

(2001) 03 NCDRC CK 0084

In the National Consumer Disputes Redressal Commission

New India Assurance Co. Ltd.

APPELLANT

Vs

MANISH UDHYOG

RESPONDENT

Date of Decision : 13-03-2001

Acts Referred:

Citation : 2001 3 CPJ 451

Hon'ble Judges : S.K.Dubey , Neelima Dubey , B.L.Khare J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal under Section 15 of the Consumer Protection Act, 1986 (for short the Act) is against the order dated 30.11.1999 passed in Case No. 50/99 by the District Consumer Disputes Redressal Forum, East Nimar, Khandwa (for short the "District Forum").

2. FACTS giving rise to this appeal in brief are thus : the respondent No. 1 carries on business of manufacture of powerloom cloth, who along with 71 other members of the Textile Association, Burhanpur obtained a Marine Cargo Insurance Policy No. 2145081000366 in the name of Burhanpur Textile Association for Rs. 75,55,000/- covering the risk for the period from 7.4.1997 to 6.4.1998 of the subject-matter insured on the consignment said to contain cloth sales whilst in course of transit by rail and/or by road from Burhanpur to anywhere in India and to be declared from time to time. The respondent No. 1 entrusted the consignment on 17.11.1997 of four bales of cloth of the value of Rs. 80,184/- to the respondent No. 2 to be delivered to the consignee, Gordhan Sari Center, Kahu Kothi, Kanpur on payment of transport charges to be paid by the consignee of which the Consignment No. 223026 was issued by the respondent No. 2 to respondent No. 1 with a copy of the consignee. The respondent No. 1 alleged that the consignment did not reach in the Transport Office of Kanpur, of which a short certificate dated 3.1.1998 was issued by the respondent No. 2, transporter to the respondent No. 1. The respondent No. 1 lodged a claim with the Insurance Company. The Insurance Company appointed an Investigator Mr. Vinod Vora who investigated the matter and made enquiries

at the Kanpur Office of the respondent No. 2. On enquiries, the concerned clerk, Mr. Premchand Pandey member of the delivery staff of respondent No. 2 gave in writing on the slip that on 13.6.1998 the consignment was received and the bales are in Transport Godown. The slip reads thus : Kataria Transport Corpn. 133/229, Transport Nagar, Kanpur.13.6.1998 Mr. Vinod Vohra I certify that the GR No. 2304b dated 17.11.1997, Burhanpur to Kanpur is laying in our godown on date 13.6.1998. Sd/- 13.6.1998

The Investigator also contacted the consignee M/s. Gordhan Sari center, Kanpur, who knew that the consignment has been received in the Transport Office of Kanpur, but the consignment was returned to the agent of the respondent No. 2 as written on 17.11.1997 by the Delivery Incharge of the M/s. Gordhan Sari Center, Kanpur. After collecting the documents and the information, the Investigator gave his report dated 15.6.1998 and 18.6.1998 that the consignment reached at the destination that is at Kanpur, but, the transporter and the insured both claimed non-delivery of four bales with a clear understanding. The claim after thorough investigation is false. The respondent Nos. 1 and 2 made correspondence with the Investigator which was replied by the investigator. On the basis of the report of the investigator and the documents collected, the Insurance Company vide letter dated 5.8.1998 communicated that the claim is not payable.

The respondent No. 1 filed a complaint against the Insurance Company and the transporter the respondent No. 2, alleging the deficiency in service in not making the payment of the claim on the basis of the short delivery certificates dated 3.1.1998 and 19.9.1998. The investigation by Mr. Vora was malicious, ex-parte and illegal, which is not binding on the respondent No. 1. The respondent No. 2 in the defence version stated that Mr. Vinod Vora after giving wrong information by misrepresentation fraudulently has obtained slip dated 13.6.1998. The procedure of receipt of consignment is that all the consignments received are feeded in the computer and are marked as X. No mark is given on the consignments which are not received. The computer feeding chart does not show "X" that is receipt of the consignment of four bales. On the date of investigation the Manager was on leave. Mr. Premchand Pandey without physical verification on representation of Mr. Vinod Vora that he should give in writing so that Investigator will get his TA DA, without seeing the record and physical verification of receipt of bales gave slip. The District Forum after appreciation of evidence and the procedure of entry in the computer feeding chart, the affidavit of Mr. Premchand Pandey dated 5.10.1999 and short delivery certificates held that the report of the Surveyor Mr. Vora cannot be accepted. The version of the respondent Nos. 1 and 2 of non-receipt of consignment is more reliable, therefore, Insurance Company was deficient in service in not paying the amount of claim. The respondent No. 2, as a goods carrier was liable for the negligence, under the provisions of the Carriers Act. Hence, ordered the Insurance Company and the respondent No. 2 jointly or severally to pay the amount of Rs. 80,184/- with interest thereon at the rate of 12 per cent per annum from 1.12.1997 and

