
(1996) 04 NCDRC CK 0040

In the National Consumer Disputes Redressal Commission

A.M.NAUSHAD

APPELLANT

Vs

National Insurance Company Ltd

RESPONDENT

Date of Decision : 19-04-1996

Acts Referred:

Citation : 1997 1 CPJ 177

Hon'ble Judges : P.K.Shamsuddin , K.Balakrishnan Nair , K.M.Latha J.

Final Decision : Complaint dismissed

Judgement

1. THIS complaint is filed under Sections 12 and 17 of the Consumer Protection Act seeking compensation. The material allegations in the complaint are as follows: The complainant owned a fishing boat named Eamsona having Registration No. NG 786 and it was registered with the Nagapattanam Port Authorities. He had taken Marine Hull Insurance Policy from the opposite party-Company in the year 1988 for a sum of Rupees three lakhs in respect of the boat. The latest policy issued was covering the period from 4.6.90 to 3.9.90. On 16th June, 1990, the complainant's vessel went out for fishing. At that time the weather condition was normal. By about 4.30 a.m. they proceeded from Neendakara sea- mouth towards the west and at about 6.30 a.m. they started fishing. After a couple of hours when they were drawing the net, the nylon rope on the right side connecting the boat and net was broken and consequently the boat forcefully hit on the rear bottom side of the Hull which resulted in breaking of the planks. Water entered the boat with great speed and in spite of best efforts to pump out the water and to draw the boat back towards east, by about 12 noon the boat reached about 10 fathoms depth west of the sea-mouth. The engine stopped functioning on account of heavy inflow of water in the engine room. Ultimately at about 12-30 the men in the canoe landed all the four members of the crew in the Sakthikulangara Harbour jetty. Immediately the crew informed the complainant about the accident and the matter was reported to the Neendakara Port Trust Authorities and the opposite party-Insurance Company. The Nagapattanam Port Office was also telegraphically informed. Salvaging operations were done but because of rocky sea-bed and rough sea, nothing could

be done and on the 19th some broken planks of the damaged hull were washed ashore at Maruthady Beach. A claim was preferred and the grievance of the complainant is that the opposite party, illegally repudiated the claim by communication dated 8.5.92.

2. A version was filed by the opposite party stating that the complaint is a thoroughly bogus and fabricated one laid with the sole intention of cheating the opposite party and to get a fraudulent claim settled somehow. It was further averred that the complainant has stage managed in order to cheat the Insurance Company and to claim indemnity by cooking up records and by fabricating documents and records by every conceivable foul method. It was also contended that cannot be decided in a summary way in view of its complex nature, the volume of evidence both oral and documentary to be adduced and the perspicacious enquiry and probe warranted to get the truth through witnesses and documents. It was however admitted that the fishing vessel Eamsons was insured for Rupees three lakhs as per valuation done on 2.6.90 and the period of insurance coverage was from 4.6.90 to 3.9.90. It was contended that the date of the accident alleged by the complainant was 16.6.90, but intimation of the accident was given only on 18.6.90. The original engine number of the vessel was AL-4140 which is said to have been changed on 1.6.90 by another engine bearing engine No. AL-6433. The vessel aforesaid was seen registered with Nagapattanam port on 7.6.88 and it is said to have been inspected by a Surveyor at Quilon on 8.6.88. It was alleged that the presence of the vessel at Nagapattanam on 7.6.88 and at Quilon on 8.6.88 appeared to be impossible. It was further averred that the vessel was allegedly built in 1988 in the complainant's own yard after purchasing a second-hand Ashok Leyland engine from Madurai. The gearbox and stern gear equipment were said to be purchased locally. The purchase bills for the engine or other equipment were not produced by the complainant in proof of purchase of the engine or connected equipment. This change of engine was noted by Port Conservator, Kolachal. The original registration was for the period from 7.6.88 to 6.6.89. The registration was not renewed from the next year 7.6.89 to 6.6.90. It was on 13th day of issuing of insurance cover by the opposite party the alleged occurrence took place. The opposite party on 20.6.90 arranged with T.S. Ramasway and Company, Insurance Surveyors and Loss Assessors to conduct survey and loss assessment on the loss alleged to have occurred to the fishing vessel. They filed a preliminary investigation report expressing grave doubt about the genuineness of the loss and about the accident. It was also alleged that the Surveyor during the course of his enquiry came across totally conflicting and mutually contradictory details and information from the complainant and his employees and other persons. The Surveyor recommended an investigation through a Government Agency in order to expose and unravel the fraudulent nature of the claim and to expose the persons who have actively involved themselves in fabricating the claim and in concocting records and in foisting a false claim on the opposite party. The claim was seriously suspected as a highly fraudulent one by the

