**(2014) 09 NCDRC CK 0003**

**In the National Consumer Disputes Redressal Commission**

NATIONAL INSURANCE CO LTD APPELLANT

Vs

Arun Tiwari RESPONDENT

**Date of Decision :** 16-09-2014

**Acts Referred:**

**Citation :** (2014) 09 NCDRC CK 0003

**Hon'ble Judges :** V.K.JAIN J.

**Final Decision :** Appeal dismissed

## Judgement

1. THE complainant/respondent no. 1, who was carrying business under the name and style of Mani Ratnam Exports and was engaged in exporting semi - precious stones, obtained a marine policy from the appellant company on 26.12.2000 for a sum of Rs.23 lakhs. The complainant then exported semi stones valued at US$44700 (equivalent to Rs.23 lakhs) to USA through its banker, Bank of America, which was also the consignee of the goods as per the Airway bill. The goods were meant for an over -seas buyer M/s. Amma Inc of USA and were sent by parcel post on 26.012.2000. The goods, however, did not reach the destination. The postal department issued a certificate dated 13.05.2002, admitting the non -delivery of the goods in question and also paid a sum of Rs.3115/ - to the complainant as per its rules. Since the goods in question had been insured under the policy taken from the appellant company, a claim of Rs.20,84,267/ - was lodged by the complainant with the said company.

2. ON receipt of the complaint, initially the insurance company appointed M/s. Goyal Rajesh and Company, surveyor and loss assessor, who submitted a financial investigation report dated 25.11.2002 after visiting the office of the complainant, making necessary inquiries and inspecting his books of account etc. Thereafter, the Insurance company appointed M/s. K.D. Kohli and Company Private Limited on 31.05.2004. M/s. K.D. Kohli and Company submitted its report dated 10.08.2004 which was styled ''technical opinion'' in respect of the claim lodged by the complainant. The aforesaid firm reported that the consignee not having received consignment, informed about it, within one month, but despite

that the complainant did not immediately intimate the loss of the goods either to the postal authorities or to the insurance company. It was further reported that the insured had not explained as to why despite having received information form the consignee about non -delivery, they did not lodge a claim with the postal authorities immediately and lodged after 5 months with Postal Department and with the insurance company about 9 months. Alleging violation of norms and policy conditions, the aforesaid company reported that had the insured complied with the said requirement recovery or non -recovery from the defaulting carrier would have been entirely a risk and responsibility of the insurers.

3. BASED upon the aforesaid report, the claim was repudiated by the Insurance Company vide its letter dated 26.10.2014 which to the extent relevant, reads as under: - "1. We have issued policy no.2000/4301301 dated 26.12.2000. And policy is specifically mention the name of Survey Agent at USA and settlement agent at London. In spite of that you have not intimated the loss of parcel to them after normal period of completion of transit i.e. may around 15 days from the date of dispatch.

2. You have intimated to us on 28.09.2001 i.e. after 184 days from the date of dispatch. After such a long time Indian Postal Department as well as USA post department will not be able to give us any track record information for insured parcel. Therefore we have not given any opportunity to verify the truth of the incidence and loss control measures.

3. You have not discharged insurance policy in favour of consignor."

Being aggrieved from the rejection of his claim, the complainant approached the State Commission at Rajasthan by way of complaint, seeking the following relief: -

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4. THE State Commission vide impugned order dated 17.03.2008, allowed the complaint against the Insurance Company directing it to pay Rs.20,87,490/ - alongwith interest @9% p.a. from the date of filing the complaint, i.e., 1.12.2004 till payment. The insurance company was also directed to pay Rs.20,000/ - as cost of litigation. No compensation, however, was awarded against the postal department which was impleaded as OP No. 2 in the complaint. Being aggrieved from the order of the State Commission, the Insurance Company is before this Commission by way of this appeal.

5. THE contention of the learned counsel for the appellant company is that though the insured came to know from the overseas buyer by 30.01.2001 that the goods had not reached him, no intimation in this regard was immediately given either to the Postal Department or to the Insurance Company thereby committing breach of the terms and conditions of the Insurance Policy and the established norms of Marine Insurance.

6. THE Insurance policy issued by the appellant company is available at page 46

 

of the paper -book. Though, there is an endorsement at the bottom of the document that the Insurance has been effected subject to the terms and conditions attached, no terms and conditions are attached to the documents. The case of the complainant is that one page policy document was issued to him and no terms and conditions were attached to it. Had there been any terms and conditions attached to the policy issued by the appellant company, the same would have formed part of the document filed before the State Commission. The very fact that the appellant has not filed any terms and conditions alongwith the copy of the insurance policy is a clear indicator that in fact, no terms and conditions were annexed to the policy document when it was issued to the insured.