Rs. 2,000/- as costs of the proceedings. 4. After hearing Mr. Mahavir Bhatnagar, learned Counsel for the appellant, Mr. B.H. Ansari, learned Counsel for the respondent No. 1 and Mr. G.S. Solanki, learned Counsel for the respondent No. 2 and on reappraisal of evidence on record we are of the opinion that in the facts and circumstances of the case, the Insurance Company, bonafidely after due application of mind on the report of the Investigator along with the material collected was not deficient in service in not paying the amount of the claim.

3. IT is well-settled that an admission by a party or his agent, is best of evidence and binds a party if not explained at a proper stage. True, admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong; but they do raise an estoppel and shift the burden of proof on the person making them or his representative-in-interest. Unless shown or explained to be wrong, they are an efficacious proof of the facts admitted. See the decisions of Supreme Court in case of *Narayan Bhagwatrao Gosvai Balajiwadle v. Gopal Vinayak Govasi & Ors.*, AIR 1960 SC 100, and *Ramji Dayawala and Sons (P) Ltd. v. Invest Import*, AIR 1981 SC 2085. In the present case the admission on the slip of receipt of the bales in the Godown is clear and specific, which binds the respondent No. 2 of the admission of fact in dispute. This fact of admission was known to the respondent No. 2, who immediately did not resile from the admission now explain the same. On the other hand the respondent No. 2, after the letter of the Insurance Company, made correspondence stating therein that the consignment has not reached at the destination, explained the admission alleging that the same was obtained by fraud, exercise of undue influence and misrepresentation.

4. TRUE, Section 23 of the Evidence Act lays down that in civil cases, no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or in fact circumstances from which the Court can infer that a party agrees to give that evidence of it, should not be given, but, to that effect no such evidence was adduced by the respondent No. 2. On the other hand allegations of fraud, misrepresentation, undue influence have been made, which can only be enquired into by an elaborate enquiry which cannot be held in summary jurisdiction. Though, Premchand Pandey filed his affidavit, but it is to save himself and the respondent No. 2 from the liability. Premchand Pandey was not subjected to cross-examination. On the other hand Mr. Vinod Vora Investigator appeared as a witness who was cross-examined at length. In the circumstances of the case in our opinion the appropriate course for the District Forum was to direct the parties to institute the civil suit in the Court of competent jurisdiction as in terms of the policy duration of the risk was from Burhanpur to the final warehouse at the destination named in the goods receipt, which required an elaborate enquiry. On the basis of the slip and documents of the consignee of not taking the delivery, the District Forum, merely on the basis of affidavit of Premchand Pandey, was not right in holding that the evidence of the respondents is more reliable than that of the Insurance Company. Infact the Insurance Company, on the basis of the material collected bonafidely after due

application of mind that the consignment reached at the warehouse of the carrier at Kanpur, did not make the payment of the claim. Besides, the respondent No. 1 has not taken any action against the carrier, which has deprived the Insurance Company to take action against the carrier under the provisions of the Carriers Act, 1865 in case the Insurance Company is made liable to pay the amount. However, the order of the District Forum is also against the carrier of the goods holding it negligent in not delivering the consignment on the basis of the short delivery certificates, who has not filed any appeal probably because the Insurance Company has been made liable to pay, from which the amount would be recovered and not from the carrier. In the circumstances, it is the respondent No. 2 the carrier of the goods, who has to blame for itself as the order of the District Forum, holding the respondent No. 2 deficient in service in not delivering the consignment and to pay the amount is maintained.

5. IN the result, the appeal is allowed and the order against the INSurance Company is set aside. IN the circumstances, parties to bear their own costs. A copy of this order be conveyed to the parties and a copy be sent to the District Forum along with the record of the case. Appeal allowed.