(2016) 09 NCDRC CK 0138

In the National Consumer Disputes Redressal Commission

Case No : 83 of 2010

M/S. LADURAM & SONS — APPELLANT

Vs

THE DIVISIONAL MANAGER, NATIONAL INSURANCE CO. LTD. — RESPONDENT

Date of Decision : 28-09-2016

Acts Referred:

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

Citation : 2016 4 CPR 1

Hon'ble Judges : B.C. Gupta

Advocate : Sanjoy Kumar Ghosh, Barun Prasad, Rupali Ghosh, Kishore Rawat

Final Decision : Appeal Dismissed

Judgement

1. This first appeal has been filed u/s 19 read with 21(a)(ii) of the Consumer Protection Act, 1986 against the impugned order dated 04.02.2010, passed by the West Bengal State Consumer Disputes Redressal Commission (hereinafter referred to as ''the State Commission''), vide which, the consumer complaint CC/62/2008, filed by the appellant was ordered to be dismissed.

2. The facts of the case are that the appellant/complainant M/s Ladu Ram & Sons is a proprietorship concern, carrying on the business of wholesale and reseller goods at Kolkata. They purchased 1080 packs of groundnut seeds valued at 16,15,140/- from the seller, Saurabh Trading, Gandhiganj, Chhindwara, Madhya Pradesh. The said consignment is stated to have been transported by six trucks on payment of charges of 90,000/-. The complainant had also obtained marine cargo insurance policy from the OP Insurance Company for the period from 22.11.2004 to 21.11.2005 for a sum of 50 lakh. It is stated in the consumer complaint that the complainant did not receive the entire consignment and the trucks got missing, while coming. The complainant made inquiries with the seller with copies to the transporter and the insurer. The complainant also requested the insurance company on 29.12.2004 to investigate the matter and assess the

loss. After a number of days, the seller lodged an FIR with the local police at Kundipura Police Station on 11.02.2005 in respect of the consignment. The carrier issued the non-delivery certificate in favour of the complainant on 25.04.2005. The Police also submitted their investigation report on 06.11.2005 before Judicial Magistrate I st Class at Chhindwara, saying that they had failed to arrest any person. On the other hand, the Insurance Company carried investigation through their surveyor and also asked for certain documents from the complainant, vide their letter dated 09.05.2007. The petitioner in reply, sent some documents to them, but the Insurance Company vide their letter dated 26.06.2007 repudiated the claim on the ground that the transporter was not a regular transporter of repute and had no trade licence for carrying on its business. The consumer complaint in question was then filed, seeking directions to the OP Insurance Company to settle the claim for a sum of 18,75,654/- alongwith interest @12% p.a. from the date of claim till payment. In addition, a sum of 10 lakh was demanded as compensation for mental agony etc. and 10,000/- as cost of litigation.

3. In their written version filed before the State Commission, the Insurance Company stated that as per the terms and conditions of the Policy in question, intimation about the incident should have been given immediately to the local police as well as the Insurance Company. However, a report was lodged with the local police by the seller, only on 11.02.2005, thereby violating the conditions of the Policy. The intimation about the incident was given to the Insurance Company, after a number of days from the date, the incident had taken place. The Insurance Company appointed M/s. Tirupati Associates to investigate into the matter, who submitted their report to the said Company. The insurance company then called for certain documents from the insured vide their letter dated 09.05.2007, in response to which, some of the Xerox copies of the documents were supplied to them. The Insurance Company found that all the trucks in question, were bearing false registration numbers. Moreover, the entire transaction was based on telephonic contacts between the parties and no documentary evidence was produced with regard to the transaction between the consigner and consignee. The claim was, therefore, treated as ''no claim''.

4. The State Commission vide their impugned order dismissed the claim and observed as follows in their order:- "As regards repudiation of the claim we find that the letter dated 26.6.07 issued by the insurer disclosed the reason for not entertaining the claim. The facts found by the insurer and noted in the said letter are that the transporter carrying the said consignment under reference is not a regular transporter of repute and have no trade licence for carrying on their business. Moreover, all the vehicles said to be carrying the said consignment were bearing false registration numbers as per details available on verification from the Office of A.R.T.O. (A), Snoebhadra. Though vehicles are said to be trucks it appeared that against the registration numbers vehicles registered were one Tata Sumo Car, one Bajaj Auto Scooter, one Tata Truck, one Mahindra Jeep, one Bajaj Scooter and one Bajaj Motor Cycle. Though argument was advanced on

behalf of the complainant relying on the report of the surveyor but a perusal of the survey report shows that the surveyor undertook a thorough investigation from various sources including the relevant government authorities, the insured, consignor, transporter, police department as also local enquiry. The surveyor noticed that the transporter was of no repute and was having no trade licence. The truck numbers were also found to be false. There was ambiguity about the driver''s signature. There was also adverse statements from some quarters. As regards the consignment notes the surveyor found that one driver signed two consignment notes which is ordinarily not possible. Moreover, the consignment notes issued on an earlier date were bearing numbers 1331 and 1332 but the consignment notes issued on subsequent date were numbered 1268 and 1269 which is also not possible ordinarily. The said ambiguity could not be verified as the books were not presented to the surveyor claiming that the same were taken away by the Police or have been lost. The surveyor further noted that the consignment note books were arranged after the police submitted the final report and the court order and the ceased documents were returned to the transporter.

