courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 27/08/2026

(2006) 08 NCDRC CK 0053

In the National Consumer Disputes Redressal Commission

ELITE BAKERS PVT. LTD. APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Citation : 2006 2 CPC 706 : 2006 3 CPR 83 : 2006 4 CPJ 52

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

Final Decision : Complaint disposed of

Judgement

1. THE complainant is carrying on the business of manufacturing bread and bakery products for consumption and sale on commercial scale. It entered into an agreement with M/s. British Bakeries Ltd., Windsor, Barkshire, England, to purchase a complete set of second hand machinery for a consideration of 75,000. For this purpose, the complainant also took a Marine-cum-Erection All Risks Insurance Policy from M/s. United India Insurance Company Ltd.

2. UNDISPUTEDLY, the said machinery was brought through opposite party No. 2-Neptune Orient Lines Ltd. It is pointed out that the machinery was shipped by Vessel "Neptune Sardony - 02E". When the said vessel reached Colombo, 4 containers were to be transhipped to Cochin, the final Port of destination. On board the container got dislodged from the transfer crane and fell to the ground resulting in extensive damage to the container and its contents. It is contended that the damaged part was an integral and crucial part of the bakery plant and equipment without which the unit could not be commissioned at all. This mishap took place on 18.10.1995. It is also contended that because of the mishap and damage caused to the parts of the plant, the entire project was affected, as it could not be made functional. It is further submitted that damaged components were not available in India and were readily available only in England. It is admitted that oven Sections of the 12 sack bread plant were second hand machinery but were required to be replaced only with new 12 sack bread plant oven Section because the second hand replacement was not possible at all. After obtaining the quotation, the complainant was required to purchase the said

component which was valued at 3,80,000.

For the aforesaid damage, the complainant lodged a claim with the insurance company. As the insurance company failed to pay the amount, present complaint is filed for recovery of a large amount as mentioned in the prayer clauses.

3. AS against this, it has been pointed out by the insurance company that loss was assessed by Thomas Grom Surveyors by their report dated 18.9.1997. In the said report, net loss was assessed at Rs. 8,30,443. However, after applying under insurance clause, the insurance company assessed the loss at Rs. 5,12,749. On the basis of the said assessment, by interim order dated 20.1.2004 passed by this Commission, the insurance company was directed to pay at least the undisputed amount to the complainant with interest at the rate of 12% p.a. and it is admitted that the said amount is paid to the complainant with interest. Further, it has been pointed out that the complainant has preferred Suit No. 4101/1996 before the High Court of Bombay against the carrier only.

4. WE have heard the learned Counsel for the parties. Learned Counsel for the insurance company has pointed out that the policy is clear with regard to its liability and admittedly the complainant has purchased second hand machinery subject to replacement clause which was attached to the policy. The replacement clause is as under: "Warranted, that in the event of any claim the sum recoverable shall not exceed the cost of replacement or repair of such part or parts provided the liability of the insurer does not exceed the insured value of the complete machine. Further agreed that the cost of replacement of part or parts is the cost of second-hand part only and not the cost of new part in case of second-hand machine."

From the aforesaid clause, it is apparent that the insurance company was required to pay to the insured the cost of the ''second hand part only'' and not the ''cost of the new part''. On that basis, the loss was assessed by the Surveyor and that amount has already been paid by the insurance company. Learned Counsel for the complainant, however, submitted that second hand parts were not available in the market and, therefore, the complainant was required to import new parts for replacement and, hence, the insurance company should be directed to pay cost of the new parts.

5. IN our view, there is nothing on record to establish that the second hand parts were not available either in INdia or in England. Further, no evidence is led by the complainant in this regard.

6. IN this view of the matter, the cost of the new parts is not required to be paid by the insurance company to the complainant. In the result, nothing further is required to be done in this complaint as the amount assessed by the Surveyor is paid to the complainant with interest as ordered by this Commission. Hence, the complaint stands disposed of accordingly. There shall be no order as to costs. Complaint disposed of.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/elite-bakers-pvt-ltd-appellant-hash-…