

2004 3 CLT 420 : 2005 1 CPR 68

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

CHENAJI CHATURJI
RAJPUT

APPELLANT

Vs

United India Insurance
Co. Ltd

RESPONDENT

Date of Decision: April 8, 2004

Citation: 2004 3 CLT 420 : 2005 1 CPR 68

Hon'ble Judges: M.S.Parikh , M.K.Joshi , Leenaben P.Desai J.

Advocate: K.C.Mehta , M.J.Parikh

Final Decision: Dismissed

Judgement

1. BY way of this complaint, the complainant has prayed for compensation in the sum of Rs. 5,26,530/- with interest @ 18% p.a. from the date of

complaint till payment and cost on following brief allegations of facts.

2. THE complainant, an agriculturist having 15 acres of land purchased one KSB submersible pump set, 62 H.P. for the purpose of irrigation in his

land as well as land of his brother, in all 30 acres. THE pump set was insured with opponent Insurance Company and was installed approximately

450 ft. below the ground level by using casing pipe of 8"" diameter. It has been alleged that since the water level went down, the pump set was

required to be pushed downwards. He, therefore, engaged an expert boring contractor. While attending to the work of pushing down the pump

set, all of a sudden it got stuck in the land somewhere 500 feet below the ground level and despite efforts, the pump set could not be dragged out.

THE complainant, therefore, informed the opponent Insurance Company about the incident. THE Surveyor of the opponent Insurance Company

visited the site. It has been alleged that necessary formalities were complied with by the complainant. However, he received communication on

30.5.1996 from the opponent Insurance Company saying that the claim was not sanctioned as the starter used for the pump set was of 50 HP

capacity leading to overheating of the starter contacts and single phasing of motor damaging starter winding and getting the pump set jammed.

According to the complainant, even accidents resulting from overloading operation experiments or tests requiring abnormal conditions would be

covered. According to the complainant, repudiation of the claim, therefore, amounted to deficiency in service on the part of the opponent

Insurance Company. THE complainant, therefore, prayed for compensation in the sum of Rs. 79,000/- for motor, Rs. 35,000/- for cables, Rs.

8,000/- for removal and lowering charges, Rs. 44,530/- for pipes, Rs. 3,00,000/- for loss of crop for one full year and Rs. 60,000/- by way of

compulsory payment made to Gujarat Electricity Board.

Opponent Insurance Company resisted the complaint inter alia on the ground that the claim was repudiated on the basis of terms and conditions of

the policy and that the complaint would not be tenable at law. It has asserted that as per Clause 3 of the general exceptions, accident loss damage

and/or liability resulting from overload operations experiment or tests requiring the imposition of abnormal conditions, the company would not be

liable under the policy. It would also be not liable under the policy as per exception No. 6 for loss, damage and/or liability caused by or arising out

of the wilful act or wilful neglect or gross negligence of the insured or his responsible representatives. According to the opponent Insurance

Company, the pump set purchased by the complainant was of 62 H.P. capacity. It was alleged to have been installed at the bore-well of the

complainant but the electrical connection which the complainant had from opponent Gujarat Electricity Board was for only 50 H.P. capacity and

the starter installed by the complainant was also for 50 H.P. capacity. It was asserted that the complainant applied for load of 60 H.P. to the GEB

who had carried out survey and had given estimate of Rs. 5,240/- to be paid by 13.12.1994. However, the complainant did not obtain any higher

load of 60 H.P. The Surveyor of the opponent Insurance Company had inter alia by letters dated 15.7.1995, 11.10.1995 and 1.11.1995 called

upon the complainant to supply certain details, that the complainant had not complied with the formalities and did not supply all the necessary

documents including bills, vouchers and receipts for payment of the alleged charges for the recovery operations stated to have been carried out by

the complainant/complainant's contractor. Yet, the Surveyor, without prejudice, assessed the loss as per the policy conditions at Rs. 1,01,838/-. It

has been asserted that use of 50 H.P. power and 50 H.P. starter for 62 H.P. pump set would result into overloading, causing short circuit fire and

damage to the pump set which can get jammed inside. Knowing these facts, the complainant was required to get higher load of power which was

sanctioned by GEB but the complainant continued with lesser HP and starter causing damage to the pump set. Under such circumstances,

exceptions 3 and 6 quoted above as appearing in the policy of insurance would apply. It has also been asserted that the bore-well was old and the

pump that is alleged to have been fitted was a newly purchased one but in the absence of pump having been not taken out it was not possible to

verify and find out whether new pump was fitted in the bore-well or not. The complainant did not make any effort to take out the pump and hand

over the same to the opponent Insurance Company. The allegation with regard to the manner in which the incident had taken place has not been

admitted by the opponent Insurance Company. The opponent Insurance Company has also not admitted various heads of damages. It has,

therefore, prayed for the dismissal of the complaint with cost.

