(1991) 08 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

June -July Fashions APPELLANT

Vs

DIVISIONAL MANAGER NATIONAL INSURANCE CO LTD RESPONDENT

Date of Decision : 28-08-1991

Acts Referred:

Citation : 1991 2 CPJ 677 : 1991 2 CPR 442 : 1992 0 CPC 129

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

Judgement

1. THE present complaint under section 21(a)(i) of the Consumer Protection Act, 1986 has been filed by a registered partnership firm carrying on its business under the name and style of June -July Fashions (hereinafter referred to as the Firm) at Madras. Opposite Party No. 1 is the National Insurance Company Ltd. through its Divisional Manager (hereinafter referred to as the Insurance Company). While Opposite party No. 1 -A is its Chairman. Opposite Parties Nos. 2 to 5 are the Transport Company and its partners (hereinafter referred in as the transporters).

2. ACCORDING to the allegations in the Complaint, the Firm purchases fabrics from various sources in Tamil Nadu and supplies them to the exporters in India and Nepal according to their specifications. On december 12,1989 at about 9.00 P.M. the Firm entrusted to the transporters three consignments (contained in many bales) of cotton and rayon power loom fabrics for being transported to three different consignees in Kathmandu, Nepal. (The details of the invoices are given in Para No. 3(ii) of the Complaint). The transporters issued three consignment notes dated December 30,1989. The consignments were to be transported to Kathmandu by lorry bearing registration No. AXK -7869 belonging to M/s. Royal Transport of India, an agent of the transporters. The Firm paid advance freight charges to the transporters. The consignments were to be delivered to the consignees within a period of 10 to 15 days. The Firm also got the consignments insured on December 30,1989 with the Insurance Company who issued three policies, details of which have been given in Para No. 3(v) of the complaint. The total amount for which the goods were insured works out to

be Rs. 15,54,225/ -. The consignments did not reach the concerned lorry office in Kathmandu of the consignees. After expiry of reasonable time, enquiries were instituted along the route of the lorry. The lorry''s path could be traced up to Jamsola (Orissa -Bihar border) where it had reached on January 2, 1990 and thereafter its whereabouts or that of goods were not known. The Firm informed the transporters about the loss of the goods. The transporters informed them that the said goods had been lost. The transporters also filed a complaint with the police at Madras and on its basis First Information Report was registered. The police could not make much headway in the investigations. The Firm also informed the Insurance Company about the loss of the goods and supplied the necessary information alongwith a copy of the said First Information Report. The Firm also lodged a claim with the Insurance Company The Firm submitted the necessary documents before the Investigating Officer. The insurance Company asked for some more documents and those were also submitted by the Firm. After the Insurance Company had ascertained the veracity of the claim, the Firm lodged Marine claim. The Insurance Company replied that the insurance claim was prejudiced as the insurance had been got effected after the goods had been dispatched and further suggested that appropriate legal action be taken against the transporters. The contention of the Firm is that the stand of the Insurance Company is untenable as the loss of the goods has occurred after the insurance had been got effected. Against the transporters, the Firms stand is that they should have taken due care and should have seen that the consignments safely reached the consignees. Firm''s claim is for Rs. 15,54,225/ - which is the principal amount under the policies, plus Rs. 2,95,307.75 p. as interest at rate of 24 per cent per annum on the principal amount The interest is claimed from April 2,1990 on which date the requisite documents are said to have been supplied to the Insurance Company. The claim for interest is based upon the plea that the Firm had invested about Rs. 16 lakhs and had the goods been delivered to the consignees within reasonable period they would have received their money from them (i.e. consignees).

3. IT is not necessary to dwell upon all the pleas taken by the Insurance Company in its written statement as most of those pleas were not urged before us. The pleas which were raised on its behalf before us are contained in Paras No. 4(vii) and 4(viii) of the written statement and those paras read as follows : - "4(vii). Para 4 (vii) of the claim petition as stated is not denied. However, it is clarified/ submitted that the letter dated 13.11.1990 was written only with a view to seek a clarification from the insured about the exact date of dispatch as there was a discrepancy between the actual date of dispatch and the date appearing on the G.Rs. covering the above three consignments. It has been very rightly agitated in the said letter that the right to claim the insurance has been prejudiced, because the insurance was taken only subsequently. 4(viii). Para 4(viii) of the complaint as stated is wrong and denied. It is reiterated that all the documents in question especially the original policy No. 500600/450242 dated 2.1.1990 has not been produced nor the original L.R. No. 34463 dated

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30.12.1989 nor the non delivery certificate by the Carriers, nor the final investigation report in FIR No. 164/1990 have been supplied to the answering opposite parties., -resulting in the non settlement of the claim."

