STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND, DEHRADUN

Date of Admission : 19.11.2018
Date of Final Hearing : 25.07.2023
Date of Pronouncement : 01.08.2023

First Appeal No. 173 / 2018

United India Insurance Co. Ltd.
Regional Office No. 5, Cambatta Building, M.K. Road
Church Gate, Mumbai
Through Chief Regional Manager
Lalit Palace, Kaulagarh Road, Dehradun
(Through: Sh. Rajesh Kumar Devliyal, Advocate)
…..Appellant

VERSUS

1. M/s Negi Digital
Partnership
Head Office House No. 4, Street No. 3, Shastri Nagar
Haridwar Road, District Dehradun
Through Partner Sh. Girvir Singh Negi S/o Sh. Kushal Singh

2. Sh. Girvir Singh Negi S/o Sh. Kushal Singh
R/o House No. 4, Street No. 3, Shastri Nagar
Haridwar Road, District Dehradun
(Through: Sh. Gandharv Matta, Advocate)
….. Respondents

Coram:
Ms. Kumkum Rani, Judicial Member II
Mr. B.S. Manral, Member

ORDER

(Per: Ms. Kumkum Rani, Judicial Member II):

This appeal under Section 15 of The Consumer Protection Act, 1986 has been directed against the judgment and order dated 17.10.2018 passed by the learned District Consumer Disputes Redressal Forum, Dehradun (hereinafter to be referred as the District Commission) in consumer complaint No. 50 of 2013 styled as M/s Negi Digital and Anr. Vs. United India Insurance Co. Ltd., wherein and whereby the complaint was allowed.

2. The facts giving rise to the present appeal, in brief, are as such that the complainant took a policy of Standard Fire and Special Perils Policy from the opposite party vide policy No. 020500/12/11/1200000044 for the year 2011-2012, but due to excessive rain flood occurred in Mohabbewala due to which boundary wall of the property of the complainant collapsed due to which one of the passerby also succumbed to injury. The complainant made a claim with the opposite party on dated 01.08.2011 and gave all the information as requested by the opposite party alongwith necessary forms required. The surveyor of the opposite party inspected the property and submitted the report on dated 11.02.2012 and in the said report of the surveyor has specifically stated that the excessive rain and over flow of water was the cause of loss to the insured property. The surveyor has submitted the loss report to the tune of Rs. 4,86,340/-. Thereafter, the complainant was called upon to submit the bills for the repair of the boundary wall, therefore, the complainant submitted all the necessary documents as requested by the opposite party. But suddenly the complainant received a letter on dated 21.09.2012 from the opposite party that the claim of the complainant was rejected on the grounds that the side wall of the compound area is not covered by the policy and the cause of loss is excessive rain and water accumulation which is not an insured peril. The complainant immediately sent his reply stating that the boundary wall always is a part of the building, secondly flood is the water upon the land which is not normally covered by the water inspite of the follow up by the complainant. Again the complainant received a registered letter on 22.10.2012. Thus, the insurance company was trying to misinterpret the

word water accumulation whereas the actual word used by the surveyor in his report is overflow of water and the overflow of water upon the land is caused only in the situation of floods. Another reason taken up by the opposite party for rejecting the claim is that the boundary wall does not fall within the definition of property. But in the common sense when the property is insured, it is the boundary wall in the property within the boundary wall, the walls of the property are not taken up separately for the insurance, the complete property including the boundary wall falls within the insurance policy. In such circumstances, the opposite party has no right to reject the claim of the complainant. By rejecting the claim, the opposite party has made deficiency in service and due to the act of the opposite party, the complainant has suffered the financial loss to the tune of Rs. 5 Lacs alongwith mental harassment and hardship to the tune of Rs. 1 Lac. Hence, the complaint should be allowed.

