(2001) 05 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

KANTIKA COLOUR LAB APPELLANT

Vs

United India Insurance Company Ltd. RESPONDENT

Date of Decision : 31-05-2001

Acts Referred:

Citation : 2001 2 CPC 669 : 2001 3 CPJ 44 : 2001 3 CPR 36

Hon'ble Judges : D.P.Wadhwa , J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Ordered accordingly

Judgement

1. THIS complaint has been filed by the complainants seeking payment for the damage to the equipment which took place during transportation from Mumbai to Haridwar on total loss basis. The case arises on account of damage caused to photo colour printing machinery, namely, Noritsu QSS-1923 printer-processor and QSF V-50 film processor from Noritsu Singapore Pvt. Ltd. The said machine was imported from Singapore via Mumbai. It reached Mumbai in prefect condition, and at Mumbai the said machine was entrusted to Super Roadlines, Mumbai, respondent No. 3, for transportation to Haridwar where the said equipment was to be installed. The said equipment was duly insured against any damage in the course of the transit by the opposite party No. 1. The equipment was insured for a sum of Rs. 53 lakhs against loss or damage/breakage against all risks including damage, breakage, physical loss, theft, pilferage, road risk and non-delivery. The insurance was extended to cover SRCC as per limits and conditions of marine policy. The policy in question was No. 80501/21/37/98.

2. IT is the admitted case of the parties that the said consignment got damaged due to mishandling in transportation. The opposite party No. 3 had issued the damage certificate. The complainant states that the new machine was so damaged that it could not be installed and run properly. So, he lodged a claim for a sum of Rs. 53 lakhs with opposite party No. 3. They lodged a claim with the opposite party No. 1 for Rs. 53 lakhs. The 1st Surveyor appointed by the opposite party No. 1 reported damage to the printing machine, i.e. QSS 1923, but stated that there was no apparent damage to the film processor QSF V-50

and found that the machine outwardly appeared to be in sound condition. The complainant obtained an opinion from the suppliers who opined that the machine cannot be restored to its 100% capacity and that the claimant shall have to instal a new one. On this opposite party No. 1 got the machine inspected by another Surveyor who based his opinion on one Mr. Bose who is an expert engineer of M/s. Satyam Equipment Pvt. Ltd. (India) who had been in the past an authorised sales and service representative of the said suppliers. On the basis of that, the second Surveyor opined that the machine as repairable and had assessed the loss to the extent of Rs. 5,76,730/. Opposite party No. 1 offered this amount, but the complainant refused to accept the same and instead filed the present complaint. Both the parties, i.e. the opposite party Nos. 1 and 3, have contested the complaint. The opposite party No. 1 has examined the Surveyor as well as Mr. Bose, in whose opinion the machine could be repaired. IT is not disputed that the equipment is sophisticated and computerised. Opposite party No. 1 has also laid stress on the question that this dispute involves complicated questions of fact and law and calls for detailed evidence. Therefore, the parties should be relegated to the Civil Court. After the parties have led all the evidence, we fail to consider as to what are the other complicated questions of fact and law which have not been dealt with by each party in its evidence. After having read all the evidence we feel that this objection has no meaning and it is accordingly rejected. IT is also not acceptable that the Insurance Company is not liable to pay as the damage suffered by the complainant on account of negligence of the carrier, opposite party No. 3. However, at the Bar, Mr. Nandwani, did not press this argument any further. But, pointed out that since both the carrier and insurer are before the Court, the ultimate liability should also be fixed. We are seized of this matter to determine whether there was any deficiency in service, which, as the facts reveal, cannot be disputed both on the part of the opposite party No. 1 as also on opposite party No. 3. The complainant apart from examining himself has also examined the expert from the suppliers of the machine who had pointed out that this is a later model which is extremely sophisticated and is computerised and that on account of damage its programming cannot be synchronised and 100% performance is not possible. Even if the repair to the hardware is carried out, the machine will never give 100% performance. They have also stated that no one in India including their former distributors'' engineers like Mr. Bose had any experience of the software employed in this model. All computerised equipments comprised of two parts, one is software and the other is hardware, and that it is not everyone who can repair such equipments. The best persons who know of this are the manufacturers whose representative has come and deposed. The witness opined that the machine is so damaged that it cannot be restored to 100% efficiency. In view of this matter, there is little scope to doubt that the complainant has proved his case and that it is a case of total loss and should have been settled as such by the Insurance Company who may exercise their recourse, if any, against the carrier. The Insurance Company had full opportunity to examine the complainant. IT is neither sides case that the machine was ever got repaired. A person who purchases a modern sophisticated machine cannot be expected to compromise in the manner suggested by the Insurance Company, opposite party No. 1 before us that he should get it repaired and get some work out of the machine. This entrepreneur had incurred huge expenses to be able to get full yield from the machine and not partial yield. For that reason, we are of the view that the complainant has succeeded in proving his case and that both the opposite parties 1 and 3 are deficient and has succeeded in proving that this is a case of total loss. The opposite party Nos. 1 and 3 are jointly and severally liable to pay a sum of Rs. 53 lakhs together with interest at the rate of 10% p.a. from the date two months after the second Surveyor''s report till the date of payment. The complainant shall be liable to surrender the salvage to the Insurance Company against payment of its claim. The respondents are allowed eight weeks'' time to make the payment. The complainant will also be entitled to the sum of Rs. 10,000/- by way of costs. Ordered accordingly.