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(1998) 05 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

KRISHNA COTTON FACTORY — APPELLANT

Vs

REGIONAL OFFICE, NEW INDIA ASSURANCE CO — RESPONDENT

Date of Decision : 06-05-1998

Acts Referred:

Citation : 1998 2 CLT 94 : 1998 2 CPJ 673

Hon'ble Judges : A.L.Bahri , Jasbir Singh , Davinder Kaur Bhamrahs J.

Final Decision : Complaints allowed with costs

Judgement

1. VIDE this order, two Original Complaints No. 14/1997 and 15 /1997 are being disposed of. The parties in both the complaints are the same and the matter is also similar. The questions of fact and law involved are similar. In OC No. 14/1997, the complainant, M/s. Krishna Cotton Factory, Bathinda claims Rs. 13,85,000/- with 24% p.a. interest from the date of loss till payment. In OC No. 15/1997, the same claimant claims Rs. 13,80,000/- with 24% p.a. interest from the date of loss till payment. Both the complaints have been filed against New India Assurance Company from whom the insurance policy had been taken covering risk to loss to the goods sent from Raman Mandi, Bathinda to Salem Railway Junction and therefrom to Karripatti by Road. The goods were sent through Railways sometime in January, 1995 details of which are given in the two complaints referred to above. Such goods reached Railway Station, Salem in Tamilnadu on or about March 9, 1995. A fire occurred at the Railway Station on March 26,1995 that the stocks were damaged having been burnt. The claims were made before the Insurance Company, which were repudiated on December 13, 1995 that ultimately the complaints were filed as stated above. The Insurance Company took up the stand that the repudiation was valid and in accordance with the terms and conditions of the insurance policy. The parties led their evidence on affidavits and documents. We have heard Counsel for the parties.

2. THE following questions require consideration: 1. Whether the repudiation of the claim by the Insurance Company is arbitrary, thus resulting in deficiency in

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rendering service in not settling the claim? 2. Whether clause "ITC Clause B" is applicable to the insurance policy in dispute as the same did not find mention in the other copies of insurance policy produced?

In case "ITC Clause B" is applicable, whether the case in hand is covered therein, in other words, the liability of the Insurance Company ceased after expiry of seven days of reaching the goods at the last Railway Station, Salem. 3. Though the questions framed above appear to be independent, however we find that they are over-lapping and can be discussed together. Ex. C7 is the office copy of Marine Policy issued by New India Assurance Company in the name of the complainant. The terms of the policy mention "Risk covered: basic, TPND and SRCC, B? At this stage, it may be observed that ''B'' is mentioned merely initial of the person issuing the policy is not clear. None of the parties have cleared this aspect of the matter and is left at that. While calculating premium, it may be observed that on the basis of basic, TPND and SRCC, different amounts were calculated alongwith stamp duty for Re. 1/-. For "ITC Clause B" reference of which would be made subsequently, no separate premium was calculated. Thus from the discussion as above, it is quite clear that clause "ITC Clause B" was not to be made applicable in the case and it was not so intended.

At this stage, reference may also be made to other copies of the insurance policies produced on the file. Ex. R2 is the photo copy of such a policy, which is of Annexure C7. In this photocopy, the word "ITC Clause B" are specifically mentioned below line "terms"; risk covered: basic TPND and SRCC, B. Since on the original copy Annexure C7 there was no endorsement of "ITC Clause B", it is to be presumed that such an endorsement was subsequently made by the employees/officials or officers of the Insurance Company. It may be observed that unilaterally one of the parties to the contract could not insert new terms and conditions in the contract. Some sort of explanation was being offered on behalf of the Insurance Company that such words were added at the time of issuing of the insurance policy. If this had been correct, such an endorsement would have found place in all the copies of the insurance policies which were prepared at one time by placing carbon papers. There was no reason why the same should not have appeared on Ex. C7, which purports to be office copy of the marine policy issued by the Insurance Company. That being the position, the repudiation of the claim made on the basis of existence of any "ITC. Clause B" purporting to be part of the insurance policy is arbitrary. Hence there was deficiency in rendering service on the part of the Insurance Company in not settling the claim.

3. AS to what is "Clause B to ITC policy", still there is confusion. On behalf of the complainant, reliance has been placed on the Marine Cargo Insurance Manual as published by the New India Training College, Bombay wherein at page 40 under the heading Inland Transit (Rail or Road) tariff and SRCC clauses are mentioned. Clause (a) covers risks i.e. until delivery to final warehouse at destination and in respect of transit by only or by rail or road until expiry of seven days after arrival of Railway wagon at final destination station and in respect of transit by road

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only until expiry of seven days after arrival of vehicle at the destination town whichever shall first occur. "Clause B" of Inland Transit Rail or Road is described as (basic cover). Under sub heading Clause (3) Transit Clause of Clause A is to apply, which has been briefly noticed above. On behalf of the Insurance Company, reliance has been placed on the instructions issued by the Tariff Advisory Committee on the subject of All India Marine Cargo Tariff issued by the Insurance Company, Bombay. The only distinction is the addition of the word Railway while describing seven days after arrival of the Railway wagon at the final destination-station. The word Railway does not find mention in the manual referred to above whereas it finds mention in the instructions referred to above. The contention of learned Counsel for the Insurance Company is that for all intents and purposes, the transit clause would be applicable and it is immaterial whether the word Railways has been mentioned in between destination and station or not. AS far as this contention is concerned, it appears to be so. When clause refers reaching of the Railway wagon at the destination station, it is postulated that it is the Railway Station, otherwise reaching of the wagon at some station, which is not a Railway Station is not contemplated. Thus, there is no marked difference in the two Manuals issued by the Insurance Company to be kept in view while issuing marine policy. The Insurance Company would have been within its rights in repudiating the claim, if "TTC Clause B" had been specifically inserted in the policy issued. AS discussed above, such a term was not included in the policy in question and hence no benefit can be derived by the Insurance. By mere fact that the goods remained at the Railway Station, Salem for more than seven days and were destroyed there by fire, the Insurance Company cannot shed its liability or responsibility to indemnify the loss suffered by the complainant. The policy in the present case was not issued by any agent of the Insurance Company but by the Divisional Manager, who was supposed to know all the legal complications of a policy. The Surveyor appointed in OC No. 14 of 1997 reported the loss of the goods to the tune of Rs. 20,88,926/-. At this stage, it may be observed that this amount as assessed is with respect to 220 bales of cotton, which were despatched by the complainant through different Railway Receipts. In OC No. 14 of 1997, 110 Cotton Bales were sent vide Railway Receipt No. 936388 dated January 26,1995 and in OC No. 15 of 1997,110 Cotton Bales were sent through Railway Receipt No. 931827 dated 7.2.1995.

4. THE Supreme Court in "United India Insurance Co Ltd v. M.K.J. Corporation", III (1996) CPJ 8 (SC) has held that compensation by way of interest on account of delayed payment on settlement of claim cannot be more than 12% p.a. in the case of Nationalised Companies. Since the total amount assessed relates to the two consignments as referred to above, in each of the cases, the complainant would get Rs. 10,44,463/- with 12% p.a. interests. w.e.f. November 10, 1995 allowing three months'' time from the Surveyor''s report to settle the claim. THE interest will be payable till realisation. For the reasons recorded, both the complaints are allowed as above with costs, which are assessed at Rs. 2,000/- in each case. Complaints allowed with costs.

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