(1997) 05 NCDRC CK 0077

In the National Consumer Disputes Redressal Commission

EROS COPRA And OIL TRADERS — APPELLANT

Vs

United India Insurance Co. Ltd. — RESPONDENT

Date of Decision : 16-05-1997

Acts Referred:

Citation : 1998 1 CPJ 11

Hon'ble Judges : P.K.Shamsuddin , K.Balakrishnan Nair , K.M.Latha J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is directed against the order passed by the District Forum, Ernakulam, in O.P. No. 990/95. The complainant is the appellant.

2. THE complainant is a manufacturer and wholesale dealer in Surya Brand coconut oil, cakes and copra and they had taken a Marine Open Insurance Policy from the opposite party covering transit of coconut oil from the premises of the insured to various places in India with facility for declaration as and when consignment was despatched. Ext. B3 is the copy of the policy so issued covering the period from 9.10.1994 to 8.10.1995. On 11.3.1995 the complainant despatched one consignment of double filtered coconut oil to Hidustan Lever Limited at Madras/ the total value of which is Rs. 3,20,791/- as will be seen from Ext. B1-invoice. Ext. B2 is consignment note issued by Inter Cargo Carriers who are liquid transport contractors and commission agents and the consignment was despatched by lorry No. TMC 4167. This lorry had public carrier permit issued by the State of Tamilnadu valid upto 10.5.1995 and temporary permit from the State of Kerala for the period from 6.3.1995 to 12.3.1995 as will be seen from Ext. B4-survey report. On the mid-night of 14 /15 March at 1.30 a.m. this lorry me with an accident near Madras city as a result of which the tank fell on its left side on the roadside adjacent to the drainage channel and almost the whole quantity of oil was lost. A survey of the scene of occurrence was conducted as directed by the opposite party''s office at Madras and Ext. B4 is the report. THE loss calculated is 9,200 Kgs. of oil costing Rs. 3,07,105/-. When the complainant preferred the claim for the entire insured amount, the opposite party-insurer

offered to pay a sum of Rs. 2,28,517/- being 75% of the assessed loss. Ext. B7 is the copy of the letter dated 6.7.1995 making this offer. THE complainant was not willing to accept the offer and insisted the whole amount of cost of the lost article should be paid which was not accepted by the opposite party. It is in these circumstances the complainant filed this complaint. A version was filed by the opposite party. It was contended that the policy issued was subject to Inland Transport Clause (A) SRCC Clause and also Open Policy Clause and IREFC Clause and also subject to an excess of 2% of the sum insured for each and every transit. The policy also provided that the right of recovery against the carrier should be protected which is a condition precedent for admission of liability and that is possible only if the consignment was sent through common carrier as defined in the Carriers Act. All marine insurance transportations are based on various status and in all cases the carriers are liable for all types of damages occurred to the goods while they are in their custody. In the instant case contrary to the accepted practice it was entrusted to a broker who does not come within the purview of the definition of common carrier as defined in the Carriers Act. Thus the right of recovery against the person who caused the injury to the goods is not protected and in such circumstances the insurer is perfectly justified in repudiating the claim. In the present case there is no chance of recovery of the loss from the carrier who is only a commission agent and despite the impediment in recovering the loss a commercial decision was taken by the opposite party to reimburse the claim to the extent of 75% of the assessed loss which is without precedent and this decision was taken on the basis of the guidelines issued by the General Insurance Company to handle cases where right of recovery is not protected and the claim experience of the client is good. The opposite party senta voucher for Rs. 2,28,517/- being 75% of the assessed loss. In the circumstances the complainant is not entitled to get any relief.

The District Forum observed that the reason mentioned by the insurer for not allowing the entire claim and limiting the relief to 75% is justified in view of the clause contained in the policy which provided that the right of the recovery against the person who caused the injury to the goods should be protected and in the instant case it cannot be disputed that the goods were not sent by another carrier but through a broker which means right of recovery is not protected. In the circumstances we do not find any error in the conclusion arrived at by the District Forum. The District Forum has passed an order directing the opposite party to pay a sum of Rs. 2,28,517/- within one month and further ordered in case of default the opposite party should be liable to pay interest at 15% from the date of default. There is no merit in the appeal and it is accordingly dismissed. Appeal dismissed.