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Court : Andhra Pradesh State Consumer Disputes Redressal Commission SCDRC Hyderabad

Decided On : Dec-30-2013

Judge : The Honourable Mr. R. Lakshminarasimha Rao, Incharge President, the Honourable Mr. Thota Ashok Kumar, Member &Amp; the Honourable Mr. S. Bhujanga Rao, Member

Appeal No. : F.A.No. 355 of 2013 Against C.C.No. 2 of 2012 District Forum-I Hyderabad

Appellant : Svs Projects (P) Limited

Respondent : Bharati Axa General Insurance Co.Ltd.

Judgement :

Oral Order: (R. Lakshminarasimha Rao, President)

1. The unsuccessful complainant is the appellant. The appellant is a private limited company engaged in the business of industrial buildings construction such as cement power plants etc., which are of 150 mtrs in height and during the course of its business the appellant obtained group insurance policy covering risk of its labour working at Andhra Cements Limited, Durga Cement Works, Durgapuram, Dachepally, Guntur District and the insurance policy bearing No.LWC/10012269/51/05/C15116 for the period from 9.2.2009 to 8.5.2009 and since then the policy got renewed regularly on payment of premium payable on

increase in number of labour with common source code no.51000078.

2. A labourer namely, Shanker Biswas working with the appellant company met with an accident on 27.4.2010 at 8.45 a.m. while carrying out civil construction work related activity of cement moli and subsequently he succumbed to the injuries. The police, Dachepally registered case and the appellant informed the respondent no.1 insurance company on 27.4.2010 about the accident and death of Shankar Biswas. On 4.5.2010 the respondent no.1 through mail sent claim form to the appellant and advised to submit it along with relevant documents. On 14.6.2008 the appellant submitted the claim form along with the documents.

3. The respondent no.1 addressed letter dated 25.8.2010 intimating the appellant that the claim was closed with the observation that the labourer died due to the fall from the first floor of the site which was at a height 21 mtrs and as per the terms of the insurance policy the height of the site should not exceed 9 mtrs.

4. The appellant submitted that a maximum height such as cement plant, power plant goes upto 150 mtrs and inclusion of the term regarding variation in height of the site without intimating the appellant and not on a fresh proposal form. The appellant contended that inclusion of height clause in column no.12 of the insurance policy issued for the period 21.3.2010 to 27.5.2010 is arbitrary and not binding on it. The appellant submitted that it had not observed the height restriction clause presuming that the policies of similar nature as those issued earlier and kept the policy in its records.

5. The appellant made a representation on 4.9.2010 requesting the respondent insurance company to reconsider the claim on technical aspect and also in the light of poor family condition of the deceased. The respondents had not given reply. Therefore, the appellant filed complaint claiming the sum assured under the insurance policy in regard to death of one of its labourers.

6. The respondents resisted the claim contending that after receiving the information, it had issued claim form and processed the claim after appointing surveyor and contended that the appellant through its letter dated 30.7.2010 informed the respondents that the deceased fell from the height of 21 mtrs and

succumbed to injuries. The surveyors report and investigation report had also confirmed the facts and as the death of the labour occurred from a fall of 21 mtrs height is not covered by the terms of the insurance policy. As such the claim was not settled. The claim has to be made subject matter of dispute before 12 months of the disclaim, in any court of law and as such the complaint is not filed within the period of limitation.

7. The Personal Officer of the appellant company filed his affidavit and the documents, Exs.A1 to A9 and on behalf of the respondents, the Zonal Manager Claims of the respondent insurance company filed his affidavit and the documents, Exs.B1 to B5.

8. The District Forum dismissed the complaint on the premise of height restriction clause incorporated in the terms of the insurance policy.

9. Feeling aggrieved by the order of the District Forum, the complainant company has filed appeal contending that the District Forum has not discussed the contention of the appellant and dismissed the complaint without referring to the IRDA Regulations and the order of the National Commission in R.P.No.186 and 187 of 2007. It is contended that the District Forum has not considered the evidence in proper perspective.

10. The learned counsel for the appellant filed written arguments.

11. The point for consideration is whether the order of the District Forum is vitiated by misappreciation of fact or law?

