
(2017) 03 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Case No : 915 of 2015

M/S. JAGRUTI SECURITIES LTD.

APPELLANT

Vs

UNITED INDIA INSURANCE COMPANY LIMITED

RESPONDENT

Date of Decision : 24-03-2017

Acts Referred:

Consumer Protection Act, 1986, Section 19, Section 21(a)(2) - Appeals - Jurisdiction of the National Commission

Citation : (2017) 03 NCDRC CK 0001

Hon'ble Judges : B.C. Gupta, S.M. Kantikar

Advocate : S.M. Tripathi, S.P. Sausan, Rajesh K. Gupta

Final Decision : Appeal Dismissed

Judgement

1. This first appeal has been filed under section 19, read with section 21(a)(ii) of the Consumer Protection Act, 1986 against the impugned order dated 30.09.2015, passed by the Maharashtra State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission") in consumer complaint No. CC/06/167, filed by the present appellant, vide which, the said complaint were ordered to be dismissed.

2. Briefly stated, the facts of the case are that the complainants M/s. Jagruti Securities Limited are a registered share-broker and a trading member of the Bombay Stock Exchange Limited (BSE) and also registered with the Securities and Exchange Board of India (SEBI). They are engaged in trading in shares and securities on behalf of their clients like the financial institutions, individual investors, sub-brokers and other general public. The Bombay Stock Exchange (BSE, Mumbai) has been taking insurance cover, known as "Special Contingency Policy" from the opposite party (OP) "United India Insurance Company" in order to protect their members against possibility of various risks involved in the share trading business. A policy bearing No. 020300/46/1/39/80117/2000 for an aggregate sum assured of 200 crores, covering the period from 01.07.2000 to

30.06.2001, had been taken by the BSE from the OP Insurance Company. The aforesaid policy covered the risks for the transactions done prior to the commencement of the Policy, but after the retroactive date, i.e., after 01.07.1996. It was also stipulated that the claim would be payable subject to the financial loss having occurred after retroactive date, but discovered during the period of policy, i.e., from 01.07.2000 to 30.06.2001.

3. It is stated that the complainant in their normal course of business, sold 1100 and 43,400 shares of a company called M/s. ANCO Communication Limited during the period 09.10.99 to 16.10.99 and from 07.12.99 to 29.12.99 under settlement No. A/3099 and A/3899 to A/4199 on behalf of a sub-broker, M/s. Midas Financial Consultant and Services. At that time, the said 44,500 shares were delivered in physical condition and received by the insured from the sub-broker M/s. Midas Financial Consultant and Services. They were further delivered by the complainant to BSE on 06.01.2000. The complainant stated that they had also confirmed the genuineness of the physical share certificates from M/s. ANCO Communication Limited, prior to delivering the same to BSE. On 19.04.2000, the complainant received 1000 shares out of 44,500 shares as PATAWAT objection from Bad Delivery Cell of the BSE, stating that 1000 shares with identical certificate and distinctive numbers were delivered by another BSE broker. The complainant immediately informed the sub-broker and they arranged to deliver another 1000 shares of M/s ANCO Communication Limited to the BSE. The issue was also taken-up with M/s. ANCO Communication Limited.

4. Further, at a later stage, other shares of the company were also received back from the Bad Delivery Cell of the BSE. The complainant requested the sub-broker to rectify the shares, but they were not able to do so due to financial crisis. The complainant was forced to rectify the shares themselves due to which they suffered loss of 29,39,125/-.

5. The complainant further stated that intimation about the loss was given to the OP Insurance Company as per the terms and conditions of the policy and claim filed with them. A surveyor was appointed by the insurance company which submitted their report on 19.04.2002. However, the Insurance Company repudiated the claim of the claimant vide letter dated 17.12.2004. Alleging deficiency in service on the part of the insurance company, the complainant filed the consumer complaint in question, seeking directions to the OP to pay the claim of 29,38,125/- with interest @18% p.a. from the date of loss till the date of order and further interest @18% p.a. from the date of order till realisation. A compensation of 5 lakh for mental agony etc. and 50,000/- as cost of litigation was also demanded.

6. The complaint was resisted by the OP Insurance Company by filing their written version before the State Commission, in which they stated that the claim could be payable subject to the following two conditions: (i) the financial loss should have occurred after the retroactive date and

(ii) the financial loss should have been discovered during the policy period.

In the present case, the loss was first discovered on 19.04.2000 and hence, the discovery was not within the policy period.

7. The State Commission, after taking into account, the averments of the parties dismissed the consumer complaint, observing that the complainant had miserably failed to prove that the financial loss had been discovered during the policy period. Being aggrieved against the said order of the State Commission, the complainant/appellant is before this Commission by way of the present first appeal.

8. It was contended by the learned counsel for appellants during arguments that the complainant had taken due precautions and sent the shares to BSE after getting the pre-verification done. The learned counsel has drawn attention to the report of the surveyor, saying that the surveyor had also computed the net loss to be 29,38,125/-. The surveyor also concluded that police complaints had been filed in the matter and the investigation was in progress. The matter was also before the Civil Court in Bangalore for adjudication. The learned counsel further argued that as per letters sent by the Divisional Office of the Insurance Company to the Regional Office, the claim had been recommended to be paid. The said letter had been signed by three responsible officers of the insurance company. Further, the Regional Office had also made recommendation to the Head Office for sanction of the claim. In view of these facts, the appeal should be allowed and the insurance company should be held liable to pay the claim.

9. Per contra, the learned counsel for the OP Insurance Company stated that as per the factual position on record, the discovery of bad shares had taken place before the policy came into operation. The documents prior to 1 st July 2000 as per letters exchanged between the parties made it clear that the discovery of the loss was made before 1 st July 2000. The insured had sent letter dated 09.06.2000 to M/s ANCO Communication Limited asking them as to why they had attested the signatures of Mr. Aakash R if the said signatures were not genuine. They sent a reminder on 14.06.2000 and warned them that they would take necessary steps for further action with the concerned department, if they did not hear from them till 17.06.2000. However, there was no reply from M/s. ANCO Communication Ltd. The learned counsel further stated that a number of parties had joined in the conspiracy involving the said fraud. Three FIRs had also been lodged in the matter, but the fate of the investigation was not known.

10. We have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us.

11. From the facts brought on record, it is clearly made out that though the policy covers retroactive period with effect from 01.07.96, but the Policy is applicable only if the loss is discovered during the policy period. The State Commission has aptly brought out that although the policy covers pecuniary loss under various circumstances, there is stipulation regarding discovery being the

basis for liability and not actual loss. From the correspondence exchanged between the parties, it is very clear that the financial loss was discovered on 19.04.2000. It is true that the complainant had got conducted the pre-delivery verification of signatures on the share transfer instruments, but this step taken by them, does not entitle them to get the claim under the policy. Moreover, the surveyor in his report has also assessed the loss to be 29,38,125/-, but the mere assessment of loss does not mean the acceptance of liability by the insurance company. The contention of the OP Insurance Company is that though the complainant discovered the loss when the first lot was returned on 19.04.2000, the complainant apprehended the loss even prior to that and had arranged for pre-delivery verification of signatures on the share-transfer instruments. In the report of the surveyor, it is stated that M/s. ANCO Communication Limited had filed a police complaint in which it was stated that as many as 9 persons were conspirators of the fraud in question.

12. From the foregoing discussion, it is made out that there is no irregularity, illegality or jurisdictional error in the orders passed by the State commission. It is held, therefore, that there is no merit in this appeal and the same is ordered to be dismissed. The order passed by the State Commission is upheld. There shall be no order as to costs.