(2000) 08 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

BAJRANG ROLLER FLOUR MILLS (P) LTD. APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LIMITED RESPONDENT

Date of Decision : 07-08-2000

Acts Referred:

Citation : 2001 1 CLT 679 : 2001 1 CPJ 147 : 2001 1 CPR 261

Hon'ble Judges : A.N.Chaturvedi , C.R.Venkataraman , Asma Ahmad J.

Final Decision : Complaint dismissed

Judgement

1. THE case of the complainant Company M/s. Bajrang Roller Flour Mills (P) Ltd. is that it carries on business of manufacturing Atta, Maida, Suji and Bran and its industrial unit is located at Village Teghra in the district of Begusarai. After the production of its finished products, it used to despatch the same to various destinations throughout the country and in order to cover the risk of transportation of consignment of finished products, it used to hire the services of General Insurance Company. On 6.8.1990 marine policy (cargo) (Annexure-1 to the complaint petition) of Rs. 25,00,000/- (Rs. twenty five lacs) was obtained from New India Assurance Company Limited on payment of Rs. 5,564/- as premium. On 9.8.1990 a consignment of 111 bags of Maida (9,990 kgs.) worth Rs. 36,963/- was despatched by truck No. WBI 5893 of Maa Lakshmi Transport, Teghra, Begusarai to Calcutta for the consignee M/s. Lakshmi Narayan Durga Dutta vide Challan No. 8/A 1990-1991 dated 9.8.1990 (Annexure-2 to the complaint petition). Transport challan No. of the said consignment was 242 dated 9.8.1990 (Annexure-3 to the complaint petition) and an amount of Rs. 2,800/- had been charged as freight. Declaration No. 1 dated 9.8.1990 (Annexure-4 to the complaint petition) being Marine Declaration Form provided to the complainant by the said Insurance Company to cover transportation risk was also issued. Even after ten days of despatch of the consignment, neither payment was received nor any information about reaching of the consignment as received from the consignee and under the circumstances the transporter was contacted but no satisfactory reply was received from him. On 10.9.1990 the transporter was again contacted but no satisfactory reply was received. However, on being

contacted on telephone, the consignee informed that the consignment had not reached. THEreafter a complaint (claim) was sent to the Branch Manager of the Insurance Company with regard to the consignment vide letter dated 13.9.1990 (Annexure-5 to the complaint petition) Under Certificate of Posting (Annexure-5/A to the complaint petition). On 14.9.1990 First Information Report (Annexure-6 to the complaint petition) was lodged at Teghra Police Station regarding the occurrence on the basis of which Teghra P.S. Case No. 143 of 1990 dated 16.9.1990 under Sections 406, 407 and 409, I.P.C. was registered against the transporter.

2. FURTHER case of the complainant is that the Director of the complainant Company went to the office of the Insurance Company several times to enquire into the matter and was informed that they would proceed with the claim only after investigation by the police is completed. There being total inaction in the matter on the part of the transporter and the Insurance Company, a registered letter dated 29.8.1991 (Annexure-8 to the complaint petition) was sent to the transporter with a copy to the Insurance Company but to no effect. However, a letter dated 29.9.1991 (Annexure-9 to the complaint petition) was received from the Insurance Company (opposite party) denying receipt of any communication from the complainant. In response to the said letter, legal notice dated 1.10.1991 was served on the Insurance Company through an Advocate and another letter dated 5.10.1991 (Annexure-10 to the complaint petition) was sent to the Insurance Company denying any fault in lodging the claim and requesting for settlement of the claim at the earliest. Thereafter the Insurance Company vide letter dated 11.2.1992 (Annexure-11 to the complaint petition) informed the complainant that its claim had been repudiated. All the time the opposite party-Insurance Company assured the complainant to wait till investigation by the police is completed and did not even bother to depute a Surveyor to assess the loss. In order to cover up its negligence the Insurance Company has denied the lodging of complaint about claim (loss). On the allegations aforesaid, the complainant has claimed Rs. 40,000/- as cost of consignment with freight, Rs. 12,000/- as interest thereon and Rs. 1,00,000/- as compensation for mental agony and harassment caused in going from Teghra to Begusarai. In all, the complainant has claimed Rs. 1,52,000/-. The opposite party has filed written statement and has contested the case. The case of the opposite party Insurance Company is that the complainant has not come with clean hands rather has committed fraud for wrongful gain. As per terms and conditions of the marine open policy declaration must be submitted by the insured to the insurer within 24 hours after despatch of the goods unless and until specific time is mentioned in the policy. The complainant has violated the terms and conditions of the policy. There is provision for proportionate refund of premium under Marine Open Policy if declaration of despatch is not made before the Insurance Company. The complainant with an intention to save his premium and to defraud the Insurance Company submitted his ante-dated Marine Declaration Form No. 1 which was received by the opposite party on 26.10.1990 i.e., after a lapse of more than two

