(2014) 07 NCDRC CK 0040

In the National Consumer Disputes Redressal Commission

New India Assurance Co Ltd, S K Mahajan, Parminder Singh Sachdeva — APPELLANT

Vs

Deepak Anand — RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Citation : 2014 0 NCDRC 437 : 2014 3 CPJ 373

Hon'ble Judges : D.K.JAIN , VINEETA RAI J.

Final Decision : Revision allowed

Judgement

1. THIS Revision Petition, by the Insurance Company, under Section 21(b) of the Consumer Protection Act, 1986 is directed against order dated 05.05.2008 passed by the Delhi State Consumer Disputes Redressal Commission (for short "the State Commission") in FA No. 550/2004, whereby, order dated 28.06.2004, passed by the District Consumer Disputes Redressal Forum (Central) (for short "the District Forum"), dismissing the complaint, has been overturned.

2. BRIEFLY stated, the material facts leading to the present Revision Petition are as under: - The Respondent (Complainant) had obtained from the Appellant a Marine Insurance Policy for a sum of US $7435/ -. It was an open policy covering exports of slates, granites and other types of stones from India. The Respondent dispatched 29 number of wooden pallets, containing slate tiles (16" X 16" and 12" x 12") for export to the United States. While transporting the said consignment to the port for shipment, the trailer met with a road accident. The material was completely damaged and was rendered unfit for export. The Respondent claims to have suffered a loss of Rs. 2,59,000/ -. The Appellant was duly informed about the accident with a request for appointment of a Surveyor, which was done.

The Surveyor assessed the loss at Rs. 1,47,707/ -, albeit subject to Appellant''s acceptance of liabilities and policy terms and conditions. The Surveyor appended a note to his report to the effect that "As per description of packing mentioned in the policy, the contents have to be firstly packed into corrugated boxes, crates but the same was found packed into crates only not in corrugated boxes and hence the matter is subjected to the underwriters consideration." Taking into consideration the said note, the Appellant repudiated the claim against the said policy.

3. BEING aggrieved, alleging deficiency in service on the part of the Appellant in not honouring its claim, the Respondent filed complaint before the District Forum, inter -alia, praying for a direction to the Appellant to pay a sum of Rs. 3,70,000/ - towards value of the goods, compensation for mental agony and harassment and cost of litigation.

4. THE Appellant contested the complaint, on the ground that the Respondent had violated the terms and conditions of the Policy, as the slates were not packed in the manner specified in the Marine Insurance Certificate. Instead of first packing the slates in corrugated boxes, crates and then in containers, these had been directly packed in wooden pallets. It was pleaded that on account the said fundamental breach of condition in the cover note, the Appellant was justified in repudiating the claim. Accepting the stand of the Appellant, the District Forum came to the conclusion that there was no deficiency in service or unfair trade practice on the part of the Appellant. The complaint was dismissed accordingly. Being dis -satisfied, the Respondent preferred Appeal to the State Commission. Taking into consideration the pleadings and the documents on record, including the Marine Insurance Certificate and Marine Declaration Form, the State Commission held that the claim had been wrongly repudiated. The State Commission observed thus: - " We have perused the insurance certificate. There is no specific mention that the goods of the kind one in question have to be first packed in corrugated box before it is packed in crates and put in containers. It does not necessarily mean that first corrugated boxes and then crates should be used. It was only observation of the surveyor who was appointed to assess the loss that the consignment should have been packed in corrugated box and then in crates.

We do not perceive any reason as to what was negligence on the part of the appellant in making such packing. The damage was caused due to the accident and not due to some weather condition that could have been avoided by particular mode of packing. There is no such observation by the surveyor that had the goods been packed firstly in corrugated boxes then in crates and thereafter in container, the damage would not have been there, even if the accident had occurred as has occurred in this case."

5. THE State Commission allowed the Appeal. The Appellant was directed to pay a sum of Rs. 1,47,707/ -, as assessed by the Surveyor besides Rs. 25,000/ - as lump sum compensation for mental agony suffered by the Respondent including costs. Hence, the present Revision Petition.

6. WE have heard Ld. Counsel for the parties. The short question for consideration is whether there was any fundamental breach of the terms of

policy covering the consignment, absolving the Appellant from their liability under the policy. ? It is trite that policy of insurance is a contract between the insured and the insurer. The rights and obligations under the policy are governed by the terms of the said contract, which are binding upon the parties. Non - observance of the terms of the policy can vitiate the policy and may absolve the Insurance Company of its liability to indemnity the loss.

7. IN Suraj Mal Ram Niwas Oil Mills Pvt. Ltd. Vs. United India Insurance Company Limited and Anr., 2010 10 SCC 567, it has been held by the Supreme Court that the terms of a contract of insurance have to be strictly construed and no exception can be made on the ground of equity. The court opined thus: - "26. Thus, it needs little emphasis that in construing the terms of a contract of insurance, the words used therein must be given paramount importance, and it is not open for the court to add, delete or substitute any words. It is also well settled that since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the Insured on account of risks covered by the policy, its terms have to be strictly construed to determine the extent of liability of the insurer. Therefore, the endeavor of the court should always be to interpret the words in which the contract is expressed by the parties."

8. HAVING examined the present case on the touchstone of the aforenoted principles, we are of opinion that no fault can be found with the stand of the Appellant and the claim of the Respondent must fail on the ground that there was a fundamental breach of the packing instructions noted on the Insurance Certificate. The said instructions read as follows: - "Srl Packaging Description Commodity Description Corrugated Boxes, Crates Slates, Granites And Then In Containers Other Types Of Stones"

9. IT is manifest from the afore -extracted packing description that the slates had to be first packed in corrugated boxes; crates and "then" in containers. The packing instructions are clear and unambiguous. The Appellant was bound to comply with the same and pack the consignment strictly as per the description/ instructions. We have no hesitation in holding that the Respondent violated a fundamental condition in the Insurance Certificate and, therefore, the Appellant was justified in repudiating the claim under the policy. We are unable to subscribe to the observations of the State Commission that since the damage was caused due to the accident and not due to some weather conditions, the mode of packing could not have avoided the damage. Suffice it to say that the necessity of packing in a particular manner depends on host of factors, like the nature of the product, mode of transportation, place of destination etc; and is to be decided by the parties to the contract and not by the Courts. Therefore, in the instant case, it cannot be held that there was any kind of deficiency in service or unfair trade practice on the part of the Appellant in repudiating the claim of the Respondent.

10.FOR the aforegoing reasons, the impugned order cannot be sustained. Accordingly, we allow the Revision Petition and set aside the impugned order with no order as to costs. It will be open to the Appellant to withdraw the amount deposited with this Commission in terms of order dated 07.11.2008.

