NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 152 OF 2011

(Against the Order dated 31/01/2011 in Complaint No. 61/1997 of the State Commission Gujarat)

1. M/S. FORGE & FORGE PVT. LTD.
M/S forge& forge pvt.Ltd.kudwara road,
rajkot
gujrat .....Appellant(s)

Versus

1. NEW INDIA ASSURANCE CO. LTD.
The new india assurance co ltd.Nagindas chamber.Dhebar Road
rajkot,
Gujarat. .....Respondent(s)

BEFORE:
HON'BLE MRS. JUSTICE DEEPA SHARMA,PRESIDING MEMBER

For the Appellant : Mr. Bharat Malhotra, Advocate

For the Respondent : Mr. Asutosh Sharma, Advocate and
Mr. S. L. Gupta, Advocate

Dated : 10 Jan 2023

ORDER
ORDER (ORAL)

The present Appeal has been filed by the Complainant against the order dated 31.01.2011 of the State Consumer Disputes Redressal Commission, Gujarat (for short "the State Commission") in Complaint No.61 of 1997 whereby the Complaint was dismissed.

2. The brief facts of the case are that on 18.03.1993, during validity of the insurance policy, the machine piston rod of 3.15 ton hammer of one of the machines was accidently damaged and broken. Since the machine was insured with the Respondent

-2-

(hereinafter referred to as "the Insurance Company"), the Complainant lodged claim for an amount of ₹10,06,938/-. The Insurance Company, however, rejected the claim and held that since the machine piston rod had got damaged due to excessive use which was covered under the exclusion clause, the Complainant was not entitled to any claim. The Insurance Company reached to the conclusion that the Complainant was not entitled to any claim on the basis of the surveyor report dated 04.01.1994. During the pendency of the Complaint, the Complainant had also appointed their surveyor Mr. Bhaskar G. Bhatt who had given his report dated 05.12.2005. The State Commission had rejected the claim, aggrieved by which the present Appeal has been filed.

3. It is argued by learned Counsel for the Complainant that the piston rod had been damaged due to accident and not due to excessive use and it had broken down due to faulty material or faulty design of OEM and therefore, the loss was covered under the policy.

4. It is argued by learned Counsel for the Insurance Company that the Complainant had produced no evidence on record which could show that the piston rod was made of faulty material or that

-3-

its design was faulty. It is further argued that the Complainant has not given the date of purchase of the said machine and has not even disclosed as to when he started using the said machine. It is also argued that since the Complainant has not even alleged that it was a new machine and therefore there was no continuous use of the machine and the rod could not have been broken down due to continuous use, the findings of the State Commission cannot be found faulty and the Appeal is liable to be dismissed.

5. I have heard the arguments and perused the record.

6. There is no dispute to the fact that the piston rod had broken down which was covered by the insurance policy. While the Complainant alleges that it had broken down due to accident, the case of the Insurance Company is that it had broken down due to continuous use and therefore, they had repudiated the claim. The Complainant had also appointed their surveyor during the pendency of the Complaint who had given his report on 05.12.2005 and this surveyor has reported that the reason for breaking down of the piston rod was not known and the damage could be due to faulty material or faulty design. The burden immediately shifted to Complainant to prove that the rod was made of faulty material and no evidence has been produced by the

-4-

Complainant to prove this fact on record even by preponderance of evidence. As regards the faulty design is concerned, the Complainant surreptitiously is silent about certain facts like the date of purchase of machine, the period for which the machine has been in use. There is no contention and no evidence on record to show that the piston rod had broken down immediately on its use. There is no evidence on record produced by the Complainant before the State Commission that the machine had not been in continuous use for long and therefore, there is nothing on record to contradict the findings of the surveyor that the piston rod had broken down due to continuous use of the machine. There is nothing on record to prove that the piston rod had broken down accidently. Even the surveyor of the Complainant has not opined that the piston rod had broken down due to accident and has opined that reason was not known. In view of this, the findings of the State Commission cannot be found fault with as the same are based on the evidences on record. There is no illegality, infirmity or perversity in the impugned order. The Appeal has no merit and the same is dismissed with no order as to costs.

.....J
DEEPA SHARMA
PRESIDING MEMBER