3. The opposite party – Insurance Company has submitted its written statement and admitted that the property in question was insured with the answering opposite party. On getting information about the loss in the insured property, the answering opposite party appointed the Surveyor, who assessed the loss at Rs. 4,86,340/-, but the payment was advised to be made as per the terms and conditions of the policy. But after scrutiny of the claim, it was found that the claim is not tenable, as the boundary wall was not covered by the policy, hence the claim was rightfully repudiated. It is further submitted that the insurer has not taken extra premium from the complainant for coverage of the same. As per peril in the standard Fire & Special Perils, the description of the property does not include the boundary wall and the boundary wall collapsed due to the negligence of the insured, which are of very low quality construction as per the information and cutting of the newspapers, therefore, the claim was repudiated by the insurance company vide letter dated 26.09.2012. It is further averred that

the surveyor has assessed the loss to the tune of Rs. 4,86,340/-, but the insurer has the right to adjudicate the claim as per the conditions of the policy, which is contractual liability and solely dependent on the terms and conditions of the insurance policy. Hence, in such circumstances, the complaint is liable to be dismissed with costs.

4. The District Commission after taking into consideration the material available on record, has passed the impugned judgment and order on dated 17.10.2018 wherein and whereby the learned District Commission has held which is as under:-

> "उपरोक्तानुसार, परिवादी द्वारा योजित यह परिवाद उपभोक्ता संरक्षण अधिनियम 1986 की धारा–12 के अन्तर्गत निम्नानुसार स्वीकार किया जाता है।
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> विपक्षी को आदेशित किया जाता है कि वह परिवादी को क्लेम धन अंकन 4,86,340/–रू0, मानसिक क्षति के लिए अंकन 20,000/–रू0 व 5,000/–रू0 वाद व्यय का भुगतान करे। धनराशि की अदायकी 30 दिन के अन्दर करना सुनिश्चित किया जाए।
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> यदि निर्दिष्ट अवधि में भुगतान नहीं किया जाता है तो परिवादी उपरोक्त समस्त धनराशि पर परिवाद प्रस्तुत करने के तिथि से भुगतान तक 9% वार्षिक दर से साधारण ब्याज भी पाने का पात्र होगा।"

5. Having been aggrieved by the aforesaid judgment and order, the present appeal has been preferred by the appellant – opposite party. It is contended on behalf of the insurance company - appellant that as per the description mentioned in the insurance policy neither the boundary wall

covered in the policy, nor was any extra premium paid for covering the boundary wall within the coverage, but the District Commission has failed to consider the said fact and ignoring the same, passed the impugned judgment against the mandate provision of law, hence it is liable to be rejected.

6. We have heard learned counsel for the parties and also perused the material available on record.

7. Learned counsel for respondent has argued that in the several cited case law of the Hon'ble Supreme Court of India as well as Hon'ble National Commission, it was laid down that the boundary wall is the integral part of the building. Learned counsel for respondent has attracted our attention to the following case law, which are as under:-

> **1. Commissioner of Income Tax, Bombay v. Gwalior Rayon Silk Manufacturing Co. Ltd., AIR 1992 Supreme Court (1782)**
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> **2. The Municipal Corporation of Greater Bombay and others vs. The Indian Oil Corporation Ltd., AIR 1991 Supreme Court 686**
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> **3. First Appeal No. 270 of 2010, The National Insurance Co. Ltd. vs. M/s Dunera Hills decided on 10.04.2013 by the State Consumer Commission, Punjab, Chandigarh**

4. Revision Petition No. 3784 of 2013, M/s Dunera Hills vs. National Insurance Company Limited decided on 09.12.2022 by the Hon’ble National Commission

5. Pandi Devi Oil Industries vs. Branch Manager, National…, III (2002) CPJ 71 (NC) dated 09.04.2002

8. We have perused the above cited case law.

9. In the case of **Commissioner of Income Tax, Bombay** (supra), the Hon’ble Supreme Court of India has held that the question whether the roads would include within the meaning of the word building was considered by various High Court. The leading decision is of Bombay High Court in CIT v. Colour Chem Ltd. (1977) 106 ITR 323. While negativing the contention that roads are part of the plant, the Bombay High Court held that roads within the factory premises are used for the purpose of carrying raw material, finished products and workers. Therefore, it must be regarded as building or buildings within the meaning of sub-clause (iv) of S. 10 (2) of 1922 Act. It is further held that the dictionary meaning of the word “building’" cannot be confined to a structure or superstructure having walls and roof over it. The roads and roadways are adjuncts of the buildings lying within the factory area linking them together and are being used for carrying on its business by the assessee. Therefore, they must be regarded as forming part of the factory building. The expenditure incurred, therefore, will have to be regarded as expenditure on buildings and the depreciation must be allowed.