4. THE transporters also contested the claim petition. We need not refer to those pleas as no relief is being granted against them. It may be mentioned here that they have admitted about the loss of the lorry with the goods and about lodging of the First Information Report with the police. It was further stated that though the lorry was sent to the premises of the Firm at about 9 p.m. on December 29, 1989 for being loaded but a couple of hours must have been taken in the loading of the goods in the lorry and it left sometime after midnight i.e., in the early hours of December 30, 1989. As the factum of the dispatch of the goods and their insurance is not disputed, this Commission asked Shri Kapoor, learned counsel for opposite parties Nos. 1 and 1 -A about the non -settlement of the insurance claim. He argued that the goods had been dispatched before the insurance was taken out and, therefore, the claim is not maintainable. This argument has no force. As pleaded by the transporters, the prevalent practice in the transport market is that goods are dispatched during the night in a lorry while the insurance is got effected on the next morning. Shri Kapoor did not dispute this practice. Otherwise also in the present case the Insurance Company knew that the goods had been dispatched in a lorry. The transporters had issued three consignment notes, copies of which are on the record, in respect of the three consignments. The numbers of those notes have been mentioned in the policies, copies of which are also on the record. In the policies it is also mentioned that the goods have been transported in a lorry. Therefore, at the time of effecting the insurance, the Insurance Company must have come to know that the goods have already left Madras. If inspite of that fact the Insurance Company chose to effect the insurance, it cannot now turn round and say that the goods had been dispatched before the insurance was taken out. It is not the case of the Insurance Company that the claimant had made any misrepresentation or practiced any fraud upon it.

5. MOREOVER , it is to be noted that the insurance was taken out before the actual loss. As mentioned in the earlier part of this order, the lorry has been traced up to Jamsola where it reached on January 2,1990. We, therefore, reject the above argument of Shri Kapoor.

6. SHRI Kapoor next argued that letter dated May 16, 1990(copy at page 59 of the paperbook) the Insurance Company had asked for the documents, mentioned in the letter, from the Firm but those were not supplied and hence the insurance claim could not be settled. Shri Venkata Krishnan, learned counsel for the Firm drew our attention to the letter dated April 2, 1990 (copy at pages 53 to 55 of the paper -book) written by the Firm to the Investigating Officer of the Insurance Company. In this letter there is also mention of the documents which were enclosed with that letter. The Insurance Company cannot be permitted to say that the documents supplied to its Investigating Officer will not be deemed to

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have been supplied to it. In fact, the documents were again supplied to the Insurance Company by the Firm vide latter''s letter dated September 3,1990 (copy at page 68 of the paper -book). Reference has been made to these copies as these were not disputed before us and learned counsel for the parties freely referred to them. In fact, Shri Kapoor''s main argument on this point was that the original policies were not submitted by the Firm and therefore, the claim could not be settled. In support of this argument reliance was placed upon a direction printed on the reverse of the policy (Photostat copy of which has been filed by the Insurance Company). The relevant portion reads are folios : - "To enable claims to be dealt with promptly, the assured or their agents are advised to submit all available supporting documents without delay, including : 1. Original policy or certificate of insurance "

That clause is only with respect to the early settlement of an insurance claim. It is nowhere mentioned that unless the original policy is submitted by the assured, the claim cannot be settled. Copies of the policies remain with the Insurance Company, If the assured gives particulars of the policy, it cannot be a difficult task for the Insurance to trace it. Hence we reject this argument also of Shri Kapoor.

7. LASTLY , Shri Kapoor argued that the transporters have not certified the loss of the insured goods. In the circumstances of the present case, this argument has not much force. When the transporters have got a First Information Report recorded about the theft of the lorry and goods no further certificate is required from the transporters about the loss of the insured goods. It is not the case of the Insurance Company that copy of the First Information Report was not supplied to it. However, to avoid controversy, Shri Aneja, learned counsel for the transporters has stated before us that his client would issue a certificate about the loss of the insured goods.

8. LEARNED counsel for the Insurance Company could not point out any other defect in the claim of the Firm under the policies. Hence it is ordered that the transport company will issue a certificate about the loss of the insured goods and deliver it to the Firm within two weeks from today. Within one week thereafter, the Firm will deliver the same to the Insurance Company. The Insurance Company shall pay Rs. 15,54,225/ - to the Complainant Firm within one month from the date on which the said certificate is delivered to it. It is made clear that this Order will not operate to the prejudice of the respondents herein in the matter of their working out or enforcing their interest rights or claims, if any.

The original petition will stand disposed of with these directions. We make no order as to costs. Petition disposed of.

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