**(2003) 09 NCDRC CK 0092**

**In the National Consumer Disputes Redressal Commission**

VISHNU CHEMICALS (P) LTD. APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

**Date of Decision :** 10-09-2003

**Acts Referred:**

**Citation :** 2004 2 CPJ 647

**Hon'ble Judges :** P.Ramakrishnam Raju , Mamata Lakshmanna J.

**Final Decision :** Complaints allowed

## Judgement

1. C.D. No. 111/98 : The complainant is a registered company engaged in manufacturing chemicals since 1989. It insured the material i.e., raw-material, semi-finished and finished stock in the factory and godown covering the risk of fire, perils, riots, etc., for Rs. 50,00,000/- from 20.10.1996 to 19.10.1997 by paying a premium of Rs. 21,695/- and obtained a policy bearing No. 11612200 1410 dated 25.10.1996 from the opposite party.

2. WHILE so on the mid-night on 26.11.1996 at about 11.00 p.m. Motor Liquor Storage tank collapsed and due to collapse of the tank and leakage of motor liquor it flowed like flood in the raw-material after processing in the manufacturing unit. The complainant informed the Insurance Company, the very same night by phonogram followed by a letter dated 27.11.1996. He also gave a police complaint on 27.11.1996 to the S.H.O., I.D.A., Bollaram who conducted Panchanama. On intimation to the Superintendent, Central Excise, Kazipally, R.R. District, he also conducted Panchanama on 29.11.1996. The driver of the excavator approached the police Station on 6.12.1996 and gave a report that the accident was due to his rash and negligent driving of the driver of the excavator loader and he was absconding from that date due to fear. The complainant submitted that claim forms claiming an amount of Rs. 15,39,000/- against the opposite party. The opposite party appointed a Surveyor by name Mr. V. Nageswar Rao who visited the factory and collected the relevant documents. But the opposite party repudiated the claim arbitrarily. Hence the complaint claiming Rs. 15,39,000/- together with interest and damages, etc.

 

The opposite party filed counter affidavit through their Administrative Officer wherein while admitting the insurance policy however it is stated that on receipt of telegram from the complainant they have appointed one Mr. D. Chennaiah to conduct preliminary survey who submitted his report on 9.12.1996 stating that he examined the collapsed storage tank on 27.11.1996 and found that one of the 4 M.S. Channel patched up legs got broken under its own weight and the tank collapsed with the contents, that the complainant, therefore, could not establish that the loss occurred due to any accident and as such its claim was repudiated. There is no deficiency on their part and the complaint is liable to be dismissed.

3. THE complainant filed the affidavit evidence of its Administrative Officer (Legal and Insurance) besides filing Exs. A-1 to A-25. THE opposite party filed the affidavit evidence of its Senior Assistant besides filing Exs. B-1 to B-9. THE point, therefore, that arises for consideration is whether there is any deficiency in service on the part of the opposite party and if so to what relief. The policy in question which is a Fire Policy-C marked Ex. A-1 bearing No. 11 612200 01410 commencing from 20.10.1996 for a period of one year is not in dispute. It is also not in dispute that raw material including storage tank was insured for a sum of Rs. 50 lakhs. While so on 26.4.1996 at about 11.00 p.m. motor liquor storage tank collapsed due to leakage and the liquor flowed like flood and damaged the raw material. The complainant informed the opposite party on the very same night by phonogram followed by a letter on 27.11.1996 besides giving a police complaint on 27.11.1996. The Superintendent of Central Excise, Kazipally, Ranga Reddy District conducted Panchanama on 29.11.1996. The driver of the excavator attended the police station on 6.12.1996 and stated that the accident took place due to his rash and negligent manoeuvring the excavator loader. In fact the driver Sri Hanumantha Rao gave a statement before the Inspector of Police under Ex. A-18 on 6.12.1996. He admitted that while reversing the excavator loader he lost control and rear portion of the excavator hit the tank as a result of the impact the tank collapsed and the liquor contents were flown out and spread around the tank area. For his rash and negligent driving challange was issued to him and he was imposed a fine of Rs. 200/- under Ex. A-19. In fact the complainant submitted all the relevant papers under Ex. A-21 including photographs. However as already seen the preliminary Surveyor opined that one M.S. Channel patched up leg got broken on its own weight and, therefore, it does not amount to accident. However he stated that the fourth leg of the motor liquor tank containing 3 pieces joined together by way of welding which must have got broken due to the weight of tank. Ex. B-6 is the report of Surveyor and Investigator Mr. B. Nageswar Rao dated 15.3.1997 wherein he observed that the complainant made prevaricating statements from time-to-time regarding cause of collapse of the motor liquor tank. According to him the complainant in his written complaint give to the S.I. of Police, Bollaram on 27.11.1996 it was mentioned storage tank collapsed. In the claim form it was mentioned that the cause of loss is not exactly known but may be due to impact of excavator loader or mischief of labour. Mr. Kamalakar, Authorised Signatory and Mr. K.