7. I have also perused the reply filed before the State Commission. Even the said reply does not refer to any specific term and condition requiring the insured to intimate the Insurance Company immediately on occurrence of the loss. No copy of the alleged terms and condition was filed by the Insurance policy alongwith its reply. I have also perused the affidavit filed by the Insurance company by way of evidence. Even alongwith the said affidavit the Insurance Company did not file any such terms and conditions. In these circumstances, it cannot be said that the Insurance Company had actually annexed certain terms and conditions to the policy issued by it. In the absence of the said terms and conditions, it cannot be said that the insured was required to intimate the loss of the goods to the insurance company immediately on occurrence of the loss assessed.

8. ASSUMING , however that there was some terms and condition requiring the insured to intimate the insurance company immediately on occurrence of the loss, the occasion for such reporting, in my view, would have arisen only after the loss was confirmed by the Postal Department. If the overseas buyer informed the complainant that he had not received the goods, that would be only an intimation in this regard to the complainant but would not necessarily mean that the goods had got lost. It was quite possible that though the goods had not been delivered to the overseas buyer, the same were still lying in the post office in USA. Therefore, unless, the Postal Department made its own inquiries and verifications and certified that the goods in question had been lost, there would be no occasion either to intimate the Insurance Company or to lodge a claim with it. It would also be pertinent to note that the goods were consigned to Banker of the complainant and not to the buyer and, therefore, he would have information in this regard only on receiving an intimation from the Postal Department about arrival of the goods in USA and his visiting the post office, for the purpose of verifying the such arrival. Yet, another possibility in this regard is that though the goods had not reached USA they were still lying in India or in transit, when the overseas buyer on inquiry came to know that they had not reached the Postal Authorities in USA. Therefore, it is only on issue of the loss certificate issued by the Postal Department that the complainant would be under an obligation to intimate the insurance company. Of course, this is based on the assumption that there was a condition requiring the insured to inform the insurance company

 

immediately on coming to know of the loss of the goods.

9. THE State Commission, took a view that the Insurance Company was not entitled to appoint a second surveyor and accordingly rejected the report of the K.D. Kohli and Company. The learned counsel for the appellant company submits that in fact, the first surveyor, M/s. Goyal Rajesh and Company was not a surveyor as such but was appointed only for carrying out the financial investigation which envisaged scrutiny of the documents of the insured. If that is so, as far as M/s. K.D. Kohli and Company Private Limited are concerned, they came to be appointed only on 31.05.2014, though as per Regulation 9 of the IRDA (Protection of Policyholders'' Interests) Regulation, 2002, the surveyor has to be appointed within 72 hours of the receipt of the information from the insured and he is required to submit his finding within 30 days of his appointment. It is only in special circumstances the surveyor can submit his report within a period of 6 months from the date of his appointment. The Insurance Company could seek additional report form the surveyor within 15 days of receipt of the original report and such additional report is required to be submitted within 3 weeks of receipt from the communication from the surveyor. On receipt of additional survey report, the Insurance Company has to offer settlement within 30 days thereof. However, the second surveyor, M/s. K.D. Kohli and Company Private Limited, came to be appointed much after expiry of the period within which the whole process should have been completed by the insurance company in terms of Regulation 9 of the above -referred Regulations. To say the least, this was yet another deficiency on the part of the Insurance Company in rendering service to the insured/complainant.

10. FOR the reasons stated hereinabove, considering that neither there was any condition requiring the insured to intimate the loss of goods to the insurance company immediately on occurrence of the loss nor the insured had an occasion to give such intimation before he received the loss certificate from the Postal Department on 10.12.2001, the Insurance Company did not have any justification for rejecting the claim.

11. THERE is no dispute with respect to the quantum of loss suffered by the insured on account of loss of the goods. The State Commission has awarded Rs.20,87,490/ - alongwith interest @9% p.a. from the date of filing the complaint, i.e., 1.12.2004. Therefore, there is no scope for any interference with the direction with respect to payment. The appeal is devoid of any merit, the same is dismissed.

12. THE amount which the appellant insurance company had deposited pursuant to the interim order of this Commission be released in favour of the complainant alongwith accrued interest thereon. The remaining amount shall be paid to the insured within six weeks from today alongwith interest computed on that amount at the rate awarded by the State Commission. The statutory deposit of the appellant be refunded to it alongwith interest which may have accrued on that statutory amount.