and half months from the date of despatch. By submitting Declaration Form No. 1 two and half months after despatch of the consignment the complainant has violated the policy condition. Due to receipt of Declaration Form No. 1 in the office of the Insurance Company on 26.10.1990, the premium could not be credited to the insurer''s account in proper time and hence Declaration Form No. 1 was not effective on the date of loss because of non-compliance of Section 64-VB of the Insurance Act, 1938.

Further case of the opposite party is that the alleged occurrence took place on 9.8.1990 but the complainant informed the Insurance Company for the first time by his registered letter dated 29.8.1991. The complainant was asked under registered letter dated 20.9.1991 as to why information was given to the Insurance Company after lapse of one year. The claim of the complainant is forged one because, the complainant did not come to obtain and fill up claim form within reasonable period which is essential for getting any claim. The insured (complainant) neither surrendered the consignment to the transporter nor obtained non-delivery certificate and hence it cannot be said if the goods were received by the consignee or not. Foul play was smelt in the claim of the complainant and hence Investigator was appointed immediately who submitted his report to the effect that the claim was not genuine. On the allegations aforesaid, the opposite party Insurance Company has prayed for rejecting the claim of the complainant.

3. IN support of its case, the complainant has brought on record affidavits dated 29.4.1993 and 22.121993 as well as supplementary affidavits dated 6.5.1996 and 14.6.2000 of Deepak Goyal, Director of the complainant Company. Photo copies of certain documents have also been brought on record as annexures to complaint petition and affidavits. Similarly, the opposite party in support of its case has brought on record affidavits dated 12.7.1994 of Subhash Kumar Sengupta, Assistant Manager of opposite party at Patna and affidavits dated 4.1.1999 and 4.5.1999 of Mahesh Kumar, Administrative Officer of the opposite party at Patna. Photo copies of certain documents have also been brought on record by the opposite party. Now it has to be considered if the claim of the complainant is fit to be allowed or not. Certain facts are not disputed. It is not disputed that the complainant had obtained marine open policy from the opposite party Insurance Company for Rs. 25,00,000/- which was valid from 6.8.1990 to 5.8.1991. It is also not disputed that on 9.8.1990 a consignment of 111 bags of Maida (9,990 kgs.) worth Rs. 36,963/- was despatched to Calcutta by the complainant by truck for the consignee M/s. Lakshmi Narain Durga Dutta but the same, according to the complainant, did not reach its destination. It is also not disputed that the Manager of the complainant lodged FIR at Teghra Police Station in this regard on the basis of which police registered Teghra P.S. Case No. 143/90. It is also not disputed that the insurance claim of the complainant was repudiated by the Insurance Company on the ground that there was no claim at all. Moreover the above facts are also apparent from the copy of the insurance policy, challans dated 9.8.1990, copy of F.I.R. and order sheet of Teghra P.S.

Case No. 143/1990 and letters dated 20.9.1991 and 11.2.1992 sent by the Insurance Company to the complainant.

