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(1993) 11 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

CHELUR SATELLITE COMMUNICATION SYSTEM LIMITED — APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD. — RESPONDENT

Date of Decision : 16-11-1993

Acts Referred:

Citation : 1993 0 NCDRC 70 : 1993 3 CPJ 417 : 1994 1 CPC 425 : 1994 1 CPR 33 : 1995 2 CLT 279

Hon'ble Judges : V.BALAKRISHNA ERADI , A.S.VIJAYAKAR , Y.KRISHAN , B.S.YADAV J.

Advocate : S.BALAKRISHNAN , P.L.Raghunath Raja , A.K.RAINA

Judgement

1. THE Complainant imported the latest induction-SMD machine, Automatic placement system from M/s. Siemens AG, West Germany in 1990. He took out a Marine insurance policy with the Opposite party-Insurance Company for Rs. 43.00 lakhs against all risks of loss, damage or expense by air from West Germany to Madras and then to the Company''s warehouse at Cochin by lorry, risk commencing from 13.2.90. When the consignment reached the Cochin there was no external visible damage to the packing case; the external condition was sound. On opening the package, however, it was found that certain parts/ components of the machine had sustained physical damage; certain parts/ components were suspected to have been damaged. In particular the protective cover inside the wooden packing case had sustained physical damage. According to the supplier''s representative M/s. Siemens Ltd., the machine had sustained damages which were severe in nature. It was assessed that the consignment had sustained 5-6G acceleration force whereas the acceleration force it could bear should not exceed 2 G. The surveyor in his report did not determine any definite cause of damage. He observed that no external visible damage was noticed to the packing case in which the above machine was transported. The consignment, according to him, had undergone transhipment while changing flights and during road transport from Madras to Cochin and therefore, experienced a number of handlings during transit. Considering the weight of the consignment which is 1.39 metric tonnes the Surveyor held that "unless the above case being handled

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systematically with proper lifting equipment, the contents packed would sustain abnormal strains due to the impacts in handling". He further observed that, on the evidence available and on the basis of the nature of damages observed "it is presumed that, the wooden case under reference might have been subjected to an uniform fall to one of its sides, presumably to any other side than to its base, at some stages during transit and the abnormal impact sustained due to the suspected fall and/or blows and knocks sustained, would have caused to sheer the bolts holding the top enclosure of the machine, resulting into fall of the top enclosure over the positioning, application heads and other sophisticated parts, to cause the above damages.

2. THE complainant got the machine repaired from the manufacturer in Germany at an expense of DM 69985. It preferred a claim in August, 1990 on the insurer for the amount D.M. 69,985 plus Rs. 43,900/- on account of documentation, clearing charges and bank charges for opening a letter of credit and for survey charges. The total amount claimed as repair charges from the insurer was Rs. 8,64,012/-. However, according to the complainant the Opposite Party, Insurer delayed this payment of the claim. It was only on 30th July, 1991 that a sum of Rs. 7,15,442/- was paid by the insurer against a claim of Rs. 8,64,012/- representing the repair charges. According to the complainant the insurer did not pay the balance of the amount of Rs. 1,48,570/-.

3. IN September, 1991 the complainant (insured) also made a claim for the short payment and other charges (interest) totalling Rs. 2.15 lakhs. However, he also claimed in September, 1991 the avoidable extra expense incurred by it because of the delay in the settlement of the claim under the insurance policy on the following counts: Figures in the round 1. Interest on the loan of Rs. 61 lakhs taken by the complainant insured from the Kerala State Industrial Development Corporation -- Rs. 9,38,000/- 2. Interest on loan of Rs. 50 lakhs taken from the S.B.I, for one year Rs. 6,61,000/- 3. Lease rent to the Cochin Export Process Zone for one year on the plot leased for the project Rs. 1,34,000/- 4. Overheads, salary etc. Rs. 5,00,000/- 5. Short amount paid against the claim on the insurance policy viz. Rs. 1,59,584/- Rs. 1,59,584/- 6. Interest on the short amount paid Rs. 58,474/- 7. Interest on the overdue interest Rs. 1,022/- (Rs.24,52,853 exact)

4. IT is evident that the report of the surveyor as to the cause of the accident is just a guess work. He had also suggested that the damage could have been caused only if it was not handled systematically with proper lifting equipments. The first question is to be considered whether there has been any avoidable delay in the settlement of this claim?

