

(1996) 10 NCDRC CK 0070

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

United India Insurance Company
Ltd.

APPELLANT

Vs

PRONTOS LIMITED

RESPONDENT

Date of Decision: Oct. 9, 1996

Citation: 1996 3 CPJ 483 : 1997 1 CLT 132 : 1997 1 CPC 286 : 1997 1 CPR 113

Hon'ble Judges: P.N.Nag , I.D.Bali , Krishana Tandon J.

Final Decision: Appeal dismissed

Judgement

1. THIS appeal is directed against the order of the learned District Forum, Solan, dated 31.3.92, whereby the respondents (hereinafter to be referred to as the appellants) have been directed to pay an amount of Rs. 22,345/- as compensation along with interest @ 9% per annum and costs of Rs. 550/- to the complainant (hereinafter to be referred to as the respondent).

2. THE respondent, which is a Company, having its factory and works at Plot No. 63-66, Sector V, Parwanoo, Tehsil Kasauli, District Solan, had insured its factory and the machinery against fire, land slides and flood with the appellant vide Cover Note No. 123778 dated 25.11.88 and such insurance was valid upto 24.11.89. On the night intervening 15-16 August, 1989, when the insurance policy was in force, a portion of the retaining wall of the factory of the respondent collapsed due to heavy rains. THE Insurance claim was lodged by the respondent with the appellant. THE Surveyor was appointed by the appellants who has assessed the loss at Rs. 22,345/- and on that basis, the learned District Forum has awarded this amount as compensation. However, the appellants repudiated the claim on the ground that the damage

caused was due to the accumulation of rain water and not because of flood. Further, since no premium was paid for the peril "flood", the loss suffered by the respondent is not covered by the insurance policy.

Mr. Deepak Gupta, learned Counsel for the appellant vehemently submits that the insurance policy did not cover the requisite peril i.e., flood and, therefore, the appellants were justified in repudiating the claim.

A perusal of the Cover Note No. 123788, Annexure-1, shows that the insurance was taken in respect of three risks, namely; fire, land slide and Flood. The requisite premium was paid, admittedly, by the respondent. However, it appears there was some objection on the part of audit authorities of the Insurance Company that deficient premium was calculated and received by the Insurance Company and consequently the respondent was called upon to pay the balance premium of Rs. 3,895/- in order to cover the risk of flood. There is no dispute that the balance premium of Rs. 3,895/- is also paid by the respondent although, according to Mr. Deepak Gupta, learned Counsel for the appellants, it has been paid after the peril of "flood" had occurred.

3. WE have considered the matter and we do not find any merit in the submissions of the learned Counsel for the appellants. Admittedly, under the Original Insurance Cover Note, Annexure-1, the risk of "flood" is covered in the Insurance policy. Once it is covered in the original insurance policy, in our opinion, the appellants were not justified in repudiating the claim. Merely the insurer had issued a wrong policy and failed to charge appropriate premium, does not entitle them to repudiate the claim of the respondent. In *Jagdish Singh v. National Insurance Company Ltd.*, I (1994) CPJ 172 (NC) Consumer Protection Reporter 467, the National Commission has held in similar circumstances that the Insurance Company cannot repudiate the claim of the insured on the ground that it had issued a wrong policy and failed to charge the appropriate premium since the policy clearly was for special peril as the premium short charged can be recovered from the amount payable. Furthermore, once the policy has been issued in the name of the respondent covering the risk, the parties are governed under the terms of the contract and, therefore, the appellants are liable to compensate for the loss suffered by the respondent.

Further more, the plea of the appellant is again untenable that the respondent paid a premium of Rs. 3,895/- to the appellants and the same was accepted without protest by the appellants. No doubt, Mr. Deepak Gupta, learned Counsel for the appellants has argued that this was done after the peril of flood had occurred, but this will not make a difference, as the appellants have never raised objections for

the payment of that premium of Rs. 3,895/- at any stage before filing of the complaint. In other words, they have accepted the balance premium deposited by the respondent with the appellants on 2.1.90 and, therefore, the appellants are estopped from denying the liability of insurance policy. The finding in this context given by the learned District Forum is correct with which we are in entire agreement.

4. THERE is no force in this appeal and the appeal is accordingly dismissed. Appeal dismissed.