Surveyor in the light of his detailed enquiries supported by documents, statements and on the spot verification and cross-checking of dates, documents, information and material objects. In the final report the Surveyor very much doubted whether the vessel actually existed on the date of the issue of the insurance policy and from the report it is clear that the claim is fraudulent one and foisted on the opposite party by employing every conceivable fraudulent methods. The opposite party has also engaged a retired Senior Police Officer attached to the CBI to investigate into the matter. It was further alleged that the crew of the vessel categorically stated that the accident took place on a Wednesday or Thursday and not a Saturday as alleged by the complainant. It was further averred that the crew members reiterated that the vessel sank 3 weeks before the ban order for trawling dated 27.6.90 issued by the Government of Kerala. Some witnesses have alleged that the vessels sank much before the on-set of the south-west monsoon on 5.6.90. Enquiries with the canoe owner Dassan, his crew, other boat operators and officials of the Mechanised fishing vessel Owners' Association revealed that the vessel sank 3 weeks before the on-set of south-west monsoon on 27.6.90. The survey report and the report of the investigator led the opposite party to believe that the alleged sinking would have taken place after the inspection of the vessel by Surveyor Reghunath on 2.6.90 and 4.6.90 the date of taking insurance cover. It is further averred that the complainant stated to have undertaken certain salvage operations to locate the vessels with the help of a driver named Vincent. The insured alleged that since the vessel was seen drifting amidst rock, salvaging could not be carried out and a few planks of the vessel were seen floating in Maruthadi area in the sea on 19.6.90. However the complainant had not undertaken steps to collect the salvage and a few local persons said to have collected the same. The insured came and took a few photo- graphs of the salvage. The insured has also another vessel by name Embrose and the crew members have been accommodated with employment in this vessel immediately after the alleged accident. The vessel was fitted with a second-hand Ashok Leyland engine AL-4140 at the time of obtaining registration at Nagapattanam. The Port Officer, Nagapattanam, did not verify the bills of the purchase of the second-hand engine from Madurai. He also did not verify from where the other equipments were purchased. No bills were shown before the Port Authorities as evidence of purchase of other equipments also. On 1.6.90 the vessel's engine was replaced by another Ashok Leyland engine AL-6433. It is still a mystery as to how the Port Conservator, Kulachal, altered the engine number without seeing the basic document for the purchase of the engine. Engine number can be noted only by the authority who issued the original registration and subsequently if any other authorities note the change in engine number the same can be done only after obtaining the necessary sanction from the original Registering Authority. In the instant case the Port Conservator, Kulachal, has violated this regulation and he stated that he inspected the vessel at Thevally, Quilon on 1.6.90. However, the insured/complainant informed that the Port Conservator did not visit Quilon and inspected the Vessel and therefore fraud and foul play is thus writ large in the deal. It was further averred that

during the course of investigation and survey both the investigator and the Surveyor came across several instances of tampering with the diesel bills and inconsistent and contradictory statements from persons who have some information or something to do with the vessel during the crucial period. Diesel bills were seen tampered with and in the matter of registration and alteration of engine also contradictory statements were given and blatantly foul and fraudulent methods were seen employed by the complainant with the connivance of Port Conservator and others concerned. The diesel bills were tampered with to establish that the vessel was in existence on certain particular dates. Another vessel named MFV EMBROSF which is registered in the name of the complainant's brother A.M. Najeem was said to have been renamed as Commissioner from 1.6.90. The fish auctioneer one K.P. Luka gave a statement to the effect that the name was changed with effect from 31.8.90. A lot of suspicious circumstances surround the change and the dates. It is further averred that the Surveyor visited Sakthikulangara, Neendakara, Aravila area on many days and enquired with many persons including the Secretary of All Kerala Mechanised Fishing Boat Owners Federation and none of these persons were aware of the occurrence to the fishing vessel. The Surveyor further visited the office of the Deputy Director Fisheries, Quilon, under whom the Fisheries Control Room is working. This control room records, the accident particulars of fishing vessels and also arrangement for the safety of crew members who are stranded in the sea and the Control room functions during June of August every year i.e., during south-west monsoon period. On a perusal of the Register kept in the Deputy Director's Office, Surveyors could not find a place for the alleged accident. The local persons at Maruthadi were of the view that the alleged accident appeared to be a stage managed one. Items viz., side planks, keel, engine-foundation sleeper etc. alone were washed ashore as the foundation sleepers were bolted at many places with engine and gearbox. It was also averred that the claim of the complainant was repudiated by the opposite party based on the survey report and the investigation report. It was also averred that from the survey report submitted to the opposite party by the Surveyor and Loss Assessor and the investigation report submitted by T.G. Krishnan Nair, Quilon, the following points emerged: (a) The exact date of the alleged sinking was not as alleged by the complainant. The only inference based on the evidence of complainant is that it could have been between 2.6.90 and 4.6.90 or even earlier which is before the date of commencement of the cover on 4.6.90. It is also suspected that no such accident took place and the loss is stage-managed. Enquiries to this effect prove the point.