On behalf of the complainant these ambiguities could not be clarified."

5. Being aggrieved against the said order, the complainant is before this Commission by way of the present first appeal.

6. During hearing before me, the Ld. Counsel for the appellant stated that the transporter in question had been hired by the consigner, whereas they had paid the transportation charges for the delivery of the goods to them. There had been a genuine dispatch of the consignment at the place, from where it was purchased and hence, for non-receipt of the same at the destination, the claim should have been paid. The Ld. Counsel stated that the surveyor had also brought out in his report that the Agricultural Marketing Committee had collected the necessary fees and issued certificates, meaning thereby that the goods had been genuinely dispatched at the place of purchase.

7. In reply, the Ld. Counsel for the OP Insurance Company stated that it was clear from record that the said trucks were carrying fake registration numbers and hence, the complainant/insured had not taken reasonable care to ensure the safety of the consignment. The Ld. Counsel has drawn attention to the terms and conditions of the Policy in question, saying that it was the duty of the assured and their agents in all cases to take such measures, as may be reasonable for the purpose of averting or minimising the loss. The Ld. Counsel further stated that although the consignment is stated to have been purchased in the year 2004, the payment for the same was made in the year 2007 only. The reasons for making such late payment have not been clarified by the complainant. Moreover, it is not explained why the payment was made, although the consignment had not been received. Further, the FIR in the matter had been lodged by the consigner and not by the appellant. The Ld. Counsel further stated that the Insurance Company vide their letter dated 09.05.2007 had asked the insured to supply them copies of the relevant documents, in response to which,

the complainant replied that the sale contracts were made orally. The complainants were not able to supply copies of most of the documents. The insurance company had again clarified to them vide letter dated 20.11.2007 that the available documents could not substantiate their claim in the absence of original consigner and consignee copies of the relevant C/Notes, which were essentially required as per the rules.

8. The OP Insurance Company sent their repudiation letter to the complainant on 26.06.2007 in which it has been stated as follows:- "However from the Investigation report in respect of your loss we observe that the transporter M/s. Hari Om Road Line carrying your consignments under reference is not a regular transporter of repute and have no Trade Licence for carrying on their business. As such, any claim against them in exercise of our right of recovery obtainable in connection with your claims would not hold good over and above, the fact that non-delivery of consignments due to disappearance of the Truck was reported to Police after a long time. Moreover, it has also been noted that all the vehicles said to be carrying your consignments were bearing false registration nos. as per the details given below on verification from the office of the ARTO (A), Sonebhadra.

Truck No. UP64B-5281 is actually the Reg. No. of a Tata Sumo Car,

Truck No. UP64C-1368 is actually the Reg. No. of a Bajaj Auto Scooter,

Truck No. UP64C-1364 is actually the Reg. No. of a Tata Truck,

Truck No. UP64C-4268 is actually the Reg. No. of a Mahindra Jeep,

Truck No. UP64C-1369 is actually the Reg. No. of a Bajaj Scooter,

Truck No. UP64C-1735 is actually the Reg. No. of a Bajaj Motor Cycle,"

9. It is clearly made out from the material on record that the vehicles were carrying fake registration numbers and there is no evidence that the transporter had any valid trade licence etc. The complainants claim to be in the business of sale-purchase of similar goods regularly and hence, it is expected from them that they are familiar with the usual trade practices, governing their transaction with the consigner. They have stated, however, that there was no written contract with the consigner and moreover, the original consigner and consignee copies of relevant documents have not been produced before the Insurance Company. It is evident, therefore, that as alleged by the Insurance Company, the complainants are guilty of not taking reasonable care in the matter, so as to minimise or avoid the loss. For violation of the terms and conditions of the policy, therefore, the claim is not payable.

10. An interesting feature of the case is that the appellant are stated to have made payment for the said consignment after a period of 3 years from the alleged purchase of goods. In their affidavit filed before this Commission, they have given the details of the payments made through cheques drawn on

05.12.2007 on State Bank of India, Gunj Area, Chhindwara Branch in the name of the consigner. It is also stated that the consigner issued receipts in their favour on 06.12.2009, i.e., after another two years. It is not understood as to why it took 3 years for the appellants to make payment for the lost consignment and another two years for obtaining receipts about the said payment.

11. In view of the above facts and circumstances of the case, as stated above, I agree with the findings recorded by the State Commission that there was no deficiency in service on the part of the OP Insurance Company in dealing with this case and that they have rightly repudiated the claim for violation of terms and conditions of the policy and for non-submission of the relevant documents by the appellant to them. This First Appeal is, therefore, ordered to be dismissed and the order passed by the State Commission is upheld. There shall be no order as to costs.