(2014) 02 NCDRC CK 0055

In the National Consumer Disputes Redressal Commission

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.	APPELLANT
Vs	
M/S. Om International Shanti Bhawan Saubhag Club Civil Lines	RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Citation : 2014 0 NCDRC 114

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : K.L.NANDWANI , Surya Prakash Gandhi

Judgement

1. THIS revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 27.11.2013 passed by the Rajasthan State Consumer Disputes Redressal Commission (for short ''the State Commission '') in FA No. 329/2012, ''''M/s Om International versus Bajaj Allianz General Ins. Co. Ltd. '''' vide which while allowing the appeal, the order dated 17.02.2012 passed by District Consumer Disputes Redressal Forum, Ajmer in consumer complaint no. 377/2010, dismissing the complaint was set aside and the consumer complaint in question was allowed directing the petitioner/OP to pay a sum of Rs.1,40,174/ - alongwith interest @9% p.a. from the date of filing the complaint as well as Rs.10,000/ - as cost of litigation.

2. IN brief, the facts of the case are that the present respondent, M/s Om International are stated to have purchased water -filling machine for Rs.9 lakh from Swami Samarth Aqua Filling Industries, Vasai (East), Thane, Maharashtra. The said machine was to be delivered from Barsai to Gaygal at the office of the complainant/respondent through a truck. Before the booking of machine with the transport company, the complainant got it insured from the petitioner vide Marine Cargo Policy bearing no. OG -09 -1406 -1002 -00000003. The machine was delivered on 26.03.2009 at about 9:00 PM but it was found to be in a damaged condition. This fact was noted at the back of the GR (builty), and the Insurance Company as well as the vendor were informed. The vendor sent their mechanic / engineer and found that the machine was damaged. The claim was

lodged with the Insurance Company which appointed a surveyor to assess the loss. However, the machine was got repaired by the complainant on payment of Rs.2,08,783/ -. According to the surveyor, the damage certificate by the transporter was not provided and the machine was not packed as per standard packing specifications and hence it got damaged. The surveyor assessed the loss to the tune of Rs. 1,40,174/ - and after deducting Rs. 5,000/ - as per excess clause, held the complainant entitled to Rs. 1,35,174/ - only. The Insurance Company, however, repudiated the claim that the machine was not given proper packaging and hence it got damaged. The consumer complaint was then filed saying that a sum of Rs. 2,08,775/ - alongwith interest @12% should be provided to them being the sum spent on the repair of the machine. In addition, a sum of Rs. 10,000/ - as compensation for mental harassment and Rs. 11,000/ - as legal expenses should also be provided. In their reply to the consumer complaint, the Insurance Company took the plea that in fact, the complainant had got the delivery of the machine in perfect condition, but later on, due to malafide intention and dishonesty, he got noted on the back of GR from the driver of the vehicle that the machine was damaged in transit and that the delivery was given in damaged condition. If the machine was damaged, the complainant should not have taken the delivery of the machine and should have informed the Ajmer branch of the petitioner and got the surveyor appointed before taking delivery. The complainant got the machine repaired on his own without informing the insurance company and hence he has done breach of the conditions of the terms of contract. It has further been stated that if the insured cargo is having insufficient or unsuitable packing or preparation, the insurance company was not liable to pay the claim as it would fall under the exclusion clause of the policy. The District Forum after taking into account the evidence of the parties found that the complainant had failed to prove that the machine was sent in transit after standard packaging and hence, they dismissed the complaint in question. An appeal was made against this order before the State Commission, which was allowed vide impugned order and the complaint was held entitled to get Rs.1,40,174/ - with interest @9% p.a. from the date of filing of the complaint as damages and Rs.10,000/ - as cost of litigation. It is against this order that the present petition has been made.

