(2006) 08 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

AMULYA SEA FOODS — APPELLANT

Vs

Oriental Insurance Co. Ltd. — RESPONDENT

Date of Decision : 23-08-2006

Acts Referred:

Citation : 2007 3 CPJ 253

Hon'ble Judges : M.B.Shah , Rajyalakshmi Rao J.

Final Decision : Appeal allowed

Judgement

1. THE present appeal is filed by appellant, M/s. Amulya Sea Foods, who is the original complainant, against the impugned order dated 14.7.2004 passed by the State Commission, Tamil Nadu in Original Petition No. 83/1998 whereby the complaint was dismissed. Brief facts of the case are :

2. THE appellant is engaged in the business of processing marine products in Tamil Nadu. After processing the marine products at Thondy, the purchasing centre, the marine products were transported in insulated vans belonging to the appellant to various destinations. THE appellant had been taking Fidelity Guarantee Policy from the first respondent, the Oriental Insurance Company Ltd. from the year 1992 onwards without any interruption. THE respondents had agreed to indemnify the appellant up to Rs. 10 lakh in case of any loss sustained by the appellant due to acts of fraud of dishonesty committed by the employees of the appellant. THE Fidelity Guarantee Insurance Policy, which is the basis of the claim of the appellant, was in force between 2.9.1993 to 1.9.1994 and covered a sum of Rs. 10 lakh in respect of five unnamed persons. It is stated by the learned Counsel for the appellant that during the currency of the aforesaid policy the Purchase Manager along with the van drivers and two others conspired and stole semi processed squid and other marine products from the insulated vans while these products were being transported from Thondy to other destinations. During transportation of these products, the drivers seemed to have broken open the sealed locks of the vans and opened the doors of the insulated vans and stole the marine products and sold the same. It is also stated

by the learned Counsel for the appellant that these stolen products from their vans were purchased by some others and the same were again resold to the appellants. This modus operandi of the drivers along with the Purchase Manager caused loss to the tune of Rs. 35 lakh. The appellant came to know of the aforesaid illegal act and defalcation on 9.5.1994 and immediately intimated the respondents, Insurance Company and lodged a police complaint against the defaulting employees. Thereafter, a claim form was submitted to the respondents on 7.7.1994.

The respondents appointed a Surveyor to inspect, assess and report the loss sustained by the appellant. After inspecting the records available a report was submitted and they opined that since the guilt of the driver had been proved by the confessions made by them a sum of Rs. 2,21,900 would be the liability of the respondents and that further liability of Rs. 8,24,193 would depend upon the conviction of the Purchase Manager. In spite of repeated requests made by the appellant, the respondents did not settle the claim forwarded by the Surveyors vide their report dated 25.10.1995. After repeated inquiries and letters, the appellant sent a notice to the respondents to settle the claim with interest within 15 days.

3. DESPITE the notice, the respondents had not settled the claim and did not bother even to reply. Hence, the appellant filed a complaint before the State Commission, Tamil Nadu in O.P. No. 83 of 1998. The respondents gave an assurance that the claim would be processed, but did not settle the same despite lapse of four years. The appellant claimed in the State Commission that there was deficiency in service and that the respondents were liable to pay Rs. 10 lakh with interest from the date of the claim apart from Rs. 10 lakh towards damages. The respondents contended that the claim, based on accounts, was exaggerated and argued on following grounds : (a) The Purchase Manager, Mr. T. Arumugam Pillai was permitted to resign in December 1993 and all the benefits were paid to him by the appellants. Although they were aware of the loss in the month before making a claim, it is argued by the learned Counsel that even before the Purchase Manager had resigned material was available to detect the defalcation and the resignation ought not to have been accepted. Given the opportunity of the Purchase Manager being in service respondents could have recovered the monies from him and that opportunity was lost. (b) That the filing of police complaint was delayed and that there was breach committed by the appellant due to inaction. (c) That the matter should be agitated before the Civil Court where elaborate trial could take place and hence the complaint was not maintainable under the Consumer Protection Act. (d) Lastly, it is stated that there are six drivers left whereas the policy provided only for five unnamed persons. The claim form submitted by the insured named five persons of which only four are shown as accused in the first information given. The fifth person is not implicated in the report. These complaints are still pending in Civil Court.

4. THE State Commission agreed with the contentions raised by the respondents

and dismissed the complaint by holding that the appellant should approach Civil Court. We heard the learned Counsel for the parties and perused the record. The State Commission proceeded on a wrong premise as to the month of detection of defalcation as appellant detected alleged involvement of Mr. T. Arumugam Pillai only in the month of May 1994. Mr. T. Arumugam Pillai was allowed to resign with all retirement benefits in December 1993; appellant was not aware in December regarding the said defalcation by the Purchase Manager. It is argued by the learned Counsel for the appellant that there was no delay in lodging the complaint before police. The fraud came to light in May 1994 and not in December 1993 as contended by the respondents. Regarding defalcation committed by the drivers with the help of two outsiders and the disclosure of these facts would not disentitle the appellant from claiming under the policy. The fair disclosure by the appellant without suppressing the facts was not appreciated by the respondents. Two outsiders were roped in, into the theft by the drivers and the Purchase Manager. Since the driver of the appellant has confessed to the defalcation, the respondents need not wait for elaborate trial considering the fact that the Surveyor has assessed the loss after seeing the entire records and evidence.

5. FURTHER, the Fidelity Guarantee Insurance Policy taken by the appellant provides as under : "Now this policy witnessed that subject to the terms, provisions, exceptions, conditions and definitions contained herein or endorsed or otherwise expressed hereon the Company agrees to indemnify the employer against loss sustained by reason of any act of fraud/dishonesty committed by the employee in connection with their/his/her employment as specified in the Schedule hereto during uninterrupted service with the employer and within retroactive period as defined elsewhere in the policy and discovered during the continuance of this policy or within twelve months after the death, dismissal or retirement of such employee or within twelve months after this policy has ceased to exist as regards such employee whichever of these events shall first happen. Condition No. 5 specifies as under : The employer shall, if required by the Company, give information and furnish evidence to the Criminal Authorities of any act or acts insured against committed or supposed to have been committed by any employee, in consequence of which a claim may be made under this policy and the employer shall if so required by the company, forthwith prosecute the employee for such acts, subject to the payment by the company in the event of a conviction of all expenses necessarily incurred by the employer in such prosecution."

6. THE sum insured under the Fidelity Guarantee Policy is Rs. 10 lakh for unnamed 5 persons which is what has been claimed by the appellant. It is an admitted fact that defalcation was by the employees. Drivers themselves confessed to the act of theft. THE respondents'' contention that the claim by the appellant is made in May 1994 although the act of defalcation was in December 1993 itself cannot be accepted considering that there is no evidence to show that the appellant was aware of it. Hence, accepting Arumugam Pillai''s resignation

and paying the retirement benefits and letting him leave the Company has no relevance in this case. Further the condition of the policy itself, as mentioned above, gives the benefit to the appellant whereby the appellant would be indemnified for fraud committed by the employees during the continuance of the policy or within 12 months after the death, dismissal or retirement of such employees or within 12 months after the policy has ceased to exist as regards such employee etc. As per the above condition No. 5 of the policy, the Insurance Company agreed to pay all the expenses incurred by the appellant for prosecuting the employee in the event of conviction. We do not see anywhere in this case the Insurance Company writing letters to the appellant to help to ensure the criminal proceedings against the accused and to prosecute them.

The criminal case against the accused has nothing to do with the payment of the lawful claim. Twelve years have passed and the appellants have been deprived of the money which they should have received as far back as in the year 1994. The respondents were liable to indemnify the appellant against the loss under the policy. There is no evidence to establish that the defalcation has been noticed in December 1993. The State Commission ought not to have proceeded on an assumption in the absence of any evidence that the appellant detected the defalcation in December 1993.

7. ALTHOUGH there is no issue of violation of the policy, the Insurance Company, delayed processing the claim on one or other flimsy grounds that it has to go to higher officers and neither replied to the notice of the appellant nor repudiated the claim even after the complaint is filed in the State Commission. This is a clear case of deficiency in service by the respondents and the very purpose of taking Fidelity Guarantee Insurance Policy is defeated in case the Insurance Company fails to settle the claim or repudiates the claim for more than 10 years. In the result, we hold that respondents are liable to indemnify the appellant. Hence, we allow the appeal and set aside the order of the State Commission and direct the respondents to make a payment of Rs. 10 lakh with interest @ 9% p.a. from December 25, 1995 till date of payment within four weeks from the receipt of this order with cost of Rs. 10,000. Appeal allowed.