
(2016) 08 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

Case No : 122 of 2010

JAIPRAKASH ASSOCIATES LTD.

APPELLANT

Vs

ICICI LOMBARD GENERAL INSURANCE CO.

RESPONDENT

Date of Decision : 16-08-2016

Acts Referred:

Citation : 2016 3 CPR 398

Hon'ble Judges : V.K. Jain

Advocate : A. N. Haksar, Tarun Dua, Rajan Raj, Mayank Grover, Gopal Jain, Amit Tyagi, Shashwata Pandey, Chinmayee Chandra

Judgement

1. The complainant company obtained a Marine Import Insurance (Open) Policy dated August 16, 2008 from During its voyage from Spain to Mumbai, the vessel carrying the said machine encountered heavy weather, which Rs.4,25,26,789/- from the opposite party along with interest and damages.

2. The complaint has been resisted by the opposite party primarily on the ground that (i) the vessel did not encounter The opposite party has relied upon the report of M/s. James Rawes & CA, LDA-Marine Surveyors and Adjustors-

3. The insurance policy taken by the complainant to the extent it is relevant reads as under:-

Conveyance Mode: Details of Transit

Sea/Road/Courier From : Anywhere in the World

Subject Matter Insured:

Machinery and other related items To: Anywhere in India

Pertaining to insured's trade Packing Details : international standard

"4. In no case shall this insurance cover

4. 3 Loss damage or expense caused by insufficiency or unsuitability of packing

or preparation of It would thus be seen that the policy envisaged the existence of International Standard for the packing of the machinery 4. In order to prove that the packing of the machine was of International Standard, and was otherwise suitable "This to certify that Horizontal Boring Machine shipped through Vessel Balticon to M/s Jaiprakash Associates The complete system of packaging involving preparation of rigid base, distribution & fixing of machine However, there is no evidence of the other manufacturers of such machines packing similar machines, in the same

5. The question to be considered is whether the packing by M/s. Juaristi was in conformity with the International

6. As far as the Code of 2014 is concerned, it not being in force when the machine was packed, any reliance upon

7. As far as the packaging being adopted by M/s. Juaristi before shipment of such machinery is concerned, the

8. I therefore hold that the parties have not proved the International Standard, if any, applicable to the packaging

9. The report of M/s. James Rawes & CA, LDA, to the extent it is relevant reads as under: "9.0 Comments and considerations: With the exceptions of crate Nos. 1/7 and 5/7 we are unable to comment on the lashing afforded to this In which concerns crate No.5/7, it was physically impossible for us to verify the lashing afforded to In which concerns the lashing belts and strips afforded to the RAM and other material placed above We were able to verify the lashing afforded to the contents of crate 1/7 (the column), by far the heaviest The weather conditions encountered by the vessel were certainly not uncommon for the time of year On the other hand we would reiterate that the crates had been well secured by the ship's crew, with

10. The report of M/s. Sucesor de J. INNES, to the extent it is relevant, reads as under: "Regarding the lashing / securing of the RAM inside the case, it should be mentioned that according Regarding the lashing / securing of the cargo, it should be mentioned that according to information received By the contrary, the RAM with a weight of 5,500 Kgs., originally stuffed in case N 0 5/7 shifted inside the The two heavy fixing plates stuffed in the bottom of the case under the RAM not shifted at all as they were Regarding the other heavy piece (column of 39,000 kgs.) stuffed in case N 0 1/7 which also shifted inside the The lashing straps were found to be broken / snapped and the wooden chocks which got unnailed had been Therefore, in our opinion, the lashing / securing of the RAM in case N 0 5/7 and the column in case N 0 1/

11. The report of M/s. Trans Ocean Marine And General Survey Agencies, to the extent it is relevant, reads as under: "SECURING AND BRACING THE CARGO IN THE BOX / CRATE (INTERNAL PACKAGING) " To secure the packaged goods against slippage and tipping in the box / crate, they must be anchored OUR

OPINION ON ADMISSIBILITY OF CLAIM: We have scrutinized all survey reports and analysed cause of loss. In our opinion the loss can be attributed Goods should be packed adequately to withstand the normal hazards to be encountered in the contemplated In our opinion considering shifting of cargo inside package in ordinary course of transit and the packaging In our opinion claim falls within exclusions provided in the policy of marine insurance. Either Bay to Biscay or Atlantic Ocean near Lisbon, Portugal 7/8 Beaufort scale weather is not considered Therefore, externally boxes secured by vessel did not move from place but internal securing failed M/s Trans Ocean Marine And General Survey Agencies to the Guidelines for Packaging of Cargo Transport Units issued by IMO/ILO/UNECE, on internal pages 19 and 20

12. In its report, M/s. James Rawes & CA, LDA stated that the lashing belts and strips were not sufficient to withstand ensure that during the sea voyage, the machine does not breach/break the casing and come out of it. As noted earlier In the opinion of M/s. James Rawes & CA, LDA, stronger material such as chains or steel wire should have been

13. It has come in the report of M/s. Sucesor de J. INNES that the nylon lashing / strips were fixed only in transversal

14. M/s. Trans Ocean Marine And General Survey Agencies, were of the opinion that to secure the packaged goods

15. The surveyor found that the loose RAM had shifted in case No.5/7. The report of the Port State Control shows The report of the James Rawes & CA, LDA shows that the machinery contained in Case No. 1, 4 and 7 of 7 The report of M/s. Sucesor de J. INNES shows that the nylon straps had got broken and RAM had shifted and M/s. James Rawes & CA, LDA also found that a number of parts / pieces which had projected out of case

16. The report of the surveyors needs to be considered in the light of the fact that no other cargo being carried in

17. For the reasons detailed hereinabove, I hold that in the absence of evidence of International Standard applicable