

GAHC010128832014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6762/2014

SURJAT ALI
S/O- LT. MARFAT ALI, R/O VILL.- BORDOLANI, P.O.- MANDIA, DIST.-
BARPETA, ASSAM.

VERSUS

THE NATIONAL INSURANCE COMPANY LTD. and 2 ORS
REP. BY ITS REGIONAL MANAGER, REGIONAL OFFICE, BHANGAGARH,
GHY- 5.

2:THE BRANCH MANAGER
NATIONAL INSURANCE COMPANY LTD.
BARPETA ROAD BRANCH
CHOUDHURY MANSION
NEAR BUS STAND
BARPETA ROAD
DIST.- BARPETA
ASSAM
PIN- 781315.

3:THE INSURANCE OMBUDSMAN
GUWAHATI CENTRE
JEEVAN NIVASH
5TH FLOOR
NEAR PANBAZAR FLYOVER
S.S. ROAD
GHY- 1

Advocate for the Petitioner : MRA HAWARI

Advocate for the Respondent : MR.R GOSWAMIR-1and2

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 06.06.2024

Heard Mr. S. Islam, learned counsel for the petitioner. None appears for the respondents.

2. The petitioner by way of instituting the present writ petition has challenged the order dated 12.12.2013 passed by the Insurance Ombudsman, Guwahati Centre, whereby the complaint filed by the petitioner has been rejected.

3. The petitioner had insured his house and the entire household items with National Insurance Company Ltd. at its branch office at Barpeta Road Branch w.e.f. 10.05.2012 till midnight of 09.05.2013. However, on 16.06.2012, on account of erosion caused by river Velengi, the house of the petitioner was damaged and rendered unfit for human habitation. The petitioner accordingly under the said Insurance Policy approached the Insurance Company and lodged a claim for the loss as occasioning to his house. The total loss as estimated by the petitioner was to the tune Rs.5,40,600/-. On receipt of the said claim, the Insurance Company deputed a surveyor to assess the loss so caused to the petitioner dwelling unit. The said surveyor on making the necessary assessment submitted a report holding that the loss as suffered by the petitioner was not covered by the risks as provided for under the Household Policy as taken by the petitioner. Accordingly, the Insurance Company repudiated the claim of the petitioner herein.

4. Being aggrieved, the petitioner approached the Insurance Ombudsman, Guwahati Centre by way of instituting complaint being Complaint No.GUW-G-048-1314-0219. The Insurance Ombudsman, Guwahati Centre upon hearing the parties to the proceeding and on perusal of the materials available on record proceeded vide order dated 12.12.2013, to uphold the decision of

the Insurance Company in repudiating the claim of the petitioner herein. The Insurance Ombudsman, Guwahati Branch by holding that such repudiation was just and reasonable proceeded to dismiss the complaint as filed by the petitioner in the matter.

5. The Insurance Ombudsman, Guwahati Centre for the purpose of arriving at its conclusion that the repudiation of the claim of the petitioner by the Insurance Company was just and proper had relied on the risk covered by the said Insurance Policy and held that the damage caused due to erosion by river was not covered under the above policy.

6. Mr. S. Islam, learned counsel for the petitioner has reiterated the facts and circumstance as noticed herein above and accordingly his submissions are not reproduced herein.

7. I have considered the submissions advanced by the learned counsel for the petitioner and perused the materials available on record. It is not in dispute that the dwelling unit of the petitioner herein was under coverage of a Household Insurance Policy taken by the petitioner from the National Insurance Company Limited. It is further not disputed by the petitioner that the damage so caused to his house was on account of the erosion caused by the river Velengi.

8. Learned counsel for the petitioner has contended that the Household Insurance Policy having covered damages occasioning on account of floods, the erosion being one of the consequences of floods, the claim of the petitioner could not have been repudiated by the Insurance Company.

9. The said submission of the learned counsel for the petitioner is based on Section 1 of House Holders Insurance Policy of National Insurance Company Limited, wherein under Clause (a) there of Flood and inundation is one of the circumstances under which the company had indemnified the insurer for the loss or damage to the insured building and its contents.

However, the said policy under the heading ‘Special Exceptions’ in Clause-f thereof provides that such indemnification of loss and damage to the dwelling unit shall not be extended in respect of coastal or river erosion. The relevant provision of the said ‘Special Exception’ is extracted herein below:-

“Special Exception:

The Company shall not be liable in respect of;

.....

F. Normal cracking, settlement or bedding down of new structure, the settlement or movement of made up ground, coastal or river erosion, defecting design or workmanship or use of defective materials, demolition, construction, structural alteration or repair of any property or ground work or excavations.”

10. It is to be noted that the documents/certificate as produced by the petitioner in support of his claim including the certificate issued by the Circle Officer also clearly indicates that the damage occasioning to the house of the petitioner was on account of erosion caused by river Velengi in the year 2012.

11. The said provision of Clause-f under the heading ‘Special Exception’ having provided that the Insurance company shall not be liable for the damage occasioning to the petitioner dwelling unit on account of erosion by river velengi, the petitioner would not be entitled to present a claim under the said Insurance Policy for damages to the insured property for risks not covered by the policy. The claims as made under an Insurance Policy must be so considered by reckoning the risks as covered by it and in the present case the Insurance Policy having not included damages caused due to river erosion as one of the risks covered by it, this Court does not find any error on the part of the Insurance Company in repudiating the claim of the petitioner herein.

12. In view of the above, the repudiation of the claim of the petitioner by the Insurance Company does not call for any interference by this Court. Consequently, the order dated 12.12.2013 passed by the Insurance Ombudsman, Guwahati Centre also does not call for any interference.

13. In view of the conclusions as recorded herein above, the writ petition is held to be devoid of any merit and accordingly, the same stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant