(1993) 12 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

JEWELLERS NARANDAS AND SONS — APPELLANT

Vs

ORIENTAL INSURANCE CO. LTD. — RESPONDENT

Date of Decision : 16-12-1993

Acts Referred:

Citation : 1993 0 NCDRC 48 : 1994 1 CLT 531 : 1994 1 CPC 423 : 1994 1 CPJ 76 : 1994 1 CPR 108

Hon'ble Judges : V.BALAKRISHNA ERADI , A.S.VIJAYAKAR , B.S.YADAV J.

Final Decision : Dismiss this complaint petition

Judgement

1. THE complainant herein -Jewellers Narandas and Sons, Bombay is a firm engaged in the business of export of jewels and jewellery, had despatched a consignment of gold jewellery to M/s. Al-Dhabi Trading and Construction Company, Kuwait on or about July 30, 1990. The consignment was despatched by the complainant by Swiss-Air under Airway Bill dated July 30, 1990. The complainant had insured the said consignment of jewellery etc. with the opposite party - The Oriental Insurance Company Ltd. -under a policy of Insurance dated July 30, 1990 for "door to door" delivery to the consignee in Kuwait. The said policy covered inter alia loss, damage etc. arising out of war risk also. According to the complainant the consignment was carried by Swiss-air on their flight SR-189 from Bombay to Zurich on August 1, 1990 and by flight SR-392 from Zurich to Kuwait on the very same date namely August 1, 1990 and after the discharge of the air-cargo from the aircraft, the goods in question had been kept in the strong room of the Kuwait Airport pending delivery to the consignee. The grievance of the complainant is that thereafter the consignment was not delivered to the consignee M/s. Al-Dhabi Trading and Construction Company at Kuwait. On this basis they have brought this claim against the insurance company for recovery of Rs. 33,19,829.13 with interest thereon at the rate of 21 per cent per annum from August 1,1990 till actual payment and realisation. The contention of the complainant is that even though the hostilities between Iraq and Kuwait had broken out and the consignment might have been lost as a consequence of the attack made by Iraq forces on the Airport in Kuwait, the

liability of the Insurance Company stood unaffected in vie w of the "institute of the war clauses" contained in the policy covering the goods against war risks also.

2. DESPITE a claim for payment having been promptly preferred by the complainant to the insurer, it was finally repudiated by the Insurance Company as per its letter sent on October 16, 1992 subsequent to the institution of this complaint petition. A detailed counter-affidavit has been filed by the Opposite Party - The Oriental Insurance Company. It has been stated therein that there were many similar claims made against different General Insurance Companies in India arising out of the loss of goods at Kuwait etc. consequent on the Gulf War and in order to evolve uniformity in the matter of consideration and decision of all such claims, under the initiative of the Ministry of Finance, Government of India, the General Insurance Corporation of which all those Companies are subsidiaries convened a joint Conference (Market Meeting) of Members of all the four General Insurance Companies at New Delhi on April 21, 1992 to evolve the principles to be applied for decision of claims in respect of exported consignments to Kuwait. The said meeting was attended by two of the senior officials of the General Insurance Company also. A copy of the Minutes of the said meeting has been produced and marked as Annexure R-IV appended to the Counter-affidavit. It is explained in the Counter-affidavit that it was because of the peculiar circumstances which had given rise to the claims and the necessity to have the principles of determination of such claims with uniform application by all the companies formulated with the concurrence of the Finance Ministry of the Government of India that there was inevitably some delay in taking a final decision on the claim put forward by the complainant. Since it was found on an application of the principles evolved at the general meeting to the complainant''s case that since the goods in question had been safely discharged from the air-craft at the Airport of final destination, the war clause risk would not apply in the present case, the complainant was informed by letter dated October 16,1992 that the war cover in respect of the consignment in question had ceased on the discharge of the goods at the Kuwait Airport prior to the commencement of the hostilities and hence the Insurer had no liability under the policy in question. The claim preferred by the complainant was repudiated by the insurer as per this letter stating the aforesaid ground.

3. FROM the facts narrated above, it is seen that the delay on the part of the insurer in taking a final decision on the claim put forward by the complainant has been satisfactorily explained. Having regard to the special and extra ordinary nature of the facts and circumstances of the case, it cannot be said that there was any negligence or lapse on the part of the Insurance Company in promptly dealing with the claim preferred by the complainant. It is manifest from the papers produced before us concerning all the correspondence that passed between the parties as also between the Opposite Party and the General Insurance Corporation that the matter was actively and diligently under the consideration of the respondent and the delay in taking the final decision was not occasioned by any default on its part.

4. ANNEXURE R-V is a communication that gives detailed reasons in support of the decision taken by the insurer to repudiate the claim and it cannot be said that the said decision was taken arbitrarily and without due application of mind of the relevant facts and circumstances or otherwise than in good faith. Such being the position, we have no hesitation to hold that there was no deficiency in service on the part of the Insurance Company so as to entitle the complainant to seek relief under the Consumer Protection Act. In case the complainant feels aggrieved by the action of the Insurance Company in repudiating its claim, the remedy of the complainant is to approach the ordinary Civil Court for appropriate relief. The complainant may also lodge his claims for compensation for the loss occasioned on account of the Iraq-Iran conflict with the External Affairs Ministry, Government of India in terms of U.N. Security Council Resolution No. 687 dated 3rd April, 1991. Without prejudice to the rights of the complainant to pursue such alternative remedies, we dismiss this complaint petition for the reasons indicated above. The parties shall bear their respective costs.