(1993) 04 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

JIT RAM SHIV KUMAR APPELLANT

Vs

NATIONAL INSURANCE CO. LTD. RESPONDENT

Date of Decision : 15-04-1993

Acts Referred:

Citation : 1993 0 NCDRC 7 : 1993 2 CPR 87 : 1993 3 CPR 438 : 1994 1 CLT 451 : 1994 1 CPJ 179

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

Advocate : P.K.AGRAWAL , M.S.NARGOLKAR , D.M.NARGOLKAR

Judgement

1. THE Complainant-Petitioner purchased 137 logs of timber on C&F basis of the value of U.S. $ 63,193.76 from M/s. Wai Wing Trading Co. Pvt. Ltd., Singapore on the 5th January, 1987. These timber logs were acquired and despatched by the supplier from Malaysia. They were shipped against a clean bill of lading of the same date, i.e. 5.1.1987. The Complainant Purchaser paid a sum of Rs. 8,20,575 / - for the import of the logs of wood. It also got the consignment insured for Rs. 10.00 lakhs against all risks.

2. THE ship carrying, inter alia, the logs of wood was reported to be lost in the high seas and a claim was lodged with the Opposite and a claim was lodged with the Opposite Party, the Insurance Co., on the 12th February, 1987. M/s. Paloccaran and Co. (Surveyors and Adjusters) Pvt. Ltd. investigated whether the lost logs of wood were loaded in the vessel and whether the loss occurred due to insolvency or financial default of the owners, operators, charters etc. The Surveyors and Adjusters submitted their report on the 2nd January, 1990. They reported that the cargo insured by another Insurer, the Oriental Insurance Company, was loaded on board the ship between 30th December, 1986 and 4th January, 1987. They also reported on the consignment of logs of wood loaded in the same vessel but insured by the Opposite Party National Insurance Company. They further reported that the loss had not occurred due to insolvency or financial default, of owners operators, charters etc.

3. THEY also pointed out that they were handicapped in making the investigations because by the time they were asked to investigate the case, the case was already three years old; some of the companies involved were already non-existent and/or had ceased to operate, several persons had left the places of employment, records were disposed off/stored away. According to the Surveyors and Adjusters the vessel never reached India; there was a rumour that the vessel with the cargo had been sold at Bangkok or Taiwan. However, the vessel had been lost and it could not be established as to what happened to the vessel. It was also confirmed that the documents, bills of lading and the mainfest were genuine.

4. AFTER the receipt of the above report from the Surveyors and Adjusters the Opposite Party, Insurance Company, on 13th November, 1990 i.e. after a lapse of a period of four years from the date of issue of bill of lading asked the Complainant to supply to apply the following documents/information: (1) Document relating to export issued by the Malaysian Government; and (2) Document of royalty paid to the Forest Department, Malaysia.

At the hearing on 16.11.1992 we asked the Counsel for the Opposite Party, Insurance Co., to clarify the relevance of these documents for settlement of the claim on the insurance policy. As already noted above, the logs of wood were imported from Singapore and were of Malaysian origin. More importantly the documents relating to export of and payment of royalty would be in the possession of the party which sold the logs of wood to the trading firm in Singapore and not with the buyer in India. The Counsel for the Insurance Company, could not clarify. All he said was that these queries had been raised on the basis of high level advice obtained by his client i.e. opposite party, Insurance Co. He also could not clarify as to what action was taken by the Opposite Party, on the report of the Surveyors and Adjusters filed by the Opposite Party, Insurance Company in these proceedings.

In its rejoinder to the complaint, the opposite party, Insurance Co., raised objections on the question of jurisdiction of this Commission, that the complaint involved complicated issues of facts and law which can be properly adjudicated by a Civil Court, that serious investigations and surveys were carried out in respect of the claim and it took a very long time to come to a definite conclusion as regards the validity and proof of the claims, that in November, 1990 it had asked for documents relating to export from Malaysia and payment of royalty to the Government of Malaysia especially because in the opinion of the opposite party, Insurance Co., "it is absolutely necessary to produce these documents so as to prove that the cargo was in fact loaded on board the ship". Since the complainant failed to furnish these documents/ information the claim was repudiated.

