
(2015) 06 NCDRC CK 0059

In the National Consumer Disputes Redressal Commission

Case No : 4210 of 2011

M/S. SUBH LAXMI SYNTEX LTD

APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD

RESPONDENT

Date of Decision : 30-06-2015

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21](#) , Section 19 , Section 17 -
Jurisdiction of the National Commission - Appeals - Jurisdiction of the State
Commission

Citation : (2015) 06 NCDRC CK 0059

Hon'ble Judges : Ajit Bharihoke, Rekha Gupta

Advocate : Devenera Mohan Mathur, Zahid Ali, A.K. De

Judgement

1. This revision is directed against the order of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur (hereinafter referred to as 'the State Commission') dated 20 September, th 2011 whereby the State Commission concurred with the finding of the District Forum Bheelwara and dismissed the appeal preferred by the petitioner/complainant.

2. Briefly stated, facts relevant for the disposal of the revision petition are that the petitioner filed a consumer complaint alleging that pursuant to an order for supply of 34 cotton bales received from M/s Govind Stores, Calcutta the complainant booked 34 cotton bales with the transporter M/s Inland Transport Company on 10.8.2001. The G.R. pertaining to the subject goods was issued by the transporter on 12 August, 2001. It is the case of the complainant that during th the midnight of 12 August and 13 August, 2001 a theft took place in the godown of the th th transporter and aforesaid cotton bales were stolen. FIR in this regard was lodged by the transporter with the police. It is also the case of the complainant that he had taken a marine insurance policy for the said goods on warehouse to warehouse basis. Thus, the insurance claim

was lodged with the respondent/opposite party. The respondent repudiated the

claim. Being aggrieved of the repudiation of claim the petitioner raised the consumer dispute.

3. The opposite party on being served filed a written statement alleging that the insurance claim is false and has been filed by the complainant in collusion with the transporter.

4. District Forum, Bheelwara on consideration of pleadings and the evidence of the parties was of the view that loss of the insured goods during transit was not established. The complaint was, therefore, dismissed.

5. Being aggrieved of the order of the District Forum the petitioner preferred an appeal and the State Commission, Rajasthan vide impugned order dismissed the appeal observing that theft of the cotton bales as alleged by the complainant was not established. The State Commission also took note of the fact that no action against the transporter for the loss of insured goods was taken nor it was made party in the consumer complaint.

5. Learned counsel for the petitioner has contended that the impugned orders of the foras below are based upon incorrect appreciation of facts. Expanding on the argument, learned counsel has drawn our attention to the FIR pertaining to loss of the goods lodged by the transporter at police station Pratap Nagar, Bheelwara. It is contended that foras below have failed to appreciate that filing of the FIR by the transporter in itself is a proof that the subject cotton bales were stolen from the godown of the transporter, otherwise there was no occasion for lodging a complaint with the police.

6. We do not find merit in the above contention. In order to succeed on his insurance claim the petitioner is required to prove that the cotton bales alleged dispatched through the transporter were actually stolen. The onus of proving the loss is on the petitioner. The petitioner but for the FIR has failed to lead any cogent evidence to establish the theft of the insured cotton bales. The complainant has not even filed the affidavit of the transporter to establish that the allegation made regarding theft made in the FIR is correct. The FIR lodged by the transporter, in our view, is only a self-supporting allegation which cannot replace the proof of theft of the cotton bales. Admittedly, the police during investigation could not trace the so-called cotton bales nor any one was arrested. Petitioner has failed to show any evidence that he took steps against the transporter to recover the loss nor he has made the transporter a party to the complaint. This also is indicative of the fact that story of theft of cotton bales from the godown of the transporter is false and a false complaint of theft was filed with the police.

7. In view of the discussion above, we are of the opinion that the foras below have rightly concluded that theft of cotton bales has not been proved and there is no deficiency in service on the part of the opposite party. There is no jurisdictional error or material infirmity in the impugned orders which may call for interference in exercise of the revisional jurisdiction.

8. Revision petition is, therefore, dismissed.