
(2016) 02 SC CK 0054

In the Supreme Court Of India

Case No : Civil Appeal No. 2800 of 2013.

Heaven Diamonds Pvt. Ltd

APPELLANT

Vs

Oriental Insurance Co. Ltd

RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Citation : (2016) 2 CPJ 1

Hon'ble Judges : Shiva Kirti Singh;R.K. Agrawal, JJ.

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Dr. Sarbjit Sharma, learned counsel appearing for the appellant and Mr. P.H. Parekh, learned senior counsel for the Oriental Insurance Co. Ltd.

2. The appellant ? Company is engaged in diamond business including manufacture of diamond impregnated scaives (grinding wheels). It is aggrieved by the impugned order dated 20th November, 2012 whereby the National Consumer Disputes Redressal Commission, New Delhi (for short "the National Commission") has dismissed the appellant's complaint in Original Petition No. 357 of 1999 and has upheld the stand of the respondent ? Insurance Company repudiating the claim made by the appellant for the alleged total loss of 200 pieces of scaives packed in two wooden boxes and exported to Belgium.

3. The purchaser of the goods at Belgium ? M/s. Nice Diamonds BVBA inspected the shipment of the two boxes and refused to accept the same. From their letter dated 14th November, 1998, it transpires that they did not accept the shipment because one box was totally broken and the scaives were damaged while in the other box the scaives were very rusty and diamond layer was with holes. They found that they could not use those scaives as they were totally lost.

4. The National Commission heard the parties in detail and also considered the report dated 9th February, 1999 by a surveyor ? M/s. N.V. Beeckman De Vos-Suikerru-Belgium. The relevant part of the report has been extracted by the

National Commission and it shows that while one box was broken, the other box was apparently in better external condition, but the grinding wheels in both cases were rusty to varying extent, on both sides.

5. It was observed that all 200 pieces were rusty to some extent. A silver nitrate test showed negative results leading to a conclusion that these goods had come into contact with fresh water. The surveyor, while recording the cause of damage, indicated that the grinding wheels became damaged by contact with fresh water and judging from the appearance of the goods, all persons present with him shared the opinion that the damage must have been sustained at some time prior to and/or during the packing of the pieces into the cases. The National Commission has also noted that the complainant protested against those findings leading to further response from the Surveyor through a letter dated 26th May, 1999, which is quoted in paragraph 6 as follows:

"We have stated in our report that it was clear that the pieces had suffered some kind of wetting. Judging from the condition of the pieces, it was concluded that this wetting was sustained at some time prior to shipment, most likely prior to and/or during packing. This is based on the fact that all pieces in both cases were in a similar condition, and that the traces of rust were present on both sides of the discs. All those who inspected the cases at Antwerp agreed that this could not have been sustained whilst the pieces were inside the cases.

We have indeed reported that there was some breakage to the cases themselves and we accept that this was sustained in the course of the various handling and/or shocks they underwent during transit."

6. The National Commission had the occasion to notice another report of a surveyor ? M/s. K.L. Assar and Company, who had been engaged by the Insurance Company to survey the manufacturing process of the complainant. The findings of M/s. K.L. Assar and Company indicate that as per enquiries made, the wooden cases were in sound conditions at the time of dispatch. The surveyor, however, went on to record that considering the sensitive functioning of the scaives and its costs, he found it necessary to recommend that such scaives should be covered with polythene sheet. The report further discloses that in spite of request, the insured, i.e., the complainant did not allow the surveyor to enter inside the cabin to inspect the machines. We may note here only the stand of the appellant that such permission was denied only to protect the confidentiality of the manufacturing process.

7. The National Commission gave due weight age to the fact that the scaives were found rusty even in the box which was not damaged and that the complainant did not cooperate with the surveyor who had gone to inspect their manufacturing place. The other relevant findings of the National Commission or their gist is indicated in paragraph 14 in the following terms:

"14. Even on quantum of loss, no evidence was led by the complainant. This is an indisputable fact that after rejection of above said goods, the complainant has

received back those goods. The said goods are in possession of the complainant itself. The complainant did not produce any expert evidence on the manufacture and working of these machines and value of the salvage, if any. The complainant did not produce any evidence in order to show as to what has happened to those goods. Dallops of mystery surround this case. This is not known whether those goods have been resold, if so at what price? It is also not known whether those goods were repaired or lying with the same condition. The complainant is trying to make bricks without straw. It's counsel did not try to throw light on these significant aspects."

8. On behalf of the appellant, it was highlighted that the National Commission has erred in recording that the complainant received their subject goods back and, therefore, it had the responsibility of proving the actual loss after accounting for the salvage. The other submissions were on issues of facts with a view to persuade us to take a different view of the matter.

9. In reply, learned counsel for the Insurance Company fairly conceded that the goods may not have been received back by the complainant, but that, according to him, will not have any significant bearing on the outcome of the complaint because of relevant clause 4.3 in the Insurance Policy, which is one of the exclusion clauses in the following words:

"4.3 loss damage or expense caused by the insufficiency or unsuitability of packing or preparation of the subject matter insured (for the purpose of this clause 4.3 "packing" shall be deemed to include stowage in a container or lift van but only when such stowage is carried out prior to attachment of this insurance or by the Assured or their servants)."

10. In our considered view, the National Commission has applied its mind to all the relevant facts and even after noting its mistake in making the observation that goods have been received back by the complainant, we find no material infirmity so as to interfere with the impugned order.

11. As a result, the appeal is dismissed. In the facts of this case, there shall be no order as to costs.