(2004) 02 NCDRC CK 0067

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE COMPANY LIMITED — APPELLANT

Vs

KABA ENTERPRISES — RESPONDENT

Date of Decision : 07-02-2004

Acts Referred:

Citation : 2004 1 CPC 634 : 2004 2 CLT 579 : 2004 2 CPJ 207

Hon'ble Judges : V.K.Agrawal , R.S.Awasthis J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal, under Section 15 of the Consumer Protection Act, 1986 is directed against the order dated 17th April, 2001 in Complaint No. 343 of 1998 by District Consumer Disputes Redressal Forum, Durg, (hereinafter called the District Forum for short), whereby the complaint of the complainant/respondent was allowed and the appellants/insurers were directed to pay him Rs. 1,56,254/- with proportionate freight charges of Rs. 3,255/-, compensation of Rs. 5,000/- as also cost of Rs. 1,000/-.

2. THE undisputed facts stated in brief are that the complainant-respondent herein obtained Transit Insurance Policies from appellant No. 1 insurer. Appellant No. 2 is the Divisional Office of appellant No. 1 while appellant No. 3 is its Head Office. THE said Transit Policy covered risk for loss or damage to the consignment during transit. It is also not in dispute that a consignment consisting of packets of cigarrettes, kept in cartons was booked by the complainant/respondent, for transportation from Bhilai to Patna. THE said consignment was damaged and rendered worthless, on account of heavy rains. THE complainant/respondent, therefore, laid claim with the appellant for loss as above. THE appellant''s Surveyor assessed the loss of Rs. 6,25,014/-. THE appellant, however, deducted 25 percent from the amount as above on the ground of alleged non-recovery of salvage, and paid the respondent the balance amounting to Rs. 4,51,686/- towards settlement of the claim of complainant/respondent. The complainant in his complaint raised his grievances against the deduction of Rs. 1,56,254/- being the 25% amount of total loss as estimated by the appellant''s Surveyor, due to

alleged non-recovery of salvage. It was averred by the complainant/respondent that the damaged goods was unloaded in the consignee''s premises of M/s. Ganpati Traders, 92, Surya Apartments, Fraser Road, Patna. It was further averred that the opposite parties/appellants directed that the said stock of damaged goods be destroyed through their Surveyor M/s. Bhadra and Associates Pvt. Ltd., Calcutta. Accordingly, the said Surveyor of the opposite parties has destroyed the salvage. The complainant, therefore, averred that since the salvage was handed over to the Insurers and as it was destroyed according to the appellant''s instructions, therefore, the appellants were not entitled to deduct 25% from the amount of estimated loss by the Surveyor. The complainant, therefore, prayed that the opposite parties/appellants be directed to refund him the deducted amount of Rs. 1,56,254/- with proportionate freight charges with interest as well as compensation and cost of the complaint.

The opposite parties/appellants resisted the complaint. It was averred by them that the transporter was a necessary party and since he has not been impleaded in the complaint the complaint is not entertainable. It was also averred that the complainant has failed to submit deed of subrogation as well as the damage certificate from the transporter showing cause and nature of damage. Therefore, the insurer-opposite parties were not in a position to proceed against the transporter for the recovery of the loss. It was also averred that since the complainant failed to submit the damage certificate from the transporter the opposite parties suffered losses. Yet, despite the above opposite partiesinsurers, after considering the case of the complainant sympathetically, he had paid him Rs. 4,91,686/- in full and final satifaction of his claim after deducting 25% of the loss estimated by the Surveyor. It was also averred that since the complainant/ respondent, accepted the payment as above; he is not entitled to claim any further relief.

3. THE learned District Forum in the impugned order held that as the salvage was destroyed as per directions of the opposite parties/appellants, therefore, they were not entitled to deduct 25% from the estimated amount of loss payable to the complainant/respondent, as per the report of the Surveyor. It was further held that the amount was not accepted by the complainant/respondent in full and final settlement of his claim, and the amount was received by him under protest. It was also held that since the damage certificate was not delivered by the transporter to the complainant, hence, he could not submit it to the appellant. It was, accordingly, held that the appellants committed deficiency in service by deducting Rs. 1,56,254/- from the amount payable to the complainant. Accordingly, the above amount was awarded with proportionate freight charges as well as costs and compensation, in favour of the complainant/ respondent. The learned Counsel for the appellant submitted that as there was recovery of salvage by the appellants, they were entitled to deduct salvage charges. It was also urged that the appellant was entitled to demand damage certificate of the transporter, but the same was not handed over to the appellants by the complainant/respondent. As a result of which appellants were unable to

proceed against the transporter. It was further urged that the appellant had finally settled the claim of the complainant/respondent and he had accepted the amount paid by the appellant in full and final satisfaction. Therefore, the complainant/respondent was debarred from claiming any relief.

