(2008) 04 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

JANANI APPELLANT

Vs

ORIENTAL INSURANCE Company RESPONDENT

Date of Decision : 28-04-2008

Acts Referred:

Citation : 2008 3 CPJ 468

Hon'ble Judges : N.K.Jain , Pramila S.Kumar J.

Advocate : G.K.Srivastava , Ravindra Tiwari

Judgement

1. -THIS appeal by complainant arises from the order dated 28. 12. 2006 passed by District Consumer Disputes Redressal Forum, Bhopal in C. C. No. 727/2005 dismissing appellant''s complaint claiming compensation Rs. 5,45,500 under a Marine Cargo Inland Transit Policy.

2. THE policy in question was obtained by appellant, a registered society dealing in manufacture and sale of condoms, from respondent the Oriental Insurance Company Ltd. for a period of one year from 9. 7. 2004 to 8. 7. 2005. The total sum assured was Rs. 50 lacs while limit per location and limit per transit was Rs. 3 lacs each. The case of the appellant before the District Forum was that it had on 1. 9. 2004 booked a consignment of 250 cases of condoms (9 lacs pieces) valuing Rs. 5,45,500 with the East India Transport Agency, a transport company at Bhopal for transport by road from Bhopal to Patna. A timely declaration of the said consignment was also given to respondent-Insurance Company on the same day i. e. 1. 9. 2004. The consignment in question was lost in transit and seemed to have been misappropriated by the driver or other employees of the said transport company. A written report of the incident was lodged with the Police Station Mangalwara, Bhopal on 8. 10. 2004 and an intimation of the loss was also given to the respondent-Insurance Company. The police after investigation has filed charge-sheet against certain persons and a complaint was also in the meantime was filed by the appellant in the Court of Judicial Magistrate, First Class, Bhopal. Claim for reimbursement of the loss was lodged with the respondent-Insurance Company on 20. 9. 2004. It appears that the matter was

got investigated by the appellant-Insurance Company by its two investigators namely Satish Telang and Pankaj Agrawal. While Mr. Telang vide his report dated 17. 8. 2005 confirmed the loss, but restricted the same to Rs. 3,00,000. Mr. Agrawal vide his report dated 12. 3. 2005 recorded no specific finding about the consignment in question, but confirmed that the consignments as stated in Annexure 1 of his report, which also included the consignment in question, were sold and dispatched outside Bhopal during the period from 9. 7. 2004 to 30. 9. 2004. However, the respondent-Insurance Company vide its letter dated 3. 11. 2005 repudiated the appellant''s claim solely on the ground that the consignment in question was actually transported and lost on 25. 8. 2004 not on 1. 9. 2004.

The Forum below after taking evidence of the parties dismissed the complaint holding that the issues involved in the case are too complicated to be gone into in summary proceedings under the provisions of the Consumer Protection Act.

3. THE dispute as projected by appellant-complainant constituted a "consumer dispute" required to be adjudicated under the provisions of the Consumer Protection Act. It is now too well settled that a consumer should not be relegated to Civil Court merely on the ground that the quetion involved is of complicated nature. [see Dr. J. J. Merchant and Ors. v. Shrinath Chaturvedi, III (2002) CPJ 8 (SC)=iv (2002) SLT 714]. Coming to the merits of the case, the only dispute requiring determination is whether the consignment in question was booked and transported on 1. 9. 2004 as claimed by the complainant or on 25. 8. 2004 as contended by the respondent-opposite party. Admittedly, declaration for transportation of the consignment in question was made on 1. 9. 2004. Had the complainant booked and transported the consignment on 25. 8. 2004, there was no reason for him not to declare the consignment to the respondent-Insurance Company and risk the avoidable loss to it. There is overwhelming evidence both documentary and oral to show that the consignment in question was, in fact, transported on 1. 9. 2004 and not before.

4. THE goods were transported through truck No. MP 18b 7630. The booking receipts issued by said transport company namely East India Transport Agency is filed and proved in evidence. It bears clear testimony to this effect that the goods loaded in the said truck were booked on 1. 9. 2004. The fact is further testified by complainant''s Regional Manager-Ranjan Kumar Panda on affidavit. It is true that Shri Panda in his written report dated 8. 10. 2004 made to P. S. Mangalwara, Bhopal stated to have booked the said goods on 25. 8. 2004. However, as explained by Shri Panda this report was lodged on the basis of transfer advice which was prepared on 25. 8. 2004. Photocopy of the said transfer advice is also filed on record. In the complaint filed with the JMFC Bhopal also it was clearly explained that although transfer advise is also filed on record. In the complaint filed with the JMFC Bhopal also it was clearly explained that although transfer advice was issued on 25. 8. 2004 the consignment was actually booked with the said transporter on 1. 9. 2004. It is significant to note that in the reports of two surveyors/investigators Satish Telang and Pankaj Agrawal no

doubt is expressed as to the booking of the consignment on 1. 9. 2004. While Shri Telang in his report not only confirmed the dispatch of the consignment on 1. 9. 2004 but also assessed the net loss at Rs. 3 lacs, Shri Agrawal has on the basis of account books of the appellant-complainant has prepared a statement (Annexure D/12) of the declarations of sale made from time-to-time by the appellant from 6th May, 2004 till 30th September, 2004. This statement clearly carries entry dated 1st September, 2004 relating to the transportation of the goods in question. As is evident further from the report of Shri Agrawal the complainant insured had declared all the sale invoices, thus leaving no scope for any suspicion about the dispatch of the consignment in question having been made on 1. 9. 2004. Both the aforesaid surveyors have filed affidavits on behalf of respondent-opposite party. It is, however, interesting to note that they both have supported the complainant''s claim that the consignment in question was actually booked and transported on 1. 9. 2004. Shri Telang has gone a step ahead and testified that he was verified this fact both from the account books of the appellant-complainant and the said transporter M/s. East India Transport Agency. Shri Agrawal in his affidavit has further testified that after 31st July, 2004 the only consignment dispatched and declared was the one in dispute sent on 1. 9. 2004. He has confirmed that no such declaration of any consignment was found to have been made on 25. 8. 2004 or on any other date in the month of August 2004. As already stated both these affidavits were got filed by respondent-Insurance Company and the company is, therefore, bound by the statements made by these two deponents. Even otherwise, we see no reason to disbelieve their testimony which is further supported by the documents on record.

5. THERE can be, thus, no manner of doubt that the date of dispatch 25. 8. 2004 mentioned in the FIR was a mere mistake while the fact of the matter is that the consignment was actually booked and transported on 1. 9. 2004 as per declaration submitted on the same date to the respondent-Insurance Company. The repudiation of appellant''s claim by the respondent was, therefore, wholly unjustified and the Forum below was also wrong in dismissing the complaint and relegating the appellant to his remedies in general law.

6. AS regards the compensation, it is true that although the value of the goods transported was Rs. 5,45,500 which was also well within the total sum assured for Rs. 50 lacs, but it was in excess the limit of Rs. 3 lacs prescribed for one single transit. So as assessed by Surveyor Shri Telang the appellant-complainant was entitled to a compensation of Rs. 3,00,000 only. The appellant is also entitled to interest on the said amount from the date of repudiation i. e. 3. 10. 2005. We, thus, allow the appeal as also the complaint of appellant in part and to the extent indicated above. The respondent-Insurance Company is directed to pay to appellant-complainant Rs. 3,00,000 (Rs. three lacs only) with interest at the rate of 8% p. a. from 3. 10. 2005. The respondent shall also bear appellant''s cost of both the Fora and the same is quantified at Rs. 2,000. Appeal allowed.