The complainant filed affidavit of one ""Vahjibhai Ganeshbhai Chaudhari after the aforesaid reply was filed who is stated to be a boring contractor.

It is alleged that on 3.3.1995 the pump set, while carrying out the operation of taking it to a deeper level got stuck up/jammed and in spite of

efforts having been made during the period 6.3.1995 to 8.3.1995 it could not be brought out. The complainant produced list of documents on

13.8.1997 and the complaint's learned Advocate fairly conceded that the first two items namely receipt in original issued by GEB Dated

13.12.1994 and the Yadi submitted by GEB dated 14.10.1994 were not annexed with the list of documents.

3. AT the hearing it also transpired that the complainant tried to put up a case before this Commission that he had already obtained 60 H.P. load of

power from the GEB and, therefore, repudiation of the claim on the ground that 62 H.P. pump set was used in sanctioned loan of 50 H.P. of

power with 50 H.P. starter was not acceptable. This Commission had an occasion to call upon the complainant's learned Advocate to substantiate

such a stand by producing the electricity bills for the relevant period. Today when the matter was argued, the learned Advocate for the complainant

fairly conceded that the complainant was not in a position to produce such electricity bills. That coupled with absence of first two documents stated

to have been filed with aforesaid list raises a serious suspicion about the bona fides of the complainant. The matter was required to be examined in

that light further. Reliance placed upon the third document namely xerox copy of certificate stated to have been issued by Dy. Engineer, Gujarat

Electricity Board on 22.1.1996 was examined. The certificate would read as ""This is to certify that Shri Chenaji Chaturji Rajput of village Sunok,

Ta. Sidhpur is occupying the Ag connection No. 31 of 60 H.P. demand load and paid connection released from 28.10.1994 and he is the Ag

consumer of GEB"". Since the matter was required to be substantiated by the complainant, even the opponent Insurance Company had an occasion

to investigate the matter and the investigator has submitted his report which is placed on record of this complaint. The report reads as under:

This Investigator submits the following facts for your perusal and notice- (1) We visited the Ranuj and Unjha offices of the Gujarat Electricity

Board (GEB) to enquire the status of the above mentioned complainants' power connection as on 3.3.1995. (2) The complainant had lodged a

claim at the Patan Branch Office of your company with the plea that his submersible pump got jammed in the well on 3.3.1995. (3) The claim of

the complainant was set aside by your Patan Office as it was found that the insured article was operating on low power and was thus vibrating. (4)

The complainant has a power connection distinguished by consumer No. Ag 31. (5) The first power connection was given to the complainant on

28.8.1968. This was a 10 H.P. connection on Survey No. 610/02. (6) He applied for another 40 H.P. of power on 9.6.1971. (7) 50 H.P. (10 +

40) of power was regularised on 1.11.1971. (8) His power was disconnected on 11.5.1990. (9) He applied for reconnection on 26.10.1990 (10)

Power was sanctioned on 5.11.1990 by Mehsana Division of GEB (11) His power was reconnected on 16.12.1990 (12) There was another

power disconnection on 16.9.1994 (13) He applied for reconnection on 18.10.1994. He deposited Rs. 6,086.00 (Rupees six thousand eighty, six

only) towards Estimate Charges on 24.10.1994. Power of 50 H.P. was released on 28.10.1994. (14) He applied for another enhancement of 10

H.P. on 27.10.1994. (15) He deposited Rs. 5,240.00 (Rupees five thousand two hundred forty only) vide receipt No. 3476 on 13.12.1994 (16)

GEB issued a notice to him on 3.1.1995. However, the complainant never submitted the Test/Electrical Inspectors report to GEB. (17) We

examined the entire set of papers pertaining to the complainant's power connection at the Unjha Office of GEB (18) Shri Ganpatlal L. Suthar

[Deputy Engineer] guided us through all the papers pertaining to the complainant's power connection. (19) He informed us that there was no

question of releasing power to the complainant or any one for that matter, without the Test Inspector's report and a subsequent survey by GEB

officials. (20) We showed him a copy of the document produced by the insured to the Honourable Forum in support of his contention that a load

of 60 H.P. was released to him on 28.10.1994. (21) Mr. G.L. Suthar confirmed that this certificate was a fake. Please note that there was no

copy of this certificate in the records of GEB. (22) Please also note that the estimate date is actually 14.11.1994 and not 14.10.1994. This was a

bona fide mistake which we found corrected in the GEB records. (23) Mr. Suthar informed us that while the certificate was a fake, a copy of the

firm quotation of GEB, test report and test report receipt should be called from the complainant. That is where it will be his undoing. (24) Please

note that the complainant may produce bill of 60 H.P. to support his contention. However, it is in order for GEB to start sending bills with charges

for the new load 3 months after the issue of notice for the test report. It is not necessary that the load shown on the bill is the actually installed load.