4. THE first contention of the learned Counsel for the appellant was that appellant insurer was entitled to the deduction of 25% from the price of the consignment, as salvage was not handed over by the insurer complainant/ respondent No. 1 to the appellants. It may be mentioned in the above respect that the complainant/respondent in the complaint has alleged that the salvage was handed over to the person authorised by the appellant namely, M/s. Bhadra and Associates Pvt. Ltd., who carried out its destruction under the instructions of the appellant. The detailed averments as above are made in Para 5(3) of the complaint. It may be noticed that the appellants have not disputed the above averments of the complainant and in Para 7 of the written version the above averments have been specifically admitted by the appellants. It was stated by appellants in Para 7 of their written version that the complainant had offered salvage to the non-applicant and the same was destroyed with the consent of the non-applicant/appellant. In view of the above it is clear that the contentions of the learned Counsel that the salvage was not duly delivered or that the appellants were entitled to deduct the claim on account of non-recovery of salvage, cannot be accepted. The learned Counsel for appellant next contended that the amount of Rs. 4,91,686/- offered by the appellants after deduction of 25% from Rs. 6,25,014/-, the price of the consignment, were accepted in full and final satisfaction of his claim by the complainant/respondent. Hence the complainant could not have laid claim for the said amount.

5. IN the above context it may be noted that material booked by the complainant/ respondent was admittedly worth Rs. 6,25,014/-. Appellant insurer had deducted Rs. 1,56,254/-, as 25% of the said amount while settling the claim and paid the complainant/respondent a sum of Rs. 4,91,686/-. It may be noted that the amount as above was paid on 17.7.1996 as would be clear from the receipt filed in the record of District Forum. It may also be noticed that on the same date the complainant/respondent had addressed a letter to the appellant''s Branch Manager at Bhilai wherein he has specifically stated that deduction of 25% due to non-recovery of salvage was not acceptable to them. It was also specifically stated therein that salvage was handed over to the Surveyor M/s. Bhadra and Associates Pvt. Ltd. and that the destruction of the said salvage was carried out by the said Surveyor with the consent and under the instructions of appellant insurer.

6. IT would, therefore, be clear that complainant/respondent had not accepted the amount of Rs. 4,91,686/- offered by the appellant, after deduction of 25% of the value of consignment, without demur and as full and final satisfaction of the claim. In fact the amount as above was accepted by him under protest which he lodged on the same day in writing by letter dated 17.7.1996. In the

circumstances, acceptance of the amount as above, offered by the appellant could not debar or deprive him from raising the claim of the deducted amount. Therefore, contentions as above of the learned Counsel for appellant can also not be accepted. Learned Counsel for appellant also tried to urge that the complainant/respondent was liable to furnish the damage certificate from the transporter so that insurer/appellant could proceed against him. The learned Counsel for complainant/respondent, however, submitted that the complainant had requested the transporter for issuance of damage certificate but he did not issue the said certificate to the complainant/respondent. He had intimated the above fact to the appellant by his letter dated 10.11.1995. It may be noticed in the above context that Shri Paresh Kumar Pandit, Asstt. Divisional Manager of the appellant has admitted having received the letter of the complainant dated 10.11.1995 wherein the complainant/appellant had expressed his inability to give the damage certificate, as it was not furnished to him, by the transporter despite the complainant''s efforts. In the circumstances, the complainant/respondent could not be held reasonsible for not handing over the damage certificate from the transporter to the appellant/insurer and appellant could not raise grievance in that regard.

It is, therefore, clear that deduction which was based on non-recovery of salvage as intimated to the complainant/respondent by the appellant by their letter dated 11.6.1996 was not justified. By doing so the appellant have committed deficiency in service as has been rightly held by the learned District Forum.

7. THEREFORE, there appears to be no reason for interference in the impugned order. This appeal has no substance. It is accordingly dismissed. The appellant shall bear his own cost of this appeal and shall also pay that of the respondent which is quantified at Rs. 2,000/-. Appeal dismissed.