5. ACCORDING to the complaint memorandum there was some difference in the material particulars in the survey report of 21.8.1990 and that an amendment of the survey report was made on 11.12.90 by Surveyors. Secondly, and more importantly in the absence of any conclusive finding regarding the cause of damage the Opposite Party - Insurer could take time to examine his liability

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under the insurance policy in the light of the Surveyor''s report. In this connection it may be relevant to mention that under the policy of insurance the following inter alia are excluded from the insurance cover: (i) loss or expense attributable to wilful misconduct of the assured, (ii) loss, damage or expense caused by insufficient or unsuitability of the packing or preparation of the subject matter insured. (iii) loss or damage caused due to the unfitness of aircraft conveyance, container or van for safe carriage.

The Surveyor''s report suggests that the contents of the package were likely to have sustained abnormal strains due to mishandling unless it was handled "systematically with proper lifting equipments". It also suggests that there was likelihood of the consignment having fallen on one of its sides other than its base at some stages during the transit which caused abnormal impact. It was, therefore, not unreasonable on the part of the Opposite Party-Insurer to have taken time to consider their liability under the insurance policy in the light of the Surveyor''s report.

6. IN its reply it has further pointed out that there was a delay of 50 days in the clearance of consignment after it reached the consignee warehouse as against the maximum period of 30 days after which the risk expires. The quantum of loss assessed by the Surveyor was DM 69985. This is equivalent to Rs. 7,04,428 approximately according to the then prevailing exchange rate between the DM and the Rupee. In addition the Insurance Company also reimbursed the survey fees and the expenses on re-export of the damaged machine to West Germany and import of the new machine from West Germany all totalling Rs. 7,48,328/-. The claim was payable subject to production of actual bills for expenses incurred by the complainant insured. The bills were submitted on or after 23rd July, 1991. It will be evident from the facts narrated above that there was no avoidable delay in the settlement of the complainant-insured''s claim; the claim could not have been settled till the Survey was completed and there was no delay in the appointment of the Surveyor. The Survey report needed careful examination especially in the absence of any definite finding regarding the cause of damage. Again time was taken in submission of the actual bills for repairs by the complainant.

7. IT is also observed from the lawyer''s notice of 20th December, 1991 sent by the complainant''s Advocate that he did not press for his claim of Rs. 5 lakhs on account of salary, overheads etc. There is no doubt that the claim has been inflated enormously perhaps because there is no Court fee payable by the complainant. At the hearing the Counsel for the complainant conceded that the claim might have been inflated and he pressed for the payment of the difference between Rs. 8,99,733 and what was actually paid Rs. 7,48,328/- leaving open the balance of the claim.

8. EARLIER the complainant made a total claim for Rs.8.64 lakhs. After receiving of Rs.715 lakhs on the policy in July, 1991 the complainant raised in September, 1991 a claim for the consequential losses. The Opposite Party Insurance Co. has

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already paid a sum of Rs. 7.48 lakhs under the policy of insurance. The other amount claimed by the complainant does nor arise on the Insurance Policy but on account of alleged delay in settlement of the claim under the insurance policy and consequential loss except for Rs. 1,48,570/- allegedly short paid. As already observed, on the fact of this case, we are not satisfied that any avoidable delay in settlement of the complainants (insured) claim has occurred. In fact we have observed above that the Surveyor''s report is inconclusive regarding the circumstances in which consignment got damaged in transit. From the Surveyor''s report it is beyond our comprehension that the top enclosure of the machine had broken off from its holding bolts but the wooden cover remained intact in spite of the consignment having been subjected to 5 to 6 G acceleration force and in spite of the consignment having fallen on one of its side during transit and having been subjected to abnormal impact during the suspected fall. It was for the parties to determine the cause of the accident to the consignment and it was not necessary for this Commission to have gone into this matter while adjudicating in this complaint. The claim of the complainant under the policy of insurance has been substantially settled and therefore the complaint does not survive as a consumer dispute. If, however, the complainant wishes to seek damages for the balance amount claimed by him in September, 1991 he will be free to approach the ordinary Civil Court which can go into the matter in depth as to the precise cause of the accident to the consignment and whether the claim for consequential damages can be sustained in this case on the policy of insurance and whether he is entitled to repair charges under the policy as claimed by him. Nothing contained in this order will operate to the prejudice of the complainant in the matter of his pursuing the remedy by way of institution of a civil suit before the competent Court.

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