(25) Mr. Suthar showed us that the insured had applied for further enhancement of power on 13.10.1999. This time an additional 25 H.P. was

requested by the complainant. A firm quotation was provided to him on 5.1.2001. (26) He paid Rs. 11,345.00 (Rupees eleven thousand three

hundred forty-five only) for the additional load from 2.2.2000 as he already had a technical sanction for 60 H.P. (not released), a total power of

85 H.P. was released to him on 10.3.2000 which continues till date. (27) Both Chhaganbhai R. Patel (Junior Engineer at GEB Ranuj) and Mr.

Ganpatlal L. Suthar appraised us on the notoriety of this complainant.

Our Conclusion It is very obvious that, the certificate produced by the complainant is a fake. There was no question of releasing 60 H.P. of power

(additional only 10 H.P.) on 28.10.1994. The GEB follows a set procedure in all such request matters. A proposal is sent to the competent office

of GEB which is usually a Division Office. Subsequent to a technical sanction, an estimate is given to the applicant. The applicant pays the

estimated charge. Subsequently an Electrical Inspector's report is demanded from the complainant with a three months notice. A survey is done by

the GEB officers after the Electrical Inspector's test report of the submersible pump. The GEB will never sanction any additional load without

following the above procedure. So the submersible pump in question was operating on a lower power of 50 H.P. as on the date of loss.

Depositing the estimated amount does not mean or guarantee release of additional load. Mr. G.L. Suthar's and Mr. C.R. Patel's opinion about the

complainant is substantiated by his temerity to produce a forged document to hijack justice.

With a view to test the bona fides of the complainant further, complainant was required to explain the date 28.10.1994 shown as the date of

release of 60 H.P. power as indicated in the alleged certificate dated 22.1.1996 in the context of receipt of estimated charges deposited by the

complainant for increase in the load. Although that receipt has conveniently not been produced by the complainant with list dated 13.8.1997, the

list itself discloses the date of the receipt to be 13.12.1994. It is impossible that the GEB would release additional load of power as indicated in the

alleged certificate dated 22.1.1996 from 28.10.1994. The complainant has also not been able to produce the test report which was the next step

(step subsequent to the deposit of estimate of charges). It would be clear from the investigation report submitted by the opponent Insurance

Company that no test report was submitted by the complainant to the GEB. Thus, the truth as surfaces from the complaint proceeding is that the

complainant continued to use 50 H.P. power to operate 62 H.P. motor pump set. The complainant's exercise of falsely submitting before this

Commission about having applied for additional load of power and having obtained the same speaks volumes about the approach to the very fact

about the alleged incident set out in the complaint. As a matter of fact, the alleged incident has not been supported by any cogent evidence. Even

the contractor's affidavit subsequently filed does not indicate about how the pump set was required to be taken to a deeper level and the manner in

which the whole exercise was undertaken by the contractor. There is no averments worth the name showing that the electricity power was not

required to be used at any point of time during the operation alleged to have been undertaken for taking the pump set to a deeper level. In our

considered opinion, the repudiation of claim by the opponent Insurance Company clearly appears to be bona fide and justified and the complainant

has tried to set up a false case for obtaining insurance amount from the opponent Insurance Company in this complaint. Thus, in spite of the fact

that the learned Advocate for the complainant fairly seeks to have compensation as approved by the Surveyor in the sum of Rs. 1,01,838/-, we do

not propose to award any amount of compensation in favour of the complainant accepting the submission and contention of the opponent

Insurance Company that the complainant would not be entitled to the claim as per the exception Clauses 3 and 6 of the policy of insurance set up

for repudiation of the claim by the opponent Insurance Company. Repudiation of claim clearly appears to be bona fide, and, therefore, will not

tantamount to deficiency in service.

4. WE called upon the learned Advocate for the complainant why cost should not be imposed upon the complainant, who had gone to the length

of producing a false and fake certificate for obtaining relief in this complaint. The learned Advocate did not have any answer to that. Hence,

bearing in mind the facts and circumstances of the case, we propose to award cost quantified at Rs. 1,500/-. Following order is, therefore, passed.

ORDER This complaint is dismissed with cost quantified at Rs. 1,500/-, to be paid by the complainant to the opponent Insurance Company within

8 weeks from today. Complaint dismissed.