4. IT was contended on behalf of the opposite party that the complainant never asked for claim form and never submitted the same and informed the Insurance Company about non-delivery of the consignment about one year after the occurrence. IT was further contended that by letter dated 20.9.1991 (Annexure-9) the Insurance Company had asked the complainant to explain as to why information regarding non-delivery of the consignment was given to Insurance Company one year after the occurrence and by letter dated 11.2.1992 (Annexure-11) the Insurance Company informed the complainant that the explanation called for vide letter dated 20.9.1991 not having been furnished, his claim file was being closed as "no claim". In para-10 of the complaint petition it has been stated that letter lodging the claim dated 13.9.1990 was sent to the Insurance Company vide Annexure-5 to the complaint petition. IT may be pointed out that Annexure-5 to the complaint petition is photo copy of a letter dated 13.9.1991 and not a letter dated 13.9.1990. By this letter the complainant for the first time informed the Insurance Company about non-delivery of the consignment and requested for payment of claim. This letter dated 13.9.1991 lends support to the above contention of the learned Counsel for the opposite party that Insurance Company was informed about the non-delivery of consignment one year after the occurrence. The complainant has not brought on record copy of any claim form submitted by him. The papers brought on record do not show that he had ever asked the Insurance Company to supply claim form to enable him to submit the same. Under the circumstances there appears substance in the above contention that the complainant never submitted any claim form to be considered by the Insurance Company. Referring to Annexures-9 and 11 to the complaint petition it has already been pointed out earlier that the Insurance Company vide letter darted 20.9.1991 (Annexure-9) had asked the complainant to explain as to why information regarding the non-delivery of the consignment was given to Insurance Company one year after the occurrence and by letter dated 11.2.1992 (Annexure-11) the Insurance Company had informed the complainant that the explanation called for vide letter dated 20.9.1991 not having been submitted, his claim was being closed as "no claim". IT was not disputed that the insured is required to submit his claim in claim form for consideration by the Insurance Company. Since the photo copies of documents brought on record by the complainant do not show submission of any claim form by him before the Insurance Company, the question of entertainment of the same by the Insurance Company would hardly arise. It was further contended on behalf of the opposite party Insurance Company that as per policy condition Marine Declaration Form No. 1 has to be submitted by the insured within 24 hours of the despatch of the consignment but in the instant case the complainant submitted the said Declaration Form No. 1 after ante-dating the same which was received in the office of the Insurance Company on 26.10.1990 i.e., two and half months after despatch of consignment and by doing so, the

complainant violated the condition of the policy regarding submission of Declaration Form No. 1 within 24 hours of the despatch of the consignment. In support of this contention the opposite party has brought on record copy of the policy and conditions thereof as Annexures A and B to the affidavit dated 4.1.1999 of Mahesh Kumar, Administrative Officer. It is apparent from the conditions of the policy that the assured is bound to declare each and every despatch coming under the scope of the policy within 24 hours. Though the declaration form (Annexure-4 to the complaint petition) is dated 9.8.1990 but there is no explanation by the complainant as to why the declaration form was received in the office of the Insurance Company on 26.10.1990. Under the circumstances the allegation of the opposite party Insurance Company that the declaration form was ante-dated document cannot be said to be without substance. By not submitting the Declaration Form No. 1 within 24 hours of the Despatch of the consignment, the complainant has undoubtedly violated the condition of the policy. It was contended on behalf of the complainant that copy of the policy given to the complainant did not contain any term or condition. In this connection the learned Counsel for the complainant referred to the photo copy of the policy which is Annexure-1 to the complaint petition and to the supplementary affidavit dated 14.6.2000 of Deepak Goel, Director of the complainant, which is to the effect that policy had been issued without clauses, terms and conditions and that there was no agreement for declaration of consignment within 24 hours of despatch. Though the terms and conditions of the policy are not attached with the photo copy of the policy (Annexure-1), it has been specifically mentioned therein that the attached clauses and endorsements form part of the policy. There is no explanation by the complainant as to why the clauses and endorsements which are said to be attached with the policy are not attached therewith though the same form part thereof. Moreover it cannot be imagined that any policy will be without terms and conditions. So there is no merit in the above contention of the learned Counsel for the complainant.

5. FROM the above discussions it is apparent that there is no merit in the case of the complainant and his claims are not fit to be allowed. In the result, the complaint of the complainant is hereby dismissed. There is no order as to cost. Complaint dismissed.