 

Suryanarayana, Production Manager explained the cause to the Excise Officials that the loader dashed the tank while reversing which resulted in breakage of two legs. In the Excise Panchanama report it was mentioned two front legs of the motor liquor storage tank were broken whereas only one leg which was having welding joints only broken.

4. THE driver Hanumantha Rao mentioned that he was driven the excavator in reverse direction and hit the tank on front supporting legs. In the police Panchanama report it was mentioned that adjacent to the motor liquor tank excavator tyre marks were clearly visible etc. If really the tank fell due to impact of excavator it should have fallen on the excavator itself and there should not have been time for the driver to escape and as such the collapse of the tank should have been due to its own weight. THE part patched up leg which was broken and welded with joints must have given the way. Basing on this report the opposite parties repudiated the claim by their letter dated 10.10.1997. We are of the opinion that Ex. B-6 does not discredit the two Panchanamas, the report of the police, complaint to Excise Department as well as the opposite party. No doubt in the phonogram it is stated that the motor liquor storage tank blasted because the phonogram was issued in the very same night itself without any investigation or inquiry and as driver was absconding for a few days the exact cause could not be known. But in the report given to the S.H.O. as well as the Excise Department and the opposite party about which reference has already been made, it is clearly stated that the storage tank had fallen due to the impact of the loader excavator dashing the storage tank while reversing the same. Therefore, the overwhelming evidence placed by the complainant cannot be ignored preferring the probable cause of breakdown of tank in view of condition of the legs which are weak and as such they gave way under their weight. We are prepared to ignore the overwhelming evidence produced by the complainant in proof of the actual cause which resulted in the damage that occurred to the motor liquor tank and its contents flowed down and damaged the other material. As such we hold that the damage was caused due to the accident by the driver of the vehicle hitting the motor liquor tank while reversing the loader excavator which resulted in this accident. Therefore, repudiating the claim of the complainant is illegal. In view of our finding that the repudiation of the claim is bad, we direct the opposite party to assess the damage in accordance with the policy conditions and pay the same to the complainant with interest at 9 per cent per annum from the date of filing of the complaint till payment. This exercise shall be done within a period of three months from today.

5. THE complaint i.e., C.D. No. 111/1998 is accordingly allowed to the extent indicated above with costs of Rs. 5,000/-. C.D. No. 121 of 2002:

6. THIS complaint is filed against the National Insurance Company Ltd., claiming a sum of Rs. 1,50,225/- for the damage caused to the motor liquor storage tank with interest at 24 per cent per annum, Rs. 10,000/- for mental agony and Rs. 5,000/- towards costs. In view of the detailed order passed in C.D. No.

 

111/1998, we hold that the repudiation of the claim of the complainant in this complaint is illegal.

Hence we direct the opposite party to assess the damage in accordance with the policy conditions and pay the same to the complainant with interest at 9 per cent per annum from the date of filing of the complaint as originally filed in the District Consumer Forum till payment. This exercise shall be done within a period of three months from today.

7. THE complaint C.D. No. 121/2002 is accordingly allowed to the extent indicated above with costs of Rs. 5,000/- Complaints allowed.

 