(2014) 11 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

Case No : NO 3425 of 2014

GLADSTONE AGENCIES LTD. APPELLANT

Vs

DUGAR BROTHERS CONCERN & ORS. RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Constitution of India, Article 226 - Power of High Courts to Issue certain writs

Citation : 2015 2 CPJ 459

Hon'ble Judges : J.M. Malik, S.M. Kantikar

Advocate : Ambika Mehta, Prashanth Banerjee, Pawan Kumar Ray

Judgement

1. This common judgment regarding the above said three revision petitions will dispose of all these cases which entail similar questions of facts and law.

2. We have taken the facts from the revision petition No.3426. During the course of its business Dugar Brothers Concern, the complainant, stationed at Nepal, placed an order with M/s. OzE Pulse Pty. Ltd., Australia, for supply of 3085 bags, weighing 136.553 Metric Tonnes of Oriental Mustard Seed in 06x40'' standard container, which was executed under Invoice No.1198 dated 09.07.2004, valued at USD 49,648.86 and Bill of Lading No. ZIMUNVK 8310 dated 26.07.2004 from the port of Novorossiysk, Port of Russia to the Port of Kolkata per vessel S.S. LIGURIA V-026. Accordingly, the goods landed at Kolkata Port and thereafter despatched to Nepal, which was ultimate destination, by Hanuman Roadway, OP No.4.

3. When the goods arrived at Nepal, damage was detected, it was brought to the notice of the carriers on delivery, and immediately a survey was conducted by the nominated Surveyor, M/s. Gladstone Ltd., Kathmandu, Nepal, which had Office at 17, Dover Road, Kolkata - 700 019 and in their report, it was reported that 1612 bags containing 71.412 Metric Tonnes of Master Seeds was found as damaged condition. At the time of loading by the Consignor, M/s. OzE Pulse Pty. Ltd., Australia, one Marine Insurance Policy, under ''All Risks'', of Tokio Marine

Insurance (Malatsia) Berhad, carrying business in India at 17, Dover Road, Kolkata - 700 019, of OP1, being Open Cover No. W-MA-2-AG-00183, dated 10.07.2004 for a sum assured of USD 55,000.00 from Warehouse to Warehouse upto destination at Nepal, was obtained. Accordingly, the complainant submitted the claim to the OPs on 29.05.2005 for payment of the loss sustained by it. However, OP1 repudiated the claim that such loss hits Clause Nos. 3.4 and 3.5.

4. Thereafter, complaints were filed by the District Forum. All the OPs denied these allegations. OP1 did not contest the case and OPs 2 & 5 denied all the material allegations. Both the fora below have come to the conclusion that M/s. Gladstone Agencies Ltd. is liable for the above said losses. OP1 is the insurer in which the OP2/the petitioner and main contestant in the original case, was to act as Surveyor as well as Claims Payable Agent, as per the policy issued in this respect.

5. The District Forum saddled the OP2 and others, with liability and passed the following order :- " That the case is allowed on contest with cost against OP Nos. 2 to 5 and ex-parte with cost against OP No.1. OPs are jointly and/or severally directed to pay to the complainant a sum of Rs.10,65,175.50 (Rupees Ten Lakhs Sixty-five thousand one Hundred Seventy-five and paise fifty only) only being the claimed amount and are further directed to pay compensation of Rs.10,000/- (Rupees ten thousand only) for harassment and mental agony and litigation cost of Rs.5,000/- (Rupees five thousand only) within 45 days'' from the date of communication of this order, i.d. an interest @ 9% shall accrue over the entire sum due to the credit of the complainant till full realization.

Complainant is at liberty to file execution case before this Forum in case of non-execution of the aforesaid order in its entirety within the stipulated period under the provision of the COPRA, 1986.

Supply certified copy of this order to the parties free of cost".

6. Similar orders were passed in the remaining two complaints.

7. Appeals were filed by M/s. Gladstone Agencies Ltd., OP2 before the State Commission which were also dismissed.

8. We have heard the counsel for the petitioner, M/s. Gladstone Agencies Ltd. The counsel for the petitioner vehemently argued that M/s. Gladstone Agencies Ltd., is a Surveyor simpliciter. It has nothing to do with the insurance as such. He contended that there is no privity of contract between the complainant and the petitioner. He contended that this Commission has no jurisdiction to try this case and only Nepal Court has the jurisdiction to try this case.

9. We have perused the insurance policy. Its relevant paras, run as follows :- " Certificate of Marine Insurance Tokio Marine Insurans (Malaysia) Berhad This is to certify that this Company has insured as above, subject to the terms and conditions of this Company''s Standard Marine Cargo Policy modeled after the English Marine Insurance Policy (MAR Form) to the extent of the same not being

inconsistent with anything contained herein. Loss, if any, payable to the Assured or order upon surrender of this Certificate which conveys the right of collecting any such loss as fully as if the subject-matter insured were covered by a Marine Cargo Policy direct to the holder hereof.

When Certificates are issued pluralistically, settlement under one of them shall render all others null and void. Under the captioned conditions, it was specifically mentioned, as under : As agreed as per Open Cover Survey and claims payable agent Gladstone Agencies Ltd., P.O. Box 1777 Block No. CH-2-339, Ward No.4 Buluwatar (Lower) Kathmandu Nepal.

10. We have seen the Survey Report, which mentions as under :- " GLAD STONE AGENCIES LIMITED ISO 9001 Certified Surveyors and Loss Adjusters (Certified by Det Norske Veritas) Head Office:

1-A, Janki Shah Road, Hastings, Kolkata, India 700 022 Phone +91 (33) 22230054-6/Fax : +91 (33) 22230290 & 22231950 Email : info@GladstoneAgencies.com Web page : http://www.GladstoneAgencies.com (Offices in Mumbai, Chennai, New Delhi, Bangalore & Kathmandu) Survey Report This report is issued for use in connection with the claim against the parties responsible, but does not imply that the loss is recoverable from Underwriters. This must depend upon the terms of the Policy of Insurance".

The Surveyor gave report in favour of the complainant.

11. The Petitioner now wants to wriggle out his liability. Customers repose faith in this Insurance Company because the name of Gladstone Agencies Limited finds mention in BOLD letters. If that was not mentioned, the customer should have thought a 100 times'' whether to get the insurance policy from OP1 or not. It is clear that OP1 and OP2 are working in cahoots with each other. The petitioner is the Claims Payable Agent. The counsel for the petitioner failed to make why this was mentioned with their name. It clearly goes to show that they have to make the payment. The language of the Surveyor quoted above is confusing, vague, evasive, ambiguous and leads the Commission, nowhere. This is the novel way invented by the OPs to mislead the people up the garden path.

12. The Foreign companies keep such like people to take the people for a ride. The petitioner is tinkering with useless defences.

13. The revision petitions are without merit and the same are hereby dismissed.