3. AT the time of hearing before us, the learned counsel for the petitioner/OP reiterated the stand taken by the petitioner in reply to the complaint before the District Forum that the complainant/respondent should have informed them immediately before taking the delivery of the vehicle so that they could have the machine inspected. On the other hand, the complainant / respondent chose to have the machine repaired on his own. The learned counsel further stated that since the packaging of the machine was not done properly, the claim falls under the exclusion clause of the policy and hence the petitioner was not liable to make payment of the claim. Our attention has been drawn to the report given by the Surveyor Ramavatar Parashar dated 12.12.2010 which says that the machine was sent in open condition without packing. There was, therefore, a breach of

terms and conditions of Insurance. The learned counsel has drawn our attention to order passed by the Hon ''ble Supreme Court of India in Civil Appeal No. 6739/2010, ''''Oriental Insurance Company versus P.C. Chadha '''' saying that if the insurance company was not informed immediately, there was breach of terms and conditions of the policy and hence, the insurer was not liable to pay any damages.

4. THE learned counsel for the respondent argued that the contention of the petitioner was not correct as made out from the documents / material on record. In fact, the petitioner had appointed M/s Wings Surveyors for verification of the mode of packing in this case and the report made by the said company dated 26.07.2010 is on record. The said company have stated in their opinion as follows: - ''''The consignment of Filling Machine having Model no. SSAI/FA/60 invoiced vide No. 13 Dt. 24.03.2009 of M/s. Swami Samarth Aquafill Industries transported vide Consignment Note No. 1687 Dated 24.03.2009 of M/s. Speedwing Roadlines, while in transit from Vasai to Ajmer was packed with a polythene / plastic cover only, as per standard practice. ''''

The learned counsel stated that the damage certificate dated 28.03.2010 given by M/s Speedwing Roadlines, states that the machine was got damaged during transit. Further, there was a declaration dated 20.03.2010 given by the supplier Swami Samarth Acquafill Industries saying that all of their machines are delivered under strict standard packaging and no machine is dispatched without packaging. The learned counsel mentioned that the complainant/respondent had informed the Insurance Company and sent his claim immediately after knowing about the damages. The learned counsel also produced a judgement of this Commission dated 03.12.2004, ''''M/s Harsolia Motors versus M/s National Insurance Co. Ltd. & Ors. '''' as reported in 2005 (I) CPR 1 (NC), saying that a person who takes insurance policy to cover the risk does not take policy for commercial purpose as the policy is not intended to generate profit.

5. WE have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us. The petitioners have taken the main line of argument that there has been the violation of terms and conditions governing in policy in question because the machine in question had not been packed properly. A perusal of the record indicates that the petitioner appointed M/s Wings Surveyor for the sole purpose of verification of mode of packing under the claim reported by the complainant/respondent. The said surveyor have categorically stated in their report that the machine during transit was packed with a polythene / plastic cover only, as per standard practice. In the impugned order, the State Commission have rightly observed that as per the surveyor appointed by the petitioner itself, the machine was covered as per standard practice. Further, the suppliers of the machine have also stated in their letter dated 20.03.2010 that all their machines are delivered under strict standard packaging and no machine is dispatched without packaging. The transporter has given the certificate that the machine was damaged during

transit only due to the bad road condition. The State Commission have rightly observed that the petitioner / OP failed to show ''''As to what was the standard packaging for the heavy and voluminous machine? '''' We have no reason to differ with this finding of the State Commission because the machine was packed as per standard practice as reported by the surveyor appointed by the petitioner.

6. THE petitioner have taken the plea in the grounds of revision petition that the complainant was not a consumer as the machine was purchased for commercial purpose only. However, this point was not pressed by the learned counsel for the petitioner at the time of arguments. Further, it has been stated in the complaint that intimation about the damaged condition of the machine was given to the insurance company immediately. The claim cannot be repudiated, therefore, on the ground that intimation was not sent to the insurance company in time. Based on the discussion above, we do not find any reason to differ with the impugned order passed by the State Commission, as the said order does not suffer from any illegality, irregularity or jurisdictional error of any kind. The present revision petition is, therefore, ordered to be dismissed with no order as to costs.