10. In the case of **The Municipal Corporation of Greater Bombay and others** (supra), the Hon’ble Supreme Court of India has held that

"However, the definition of the word 'building' is an inclusive definition bringing within its ambit amongst other every other such structure. The structure must be an entity in itself, although not necessarily a building in itself, adopted to the particular purpose it serves. In its ordinary sense a structure is something which is constructed by way of being built as is a building. But method of construction by itself is not conclusive. Structure by itself may not be a building but it may be analogous to a building, outhouse, shed, hut or a stable. Ship is like a floating building but it is not a structure. A crane gantry or a turnable is a structure but is not a building. Weighing bridge is a structure. Tilting furnaces mains are in the nature of structure. Under the Act the incidence of taxation is on the building or land. So the building or its accompaniments like house, out-house, garage, stable, shed, hut and such other structures must also be an entity by itself although not necessarily a building, erected on the land."

11. In the case of **The National Insurance Co. Ltd. vs. M/s Dunera Hills** (supra), the State Commission, Punjab (Chandigarh) has held that "The boundary wall and the retaining wall are separately two different things. The boundary wall is always a part of the building as it is constructed to secure the building itself. Retention wall is also a part of the building but once the building is further qualified by the words "begin above plinth level", that excludes the retention walls. The retention walls are always below the plinth level and are never about the plinth level.

12. In the case of **Revision Petition No. 3784 of 2013, M/s Dunera Hills vs. National Insurance Company Limited** decided on **09.12.2022 by the Hon'ble National Commission,** it is held that while boundary wall was covered under the term 'building' as mentioned in an insurance policy, a 'boundary wall' and a 'retaining wall' were different and as the retaining

wall in the present case was qualified by the words "above plinth level" and as retaining walls are always below plinth level."

13. In the case of **Pandi Devi Oil Industries** (supra), the Hon'ble National Commission has held that "starting point is the proposal form. The Respondent company did not produce it. It is not disputed that the policy cover was provided after a visit to the factory by the Respondents. Photographs produced before the District Forum and this Commission make it abundantly clear that there are no side walls to the factory/machinery. It is under a shed - open from all the sides. Protection to the factory / machinery is provided by the boundary wall. It is unimaginable that the Respondent would have issued the policy without proper protection to the machinery in normal circumstances by a building - in this case provided by boundary wall. We have seen the tariff schedule and also see that there is a separate reference to "Boundary Wall" and tariff for this purpose. What we are unable to see is that in the Fire Acceptance Advice - produced before the District Forum - does not contain a break-up of the premium. How and who is than to determine whether the premium charged included tariff for the boundary wall or not? No defence is on record on behalf of Respondent Company to clear this haze. Inference in such circumstances, has to go in favour of the Consumer."

14. Learned counsel for the appellant – insurance company has not submitted any such cited case law, whereas the Hon'ble Apex Court or the National Commission has held that the boundary wall is covered within the definition of the building.

15. In such circumstances, we are of the view that the principle laid down in the above cited case law referred to before us by the learned counsel for the respondent – complainant are applicable to the case in hand and we are

of the considered view that the boundary wall was also covered within the coverage risk of the policy and the insurer is entitled to indemnify the loss occurred to the boundary wall and the claim in this respect cannot be repudiated by the insurer.

16. Thus, we are of the view that the repudiation on the ground that the property damaged is not covered by the insurance policy, is not appropriate and just. It is contrary to the terms and conditions of the policy. A repudiation letter (paper No. 29) has transpired that the claim of respondent was repudiated on the ground that the cause of loss is excessive rain and water accumulation which is not an insured peril. It is provided that under the heading "Standard Fire and Special Perils Insurance Policy (Material Damage)" (paper 34) if the insurance company has accepted the premium required for issuance or renewal of the policy, then the insurance company shall pay to the insured the value of the property at the time of the happening of its destruction or the amount of such damage or at its option reinstate or replace such property or any part thereof.

