(2017) 02 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

Case No : 2955 of 2011

M/S. AGARWAL STONE OVERSEAS — APPELLANT

Vs

REGIONAL MANAGER, NEW INDIA ASSURANCE CO. LTD. & ANR. — RESPONDENT

Date of Decision : 15-02-2017

Acts Referred:
Consumer Protection Act, 1986, Section 21(b) - Jurisdiction of the National Commission

Citation : 2017 1 CPR 791

Hon'ble Judges : B.C. Gupta

Advocate : Devendra Mohan Mathur, Rajesh K. Gupta

Judgement

1. This revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986, against the impugned order dated 27.05.2011, passed by the Rajasthan State Consumer Disputes Redressal Commission, (hereinafter referred to as "the State Commission") in Appeal No. 1199/2010, M/s Agarwal Stone Overseas vs. New India Assurance Co. Ltd., vide which, while dismissing the appeal, the order dated 17.05.2010, passed by the District Consumer Disputes Redressal Forum, Jaipur in Consumer Complaint No. 597/2007, dismissing the said complaint, was upheld.

2. The complainant M/s Agarwal Stone Overseas is a partnership firm and deals with the export of different types of marble stones etc. They obtained a marine insurance policy, covering risk to the tune of Rs. 1 crore vide cover note no. 11871 for the period from 01.09.2004 to 31.08.2005. The coverage for a single consignment of export was Rs. 15 lakhs on warehouse to warehouse basis. The complainant sent a consignment of 65 pieces of granite slab to M/s Center Stone Granite and Marble INC, Toronto, Canada, valued at 20334.33 canadian dollars through Chennai port. The consignment did reach the Toronto port in Canada, from where it was sent to the warehouse for delivery. The case of the complainant is that the delivery of the goods was not done at the warehouse and the trailer in which the material was being transported, was stolen on the

highway itself, before reaching the warehouse. Since the complainant suffered loss of goods during the insurance period, a claim was filed with the Insurance Company and the claim settling agent at Canada was also informed on 07.12.2004. The theft of the goods took place on 04.12.2004. However, the case of the opposite party (OP) is that the consignment reached the warehouse on 24.11.2004, but it could not be taken inside the warehouse due to lack of space. Thereafter, the consignment was stolen from outside the warehouse on 04.12.2004. The case of the OP Insurance Company is, that since the consignment had been delivered to the recipient, they could not be held liable in any manner for the payment of any claim. The complainant filed the consumer complaint in question, seeking directions to the Insurance Company to pay compensation of 20334.33 Canadian dollars equivalent to Rs. 7,78,836/- with 24% annual interest from the date of filing the claim till payment. A further compensation of Rs. 5 lakhs was also demanded for mental harassment etc. and Rs. 21,000/- as litigation costs.

3. The complaint was resisted by the Insurance Company by filing a reply before the District Forum, in which they stated that the delivery of the consignment was received by the consignee, M/s Center Stone Granite and Marble INC from the transporter on 24.11.2004. As per the conditions of the policy, if any loss was caused to the insured after receiving the delivery of the goods, the Insurance Company was not responsible for payment of compensation in any manner. It was also stated that signatures of the purchaser of the consignment had been obtained on the bill of lading by the transporter M/s Straight Transport INC, which was proof of the delivery of the said consignment.

4. The District Forum, after taking into account the averments of the parties, dismissed the complaint vide their order dated 17.05.2010, observing that the delivery of the goods was made to the consignee on 24.11.2004, but the goods were kept on the road, outside the warehouse for want of space inside the same. The goods were then stolen on 04.12.2004 from outside the warehouse. Being aggrieved against the order of the District Forum, the complainant challenged the same by way of an appeal before the State Commission. The said appeal having been dismissed vide impugned order, the complainant is before this Commission by way of the present Revision Petition.

5. During arguments before me, it was asserted by the learned counsel for the petitioner/complainant that as stated in the policy itself, the risk for the consignment was covered from warehouse to warehouse basis. In the present case, since the consignment did not reach the warehouse of the consignee, the Insurance Company was bound to reimburse the claim.

6. On the other hand, the learned counsel for the respondent stated that the insurance policy contains the Institute Cargo Clause (A), which clearly states that the insured transit terminates on delivery to the consignee at their final warehouse or place of storage at the destination named under the policy. It has been confirmed by the claims'' agent of the Insurance Company that the

container was delivered to the premises of the consignee on 24.11.2004, but due to limited capacity of the receiving facility, the container was parked on the public highway, from where it was reported to be stolen on 04.12.2004. The learned counsel further stated that the signatures of the purchaser had been taken on the bill of lading as stated in the reply to the complaint. The order passed by the State Commission and the District Forum, therefore, reflect a correct appreciation of the facts and circumstances on record. The orders passed by the consumer fora below were, therefore, in accordance with law and should be upheld.

7. In reply, the learned counsel for the petitioner stated that the evidence affidavit filed by them before the District Forum had not been controverted by the other party.

8. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me.

9. The main issue for consideration in the matter is whether the OP Insurance Company is liable in any manner for payment of the claim for the alleged loss of goods sent to the consignee in Canada. It has been amply brought out in the material available on record that the delivery of consignment was given to the consignee in Canada on 24.11.2004. The signatures of the purchaser were also obtained by the transporter on the bill of lading. It has been duly observed by the District Forum that the delivery papers containing the signatures of the consignee had been produced before them during hearing. It has also been stated that the material could not be moved inside the warehouse on 24.11.2004 due to lack of space in the same. The material was then stolen from outside the warehouse on 04.12.2004. The contention raised by the petitioner/complainant that since the goods had not reached inside the warehouse, the Insurance Company were liable to pay the claim, is without any ground, looking at the fact that the delivery of the consignment was made to the purchaser. The complainant has not controverted by any evidence that such delivery was not accepted by the consignee.

10. From the foregoing discussion, it is evident that the orders passed by the consumer fora below reflect a correct appreciation of the facts and circumstances on record. There is no infirmity, irregularity or jurisdictional error in the said orders and these are ordered to be confirmed. This revision petition is ordered to be dismissed, being devoid of any merit. There shall be no order as to costs.