(b) The Surveyor has come to the conclusion that the insured might have had one fishing vessel in his possession whose engine number was AL-6433 and foundation block EF-10305. With a single engine in his possession he has been able to register two vessels by name EAMSONS A EMBROSE on 1.6.90. EMBROSE was newly registered on 1.6.90 and the registration of EAMSONS renewed. All this with one single engine. The engine No. AL-6433 was verified by Surveyor

Reghunathan on 2.6.90 and he has clearly stated that there is a crack in the engine block. However, the defective original engine No. AL-4140 which was said to have been replaced on 1.6.90 by AL-6433 is also found to be defective by the Surveyor on 2.6.90. This raises a lot of suspicion regarding genuineness of the change made.

(c) The hasty and unwarranted acts of the Port Conservator, Kolachal, in the matter of alteration of engine number in the registration certificate without any documentary proof and physical verification of the engine establishes fraud and foul play. It is to be noted that the registration was cancelled by Port Officer, Nagapattanam and not by Port Conservator, Kulachal.

(d) The evidence tendered by the fish auctioner Luka about the financial problems of the complainant, the tampering of diesel purchase bills etc., has clearly established that the claim of the complainant was false and bogus.

(e) The complainant did not make any sincere efforts or attempts to salvage the vessel. He only conducted some peripheral efforts for record purpose without any sincerity or earnestness. To buy the loyalty of the crew in getting their help in fabricating and foisting this false claim the complainant obtained necessary statements from them.

(f) The inability of the insured / complainant to produce proof for purchase of the engine AL-4140 and AL-6433 and also his inability to produce any documentary proof evidencing purchase of their equipment for constructing the vessel has exposed the fraudulent and highly concocted nature of the claim.

(g) The complainant has not established with cogent and convincing evidence that the vessel existed on the date of the sinking i.e., 16.6.90. The loss is a stage-managed show to claim insurance indemnity and that the insured vessel was not existing on the date of taking of the policy.

In the circumstances the opposite party contended that there is no deficiency of service in repudiating the claim and the claim is liable to be dismissed. The complainant was examined as PW 1. Besides him the driver of the boat of the complainant was examined as PW 2 and Exts. P 1 to P 20 were marked.

On behalf of the opposite party, RW 1, the Divisional Manager of the National Insurance Company, Kollam, was examined and Exts. R 1 to R 7 were marked.

3. THE opposite party filed a petition requesting the Commission to relegate the matter to a Civil Court as there are innumerable number of documents, circumstances and evidences to prove the point. THE opposite party submitted in a case like this, the forum of a Civil Court alone can undertake such an elaborate enquiry. It was also pointed out since matters have to be probed in detail in view of the mutually contradictory statements, documents and circumstances unearthed by the Surveyor and the investigator, an enquiry in full compliance with the rigors of the rules of evidence is essential for which the Forum of a Civil Court is needed to get at the truth. It was also pointed out that the claim was

repudiated on the basis of the report of the Surveyor and the investigator who opined that it is a stage-managed loss falsely created to claim insurance indemnity by fabricating and forging evidence and documents. THE opposite party has filed witness schedule in which they wanted to summon 17 witnesses to substantiate the case of the opposite party. On going through the evidence of witnesses already examined and the documents produced we feel that an elaborate enquiry is required in the instant case. As indicated above the opposite party has requested us to summon 17 witnesses. They have also alleged fraud and deceit by the complainant and they have also stated the alleged incident is a stage-managed one. In the above circumstances we feel that the matter requires to be tried by a Civil Court as this Commission will not be able to undertake such elaborate enquiry. We, therefore, dismiss the complaint reserving the right of the parties to approach the Civil Court for appropriate relief. Complaint dismissed.