I. **Fire :** xxxxxxxxxxxxxxx

II. **Lightning** xxxxxxxxxxxxx

III. **Explosion / Implosion :** xxxxxxxxxxx

IV) **Aircraft Damage :** xxxxxxxxxxxxx

V) **Riot, strike and Malicious Damage :** xxxxxxxxxx

VI. **Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, Flood and Inundation :** Loss, destruction or damage directly caused by Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, **Flood** and **Inundation** excluding those resulting from earthquake, volcanic eruption or other

> convulsions of nature. (Wherever earthquake cover is given as an "add on cover" the words "excluding those resulting from earthquake volcanic eruption or other convulsions of nature" shall stand deleted.

As per paper No. 35 of the appeal record, according to "List of Add-on Covers", Earthquake (Fire and Shock) is also included in the coverage of the policy.

17. In the cited case law **Oriental Insurance Co. Ltd. vs. M/s J. K. Cement Works, AIR 2020 Supreme Court 921 : AIROnline 2020 SC 79,** the Hon'ble Apex Court has held as under:

> "13. In the instant case, the Appellant has not disputed that there were heavy rains on 29.08.2003 and 30.08.2003 in the Nimbahera region. In fact, the surveyor appointed by the Appellant had also observed in its report that heavy rainfall had occurred in the area, causing flood like conditions that resulted in some of the coal kept in the insured premises being washed off. Moreover, the surveyor's report also stated that there was accumulation of water due to the heavy rains, that had caused the coal to get washed off.
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> 14. The NCDRC in the following cases: (i) Bajaj Allianz General Insurance Co. Ltd. v. M/s. Gondamal Hardyal Mal, (2009) NCDRC 127, (ii) Oriental Insurance Co. Ltd. v. M/s Sathyanarayana Setty & Sons, (2012) NCDRC 124, and (iii) Oriental Insurance Co. Ltd. v. M/s R.P. Bricks, (2013) NCDRC 494, had held that damage caused

by heavy rainfall would not fall beyond the 'flood and inundation' clause of the Standard Fire and Special Perils insurance policies. It is brought to our notice by the learned counsel appearing for the Respondent that the aforesaid view has been consistently taken by the NCDRC. The aforementioned view of the NCDRC supports the impugned judgment and the same cannot be said to be erroneous."

18. Learned counsel for the appellant has neither cited any case law in this respect, nor attracted out attention to the terms and conditions of the policy, whether the cause of loss due to excessive rain and water accumulation / flood is beyond the insured peril.

19. In the above cited case law, the Hon'ble Supreme Court of India has held that the damage caused by the heavy rainfall would not fall beyond the 'flood and inundation' clause of the Standard Fire and Special Perils insurance policy. Thus, the above principle laid down by the Hon'ble Apex Court is undoubtedly and fully applicable to the case in hand. The policy's terms and conditions also indicate that the damage, if caused by the heavy rainfall / flood will fall within the cause of flood inundation clause of Standard Fire & Special Perils Policy. The policy cover note (paper No. 30) has clearly shown that the respondent – complainant purchased the Standard Fire & Special Perils Policy from the appellant – insurer and as per the terms and conditions of insurance policy clause (paper No. 34, condition No. vi of the policy), the loss due to flood or inundation is within the coverage of the policy. Thus, the grounds mentioned in the repudiation letter cannot be said to be valid ground.

20. It is pertinent to mention that other ground in the appeal has neither been pressed and nor argued on behalf of the appellant before us. Apart from it, it is mandate provision that while considering the appeal grounds, the grounds which are not mentioned in repudiation letter cannot be discussed and considered at the stage of appeal. Thus, we are of the definite view that the impugned judgment passed by the District Commission is perfectly justified and in accordance with mandatary provisions of law. The District Commission has elaborately discussed all the facts and evidence of the case and grounds of repudiation letter. There is no perversity, illegality and infirmity in passing the impugned judgment, therefore, we are not inclined to interfere with the impugned judgment. We are of the view that the impugned judgment is liable to be affirmed. Accordingly, the appeal is liable to be dismissed.

21. Appeal is dismissed. Impugned judgment and order dated 17.10.2018 passed by the District Commission, Dehradun is hereby affirmed. No order as to costs of the appeal.

22. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 /2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties. The copy of this judgment be sent to the District Commission concerned for record and necessa ry information.

23. File be consigned to record room along with a copy of this Order.

(Ms. Kumkum Rani)
Judicial Member II

(Mr. B.S. Manral)
Member

Pronounced on: 01.08.2023