Nos. 163, 156 and 164 on which stand the poly houses 7, 8A and 8B, find a mention in the Proposal Form, hence covered under the policy. Such linkage is not spelt out in the complaint. In the rejoinder filed by the complainant it is stated by them : "A deliberate false impression has been sought to be given that the area of the farm that was covered by the insurance policy was only 2.8 hectares. At the relevant point of time, the size of the farm was as at present. The total area of the farm was 6.3 hectares. The respondent is purporting to take advantage of the fact that at the relevant point of time saplings had been planted over an area of 2.8 hectares and declaration to such effect had been made by the claimant. However, such declaration did not limit the area covered by the insurance policy to the 2.8 hectares.

7. THERE is not even a whisper in the one single affidavit filed by the Directors of the complainant Company on this point. They could have proved this point with the help of some revenue record. We are unable to accept this contention of the complainant as this point i.e. that poly houses 7, 8A and 8B stood on Khasra Nos. 163, 156, 164 as it is not supported or proved by any material on record.

8. IT is not in dispute that at the time of taking policy only six poly houses were in existence. Poly houses 7, 8A and 8B came into existence only in March, 1996, - Over two months after the policy was issued. No evidence or proof either on law or regulation has been produced before us to substantiate the point that there could be insurance cover for non-existing property, at the time of taking insurance policy. On being confronted with the fact this is what the complainant had to say vide its letter dated 6.12.1996 addressed to the 1st Surveyor, M/s. Standard Surveyors Pvt. Ltd. is as following : "On a quick perusal of the proposal form read with policy condition also, it would be abundantly clear that we always wanted to cover all the ply houses, which existed on the date of the proposal as

also which were stated to come up well within the policy purview, and that we understood that all poly houses which exist on a particular location are duly covered". It appears that complainant lives in a dream wood. Policy document is a contract on which there is no provision for ''wanted'', ''understood''. One has to go by the terms of the contract and it says "six". We are quite clear that it is the terms of contract - which an insurance policy is - which shall hold good. An effort is also made to bring in poly-houses 7, 8A and 8B by way of telling us the value of insurance cover i.e. implying that it covered all the nine poly houses.

According to the complainant the cost of all poly houses is Rs. 1.25 crores, but that is not supported by their own valuation vide their letter dated 22.8.1995 according to which cost per ha. is Rs. 50.92 lakhs whereas again an effort is made to make us believe that actually the cost of poly houses per ha. is Rs. 40,53,500/-. Confronted with this contradiction, the complaint states in his letter dated 29.3.1997 that "We have seen our letter dated 22.8.1995. We do not exactly recall the basis and circumstances under which these figures were mentioned". We have three figures on the costing of poly houses covering 2.8 ha. Based on costing of Rs. 50.92 per ha., it comes to over Rs. 1.4 crores, based on costing of Rs. 40,53,500/- per ha. It comes to something around Rs. 1.2 crores then we have the valuation of Rs. 69 lakhs for poly houses 1-6 assessed by the Surveyors'' Standard Surveyors Pvt. Ltd. In the face of all these respondent Company appointed an independent Surveyor, Jupiter Claim Consultants to get at the truth of costing, on the basis of record with the complainant Company and the Bank (Canara Bank) Report of this consultant is on record in which it is made clear that on account of non-co-operation by both the complainant Company and the Bank by way of not being present in an arranged meeting and by way of not making available record or answering their queries, these figures could not be worked out. This has been rebutted by the complainant in a one liner, ''it is denied and disputed that the complainant failed to submit any necessary documents required for releasing of payment done for the respondent''. What is being talked about in the reply filed by the respondent in para 2(n) relates to non-co-operation with the new Surveyor while through the rejoinder filed by the complainant he speaks of document required for release of payment. It appears that throughout effort is to confound the issue on the part of the complainant. Other points relating to comprehensive floriculture insurance policy and "conditions of average" need not be gone into by us at all as they are meant to cover the number of poly houses mentioned in the policy document. They have no independent existence. Comprehensive could mean six poly houses and so could "conditions of average" to mean average of six poly houses. We fail to understand as to how does it help the complainant to establish that all the nine poly houses were covered under the policy.

9. FOR all the above reasons, we are unable to accept the contention of the complainant that poly houses 7, 8A or 8B were covered under the insurance policy in question especially when admittedly, they were non-existence on the day, the policy was taken and policy clearly mentions the number of poly houses

as "Six". In our view the complainant has failed to prove a case based on the material on record. Complaint is dismissed. Respondent Company is, however, directed to pay the admitted amount of Rs. 5,72,798/- within a period of six weeks on account of damages caused to poly houses 1-6 during the two storm/ cyclones of 23.5.1996 and 18.6.1996 along with interest @ 12% from the date of the first Surveyors report i.e. 6.11.1997 upto the date of payment, failing which the rate of interest shall be @ 18%. Keeping in view the facts and circumstances, no orders as to costs.