**(2000) 07 NCDRC CK 0045**

**In the National Consumer Disputes Redressal Commission**

AGGARWAL UDYOG — APPELLANT

Vs

NATIONAL INSURANCE COMPANY LTD. THOROUGH ITS MANAGER — RESPONDENT

**Date of Decision :** 05-07-2000

**Acts Referred:**

**Citation :** 2000 3 CPJ 435

**Hon'ble Judges :** Amarjeet Chaudhary , A.D.Malik J.

**Final Decision :** Appeal dismissed

## Judgement

1. COMPLAINANT-M/s. Aggarwal Udyog have come up in appeal against the order of the District Forum, Faridabad dated 10.11.1995 vide which the complaint was dismissed.

2. THE case of the complainant as set-up before the District Forum was that the complainant firm is engaged in the business of mustard oil and had taken the Marine Policy for a sum of Rs. 10 lacs from the opposite party-National Insurance Company. THE opposite party had issued temporary Cover Note No. 314468 dated 18.9.1990 on receiving the premium. THE complainant got itself covered in respect of rail and road risks of mustard oil packed in tins from Hodel to anywhere in India. THE risk included leakage, S.R.C.C., T.P.N.D. and shortage or any other loss of the goods while in transit. THE policy which the complainant had taken was extended from time to time on payment of required premium. THE complainant further alleged that it had booked for loading 600 packed tins of mustard oil with Mahavir Road Carrier, Azadpur, Delhi and the consignment was to be handed over to M/s. Sushil Kumar Mohan Lal at Guwahati. THE transportation of the goods was from Hodel to Guwahati through truck No. HR-10-2698 on 20.1.1991 under consignment note dated 20.1.1991 entered under Bill No. 669 of the same date. THE complainant has alleged that out of 600 tins, 44 tins were totally empty whereas 125 tins were found leaking due to jerks and jolts received during the course of transportation. THE complainant further alleged that there was shortage of 1058 kgs. mustard oil at the time of delivery

 

to the consignee and a certificate to that effect was also issued by the road carriers. THE complainant further alleged that he had suffered a loss of Rs. 36,199.20 paise due to short delivery of goods. THE complainant thereafter filed a claim of loss bearing No. 44/91-92/06 with the opposite party and the Insurance Company vide letter dated 16.1.1993 intimated to the complainant that his claim has been rejected. Aggrieved against the same, the complainant had filed the complaint before the District Forum seeking an amount of Rs. 35,199.20 as price of the goods and Rs. 15,000/- as compensation on account of harassment. The matter was contested by the Insurance Company by taking a plea that cheque of Rs. 2,001/- bearing No. 493491 dated 18.9.1990 towards the payment of premium was dishonoured by the bankers of the complainant and as such the opposite party had no alternative but to cancel the policy under intimation to the complainant. It was further pleaded that claim of the complainant cannot be entertained after cancellation of the policy of insurance and repudiation of the claim was as per rules of the Company. It was also pleaded that when the original policy had been cancelled, there was no question either of renewal of the policy or extension thereof. However, the District Forum did not agree with the submissions of the Counsel for the complainant and dismissed the complaint.

The challenge to the impugned order is mainly on the ground that first cheque was given on 18.9.1990 for a sum of Rs. 2,001/- which was alleged to be dishonoured on 27.2.1991. The 2nd, 3rd and 4th cheques for Rs. 2,023/- each were also given on 3.11.1990, 6.2.1991, and 30.7.1991 which were cleared and payments were received by the opposite party on 7.12.1990, 19.2.1991, and 5.9.1991 respectively. Though the cheques were received by the Insurance Company, yet the claim was wrongly repudiated in the year 1993.

3. NOTICE of the appeal was issued and in pursuance of which the respondent has put in appearance through his Counsel, who has defended the order of the District Forum. The Commission has considered the submissions of the Counsel of both sides and has also perused the impugned order. From the record, the Commission has observed that the complainant had taken policy on 18.9.1990 vide Cover Note No. 314458. Cheque No. 493491 dated 18.9.1990 for a sum of Rs. 2,000/- drawn on Punjab National Bank, Hodel was presented on 20.9.1990, which was dishonoured vide memo dated 27.2.1991. The consignment of 600 tins of mustard oil was despatched from Hodel to Guwahati on 20.1.1991 on which date the risk of the consignment was not covered for the reason that the cheque was dishonoured in respect of the marine policy, which was taken from 18.9.1990 to 17.9.1991. The Commission is of the view that the liability of the Insurance Company arises only when it has received the insurance premium. If the cheque is bounced, there would have been no liability of the Insurance Company. While issuing the cheque, the complainant should have ensured that there is sufficient money in the account. It is pertinent to point out that no insurer shall assume the risk to be covered unless the premium stands paid. In view of the aforesaid discussions, we hardly find any merit in the appeal as the

 

claim has rightly been repudiated by the Insurance Company and the District Forum committed no error in dismissing the complaint. Accordingly, the appeal fails and is hereby dismissed. Appeal dismissed.

 