12. It is not in dispute that the appellant company obtained insurance policy covering risk on its workers. The appellant has contended that since 9.2.2009 it has been obtaining the insurance policy from the respondent insurance company and got it renewed regularly on payment of premium payable on referring to number of labour.

13. It is not disputed that the labourer working at M/s Andhra Cements worksite Durgapuram Guntur fell down while working with cantering material on slab and he was taken to Amarnath Hospital Guntur where he was declared dead. The

respondent repudiated the claim on the premise of height restriction clause incorporated in the terms and conditions of the policy. It is not denied that the appellant informed the respondent company that the deceased died from a height of 21 mtrs. The appellant has raised objection that the height restriction clause limiting the height to 9 mtrs has been added in the terms of the insurance policy without giving intimation to it.

14. In the letter dated 3.9.2010 the appellant company referred to the maximum height at worksite would be upto 150 mtrs and while incorporating the height class in the WC policy the respondent has not discussed nor informed it. The letter reads as under:

While on the subject, you will appreciate that we have been doing business with you from the inception of the Company and you are well aware that we are specialized in construction of Industrial Buildings such as Cement Plants and Power Plants where the maximum Height goes upto 150 meters. While incorporating the Height Clause in the W.C.Policy, neither you have discussed with us nor informed us about the height clause and you have incorporated the Height clause in some of the W.C. Policies.

In this context, we have brought the said subject to your kind notice recently when we noticed that the clause has been added in the policy. Also written letters to your Office stating the valid reasons to amend the height clause. But we regret till date we have not received any reply from your Office, and in meanwhile stating the Height clause condition you have rejected the said death claim.?

15. Clause 12 of the insurance policy lays down the governing condition as to the liability of the respondent insurance company exonerating it from making payment in respect of death of the labouers of the appellant company if occurred from a fall from the site height of which exceeds 9 mtrs in other words the respondent is liable to pay the sum assured in the circumstances where the death of the labourer occurs from fall from a height below 9 mtrs.

16. The learned counsel for the appellant company has contended that the respondent insurance company has to follow the regulations 2002. As per

regulation 3 the insurer must explain the warranties, exceptions and conditions to the proposed policy holder and as per explanation to the regulation the rider or riders attached to a life policy would bear the nature and character of the main policy. He has submitted that the respondent has not explained the condition of height clause before inclusion and in the prior policies the height clause was not mentioned.

17. He has placed reliance on the decision of the Honble National Commission in œNational Insurance Company vs Sri D.P.Jain? and œNational Insurance Company vs Manjeet Kumar and another? in R.P.No.186 and 187 of 2007 respectively wherein it was held that clauses are required to be ignored if the insurance company or its agent of intermediary does not adhere to the mandatory requirement of explaining the exclusion clauses before issuance of the insurance cover.

18. It is not denied by the respondent insurance company that the exclusion clause i.e., height restriction clause was not originally incorporated in the previous insurance policies. However, the appellant company has not mentioned specifically as to from which year of the insurance policy the height clause has been got incorporated. In view of the decisions cited and the ratio laid therein, it can be said that the insurance company has the obligation to explain the exclusionary clause to the insured if incorporated in the insurance policy. As such the exclusionary clause cannot be made applicable to the case of the death of the labourer who fell from the height of 21 mtrs.

19. The contention of the respondent insurance company is that the claim has to be made subject matter of the dispute before any court within 12 months from the date of disclaimer. The respondent repudiated the claim and informed repudiation of the claim to the appellant company through letter dated 26.08.2010. The clause 8 of the terms of the insurance policy mandates that the claim has to be made subject matter of dispute before court within 12 months from the date of disclaimer

20. In œHimachal Pradesh State Forest Co.Ltd., Vs United India Insurance Co.Ltd., reported in 2009(2) SCC 252 held that the claim has to be made subject matter of arbitration or suit in a court within the prescribed period than the period

mentioned in the limitation Act. The respondent repudiated the claim on 26.8.2010. The complaint was filed on 21.11.2011. As such it can be said that the claim is barred by law of limitation. In terms of clause 8 of the terms of the insurance policy, the appellant company ought to have filed the complaint within one year from the date of repudiation of its claim. As such, we are not inclined to interfere with the order of dismissal of the complaint.

21. In the result the appeal is dismissed confirming the order of the District Forum. There shall be no order as to costs.