5. IN its rejoinder it also maintained that, according to its information, the insured cargo was not loaded on the vessel which was lost and that, instead of the cargo which was insured, some other cargo was loaded on the vessel,

6. AS already mentioned above, at the hearing the Counsel for the opposite party, Insurance Co., failed to explain the relevance of the information/ documents asked for in November, 1990 and the decision taken on the report of the Surveyors and Adjusters. He also did not place before the Commission the further investigations made by the Opposite Party Insurer leading to the conclusion that the insured cargo had not been loaded in the vessel and that the shipping documents viz. the Bill of Lading and Manifest were not conclusive evidence of the actual fact of loading of cargo. At the last hearing held on 16th November, 1992 the case was adjourned to enable the opposite party to file written submissions in supplementation of its oral arguments. The opposite party had made written submissions dated the 13th November, 1992 in support of the oral arguments and the complainant has also filed a reply to these "written submissions" of the opposite party. It has also filed the Institute Cargo Clause (A) regarding the risks covered by the insurance policy.

7. THE opposite party, Insurance Company, has also furnished clarifications dated the 29th January, 1993 sought for by this Commission after the conclusion of the hearing on 16th November, 1992.

8. IT is observed from the written submissions in support of the oral arguments of the opposite party Insurance Co. and its clarifications of 29th January, 1993 that its contention that, after investigation of the claim, it found that the insured cargo was not loaded on the vessel, and that, instead of the cargo which was insured, some other cargo was loaded in the vessel, was based an the report of the Surveyors, Perfect Lambert and Co., Bangkok. It also now maintained that the findings of M/s. Paloccaran and Co., were applicable only to the claims against the Oriental Insurance Co. At the hearing held on the 11th February, 1992, it was pointed out to the Counsel for the Respondent, Insurance Co., that originally the claim had been repudiated by the respondent, Insurance Co., on 24th September, 1991 on the ground that the complainant had failed to submit the required documents viz., document relating to export issued by the Malaysian Government and documents of royalty paid to the Forest Department of Malaysia. While the Counsel for the Respondent Co., could not establish the relevance of these documents in repudiating the claim of insurance, now, the claim has been sought to be repudiated on entirely different grounds. (a) The loss or damage was not caused by perils of the Sea which alone, according to the Respondent, were insured under the policy. (b) It was submitted that the loss occurred on account of sale of the cargo for non-payment of freight and that the loss on this account was not covered by the Insurance Company. (c) That the insured goods were never actually loaded in the ship. In fact, with reference to this objection taken in the reply of the Respondent to the complaint petition, the Respondent was specifically asked to state what investigations were made which led it to this conclusion.

We find that the Respondent-Insurance Company, has altogether altered the grounds for repudiation of claim. More importantly it has now pleaded that the repudiation of the claim was based on the survey report of M/s. Perfect Lambert & Co. and that the survey report of M/s. Paloccaran & Co., is only for the claims against the Oriental Insurance Co.,

9. AT the hearing held on 16th November, it was specifically enquired from the Counsel for the Respondent-Insurance Company whether the report of M/s. Paloccaran and Co. was also adopted by the Respondent Insurance Company, in the disposal of this insurance claim. At that hearing he submitted that the Respondent Insurance Company adopted the report of the Surveyors M/s. Paloccaran and Co., furnished to the Oriental Insurance Co., for this case also. Further, while filing a copy of the Survey report of M/s. Paloccaran, no qualifications had been made as to whether this survey report did not from the basis for repudiation of the insurance claim nor did it disclose that there was another survey report on this subject.

10. AT the hearing held on the 11th February,1993 we enquired from the Counsel for the Respondent, M/s. National Insurance Co. as to the date on which M/s. Perfect Lambert and Co., was asked to survey and make a report and the date on which the report was submitted. He frankly admitted that this information was not available. His attention was drawn further to the fact that the survey report of M/s. Perfect Lambert and Co., was also one furnished to the Oriental Insurance Co. and not to National Insurance Co. and that it did not at all deal with the consignment of the complainant, Mr. Jit Ram Shiv Kumar. On the other hand, the survey report of M/s. Paloccaran and Co. which was furnished to M/s. Oriental Insurance Company also with reference to their insurance policies, specifically deals with the three Bills of Lading of the complainant, M/s. Jit Ram Shiv Kumar regarding the consignment of 37 pieces of logs of wood with port of discharge Vishakhapatnam. The Counsel for the Respondent was unable to throw any light on the matter or clarify as to why the Respondent now preferred to go by the report of M/s. Perfect Lambert and Co., instead of M/s. Paloccaran and Co.

