

(1999) 07 NCDRC CK 0085

In the National Consumer Disputes Redressal Commission

K.R. PULP AND PAPERS LIMITED

APPELLANT

Vs

SHRI JAI AMBE TRANSPORT COMPANY

RESPONDENT

Date of Decision : 02-07-1999

Acts Referred:

Citation : 1999 3 CPJ 98

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal filed by M/s. K.R. Pulp and Papers Limited, Village Rampur, Jalalabad Road, Tehsil Sadar, District Shahjahanpur and the National Insurance Company Limited through the Divisional Manager of National Insurance Company, Shahjahanpur against Sri Jai Ambe Transport Company, Ahmedabad against the order dated 9.11.1998 passed by District Forum, Shahjahanpur in Complaint Case No. 179/98 :

2. THE facts of the case are as under : THE appellant K.R. Pulp and Papers Limited had placed an order for supply of two dryers from Ahmedabad manufacturer. Payment of equipment was made to the manufacturer and the equipment containing two dryers was despatched through the respondent Shri Jai Ambe Transport, Ahmedabad. Freight was mutually decided as Rs. 18,025/-. THE two dryers were loaded in truck No. GJ-IB/3370. During the transit the respondent changed the truck in which the two dryers were loaded. THE changed truck No. was GJ-IU-3400. When the truck reached the destination it was found that the dryers were completely damaged. THE appellant K.R. Pulp paid the freight of Rs. 18,025/- and received the consignment. THE driver of the truck verified the damage of the dryers. Since the appellant had taken the Insurance policy for the transit of said consignment of the order of Rs. 3,20,000/- on 20.3.1998 and as per the terms of the policy a claim was lodged with the Insurance Company- appellant No. 2. Insurance Company-appellant No. 2 granted a claim of Rs. 2,80,000/- and authorised the appellant to realise the cost of the damaged equipments. According to the appellant the cost of two dryers

was Rs. 4,47,200/- which were received in damaged condition.

The District Consumer Forum heard the complainant and passed an ex parte order as the opposite party-respondent in this case did not appear before the Forum. The District Forum came to the conclusion that there was no clear proof as to what specific damage has been caused, therefore, dismissed the complaint. The complainant, therefore, preferred an appeal before this Commission challenging the correctness of the order passed by the learned District Forum.

3. IN the memo of appeal, it has been stated that the findings given by learned District Forum that the appellant failed to prove that the two drying cylinders were damaged and were of no use whereas the Surveyor in his report had categorily stated that the drying cylinders were badly damaged and cannot be used in quality production of packing papers. This report of the Surveyor was filed before Forum. He had also stated that the driver of the truck had also given an endorsement that two drying cylinders were damaged in the way. The INSurance Company- appellant No. 2 as per the survey report sanctioned a claim of Rs. 2,84,900/- by means of a cheque and, therefore, in view of these facts the findings given by the Forum were totally incorrect. It was because of negligence on the part of the respondents that the equipment was damaged during the transit when the same was unloaded from the truck and loaded on another truck. Appellant No. 2-National INSurance Company also filed an affidavit confirming the facts given in the grounds of appeal by the appellant and the said drying cylinders were sent by the respondent to the appellant No. 1 on 1.1.1998 vide Bill No. P-14 and GR No. 269. But appellant No. 1 had taken a Marine Policy with appellant No. 2 and when drying cylinders reached the destination, appellant No. 1 found that the said cylinders had been badly damaged. After receiving the survey report, the appellant No. 2 settled the insurance claim for a sum of Rs. 2,84,900/- and the same was paid to appellant No. 1 on 22.5.1998. Notice was issued to the opposite party- respondent to appear on 18.5.1998. The notice was issued on 12.2.1999 but in spite of the registered notice the opposite party did not attend the case and the case proceeded ex parte.

4. WE have heard learned Counsel for appellant Anil Kumar. WE have also gone through the evidence on record. The report of Surveyor, appointed by appellant No. 2 indicates that two drying cylinder having dimension of the size 1500 mm dia x 3200 mm dia face length Bearing Centre 3800 mm were despatched to Shahjahanpur as per Bill No. P-14 dated 18.3.1998 by road GR No. 269. The survey report also says that the drying cylinders were initially loaded in truck No. GJ-1B/3370 and truck on its way to Shahjahanpur developed some trouble in the engine. Thus, two drying cylinders were shifted to truck No. GJ-IU-3400 and brought to Shahjahanpur for door delivery. That damage had taken place while shifting to another truck and further damages had taken place due to jerk and jolts during transit. Due to this damage, the drying cylinder cannot be used in quality production of packing papers. The Surveyor recommended an amount of Rs. 2,84,900/- as claim to be sanctioned against maximum liability of Rs.

3,20,000/-. In the same survey report in column No. 17 details of mode of packing have been mentioned. It has been clarified by Surveyor that two Nos. dryers were packed as detailed below : "Initially a chemical coating applied on drum surface, then thick P.V.C. sheet put on it. On P.V.C. sheet thick nylon Nevad tied around it. The dryers individually secured on arched wooden rest and tied up to prevent any movements during transit. The packing "bund to be suitable and standard for dryer transportation by Road.

The dryers were individually secured on arched wooden rest and tied up to prevent any movements during transit. The packing was found to be suitable and standard for dryer transportation by road. PVC sheet thick nylon Nevad was tied all around and then a rope was tied around the machine. Under these considerations, even a dryer re-loaded in another vehicle could not have been damaged. Secondly the extent of damage reported by the Surveyor in para 23 of his report has been found as vague as it has been stated that the dryer cylinders cannot be used in quality production of packing papers. It can also be presumed that damage was not to that extent that the equipment was unusable. We, therefore, cannot place reliance on the report of Surveyor or especially when a Surveror has been appointed by the appellant No. 2-the Insurance Company. If the report of the Surveyor had been corroborated by any other technical evidence then the same could have been considered. No other technical evidence has been filed before this Commission. The mere oral statement of the truck driver that surface of the dryer cylinder had become bad does not mean that dryers in question had cracked and were of no use.

5. THE appellant No. 2 has sanctioned a claim of Rs. 2,84,900/- in favour of appellant No. 1 and the amount was received by appellant No. 1 on 22.5.1998. .Appellant No. 1 has, therefore, been adequately compensated by the Insurance Company which is appellant No. 2 and since no concrete evidence of the damage done to the equipment during the transit has been produced except the report of the Surveyor which has been discussed above, it cannot be held that in view of high standard packing, the equipment was badly damaged while loaded for transshipment in another truck. THEREfore, the allegation against the respondent is not proved.

6. IN view of the above discussion, we are not inclined to interfere in the judgment and order dated 9.11.1998 passed by learned District Forum, Shahjahanpur against which the appeal has been filed. Appeal is, therefore, liable to be dismissed. ORDER The appeal is dismissed. No order as to costs. Let the copy of this order be sent to the parties as per rule. Appeal dismissed.