(1994) 03 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

MAHALAKSHMI ENTERPRISES APPELLANT

Vs

UNITED INDIA INSURANCE COMPANY LTD RESPONDENT

Date of Decision : 08-03-1994

Acts Referred:

Citation : 1994 3 CPJ 507 : 1996 1 CPR 210

Hon'ble Judges : N.C.Sharma J.

Advocate : B.L.Khamka , Ashok Mehta

Judgement

1. -THIS complaint has been filed by M/s. Mahalakshmi Enterprises against United India Insurance Company Ltd. under Section 17 read with Section 12 of the Consumer Protection Act, 1986 claiming a compensation of Rs.. 2,29,769.40 in respect of damage caused to the goods alongwith interest @ 18% p.a. and Rs. 1,50,000/- as compensation for mental agony with costs.

2. FACTS alleged in the complaint are that the complainant carries on business as exporter of hand knitted woollen carpets. On 18.7.1989 the complainant had sent a consignment of hand knitted woollen carpets from Jaipur to Bombay by road and from Bombay to Hamburg in West Germany by a ship named Merzario under a bill dated 31.7.1989. The ship arrived at Hamburg on 10.9.89 and at the local quay shed on 13.9.89. The consignments sent to Hamburg was got insured from the United India Insurance Company under an Insurance Policy dated 12.4.89 which was in force till the consignment reached the destination by sea and 60 days thereafter. The consignment was not taken delivery of by the consignee. The complainant alleged that the bales in which the carpets were sent were packed in Polythine and hassion cloths in a secured condition. As the foreign consignee did not take delivery of the consignment, it was redespatched from Hamburg to India to be delivered to the complainant on 21.12.89. During the period from 10.9.89 to 21.12.89 the consignment remained in the goodown at Hamburg. For the return of the consignment also the complainant got the goods insured under an Insurance Policy dated 21.12.89 with the opposite parties. The goods reached Jaipur on 4.5.90. When the complainant went to take

delivery of the goods of the office of the Golden Transport Company Ltd., Jaipur, he found the goods in a damaged condition. The complainant informed the Insurance Company immediately and Shri V.P. Bharatwaj was deputed by the Insurance Company as Surveyor. The Surveyor made an inventory of the goods and gave a report to the United India Insurance Company. The complainant went to take open delivery of the goods from the transporter-Jaipur Golden Transport Company and found that two carpets were missing and 50% of the carpets were damaged by small holes and were stained. It has been alleged that when the goods were rebooked from Hamburg to Jaipur, a remark was made in the bill of loading that the goods had jute wraper dry stained and with small holes. From this remark in the bill of loading the complainant alleged that it clearly appears that the goods were damaged while it was being carried from Bombay to Hamburg Port by ship. The complainant prayed for claim compensation from the opposite parties to the extent as indicated above. The claim filed by the complainant has been opposed by the opposite parties and they have filed a version of their case. According to the opposite parties the policy of insurance was taken on 12.4.1989 for a sum of Rs. 10,00,000/-. The policy was restricted for the period of transhipment and 60 days from the date of unloading of the goods in the shed at the place of destination. The goods reached the destination on 10.9.89 at Hamburg and were unloaded on 13th and 14th September, 1989. As per information supplied to the opposite parties by Gellatly, Hankey & Co., the goods arrived at local quay shed at Hamburg on 13.9.89. It appears that there is writing error of the year in the letter sent by Gellatly, Hankey & Co. (Annexure 11) inasmuch as instead of the year 1989 the year was typed as 1990. The consignment was rebooked on 21.12.89. The period of 60 days, according to the opposite parties expired on 13.11.1989 and the goods remained uninsured during the period from 13.11.89 to 21.12.89. The Insurance Company asked he complainant to substantiate the claim that the goods were damaged during transit. Since the complainant failed to substantiate this fact the Insurance Company did not accept the liability and repudiated the claim of the complainant.

The parties have produced affidavits and certain documents in the case. I have heard the learned Counsel for the parties and have gone through the affidavits and the documents produced.

3. IT is not in dispute that the consignment containing hand knitted woollen carpets have been booked by the complainant to Hamburg and were sent on 18.7.89. IT is also not in dispute that when the goods were booked and sent from Jaipur to Bombay for onward transmission to Hamburg, they were insured under the Insurance Policy dated 12.4.89. The Insurance Policy covered loss of the consignment upto the date the consignment reached the destination and 60 days thereafter. The consignment reached the destination on 10.9.89 and was received at the local quay shed on 13.9.89. No evidence has been adduced of the clearing agent at Hamburg to show regarding the condition of the goods when they had arrived at the local quay shed at Hamburg. IT was not disputed before me that the period of insurance was upto 60 days after the consignment reached

the destination and this had expired on 13.11.89. The goods were rebooked on 21.12.89 after gap of one month and 8 days. During this period the consignment was uninsured. Learned Counsel for the complainant led emphasis on the fact that when the consignment was rebooked a remark had been made in the bill of loading (Annexure 5) to the effect that jute wrapper dry stained and with small holes. It is true that in the bill of loading (Annexure 5) this remark has been made when the goods were rebooked for return journey on 21.12.89 but from this remark alone it cannot be inferred that the damage was caused during the course of transit of the goods from India to Hamburg. As already stated the goods remain lying beyond the risk covered period from 13.11.89 to 21.12.89. It was very necessary for the complainant to produce the affidavit or other documentary evidence from his clearing agent at Hamburg to show as to what condition the goods reached at the destination. Unless loss to the goods was established at the precise point of time during which the goods were covered by the insurance the complainant could not succeed. Since the complainant has failed to establish this crucial fact, no relief can be granted to him in the complaint. The complaint is therefore dismissed. I leave the parties to bear their own costs. Complaint dismissed.