11. IT also appears to the Commission from the perusal of the record (Report of M/s. Perfect Lambert and Co. at pages 101-106 of the Paper Book) that the report of the Perfect Lambert and Co., is of an earlier date than that of M/s. Paloccaran and Co., they (M/s. Perfect Lambert) were asked to report on 20th August (1987) and they submitted their report on 22.8.1987.

12. REGARDING the risks covered by the insurance policy in this case, the insured" complainant has submitted that, according to the Institute Cargo Clauses (A), the insurance covered, all risks or damage except as provided in Clauses 4, 5, 6 and 7 thereof. They have further submitted that it is wrong to say that the policy covered only losses due to ''Perils of the Sea''. This was specifically put to the Counsel for the Opposite Party-Insurance Company at the hearing on 11th of February, 1993. The relevant clauses of the Institute Cargo Clauses (A) were also read out but he was unable to repudiate the contention of the insured"complainant that the insurance policy covered all risks or loss or damage and it was not confined only to the ''Perils of the Sea''. It is evident from

the facts stated above and the submission made at the bearings that: (i) The Opposite Party-Insurance Company repudiated the claim lodged in February, 1987, in September, 1991, after the elapse of four years. (ii) The initial repudiation on the ground that the insured complainant had failed to submit the documents relating to export and royalty was not tenable under the policy of insurance and the grounds of repudiation were not relevant to the settlement of the insurance claim. (iii) It was not established that the policy of insurance covered only ''Perils of the Sea'' and did not cover all risks of loss or damage except those falling under Clause 4, 5, 6 and 7 of the Institute Cargo Clauses (A). (iv) In its reply to the complaint petition, the respondent-insurer has stated that, after investigation, it was found that the insured cargo was not loaded on the vessel and that instead of the Cargo which was insured some other Cargo was loaded on the vessel. When called upon to produce that investigation report and to state as to when this was conducted and by whom, the respondent-insurer submitted the report of M/s. Perfect Lambert &c Co., Bangkok. (v) While the Counsel for the respondent-insurer was unable to give the date of this report, it appeared that this report was prepared on 27.8.87 whereas the report of M/s. Paloccaran, the second Surveyor, was submitted in January, 1990. At the hearing on the 11th February, 1993 the Counsel for the respondent-insurer was unable to establish the M/s. Perfect Lambert and Co., and that that report of M/s. Paloccaran was not relevant.

13. IT emerges from the above that the earlier survey report, which makes no direct mention of the cargo booked by the complainant-insured, has been used to repudiate the insurance claim. More significantly the respondent-insurer has now sought to disregard the report of the second Surveyor M/s. Paloccaran submitted in January, 1990 though it specifically refers to the cargo booked by the complainant-insured. It is noteworthy that both the survey reports were submitted in response to the surveys got conducted by the Oriental Insurance Company and not by the Respondent-Company. There is, therefore, no doubt that the repudiation of the claim by the Opposite Party-Insurance Company is mala fide. There has also been inordinate delay in repudiating the claim depriving the complainant of a sum of Rs. 8,20,575/- which obviously would have caused serious inconvenience and financial embarrassment of the insured. We therefore order as under: The Opposite Party-Insurance Co. should pay to the complainant-insured as under: 1. Rs. 8,20,575/- the full insured value of the consignment, actually paid by the complainant for import of logs of wood. 2. Interest at the rate of 18% per annum after the elapse of 6 months from the date of lodging of the claim on 12.2.1987 viz. from 12.6.1987. 3. A compensation of Rs. 1.00 lakh for the unjustified delay and harassment of the insured in repudiating the claim. 4. Interest at the rate of 18% on the above-mentioned amounts after 30 days of the date of this order till the payment is made.

