(1999) 12 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

New India Assurance Company Ltd. APPELLANT

Vs

SRI GOPAL STARCH MILLS RESPONDENT

Date of Decision : 17-12-1999

Acts Referred:

Citation : 2001 2 CPJ 310

Hon'ble Judges : S.Parvatha Rao , Mamata Lakshmanna J.

Final Decision : Appeal dismissed

Judgement

1. HEARD the learned Counsel on both sides. This is an appeal preferred by the opposite party Insurance Company questioning the order of the East Godavari District Forum at Kakinada in O.P. No. 196/1996 dated 19.6.1998. The complainant in the O.P. is the respondent in the appeal. The District Forum allowed the complaint and directed the appellants to pay Rs. 43,000/- together with interest 18% per annum from 12.9.1994 till the date of realisation and also Rs. 2,000/- towards costs to the complainant.

2. THE case of the complainant before the District Forum was that he obtained a Marine Policy (Cargo) dated 15.3.1994 with insurance cover "on consignments said to contain starch packed in new single gunny bags and declared for insurance as and when despatched" subject to the maximum value of each consignment despatched by road not exceeding Rs. 1,00,000/-. THE policy was open and the period during which the despatches could be made was 15.3.1994 to 14.3.1995. On 17.5.1994 the complainant despatched 120 bags of sago by a lorry bearing No. AAP 1159. THE despatch was duly notified and the complainant also obtained certificate of insurance in respect of the said despatch. THE said despatch got burnt on the same day on the way. THE complainant lodged a claim dated 5.8.1994 before the second appellant on 8.8.1994. THE appellants repudiated the claim by letter dated 2.11.1994 stating as follows : "With reference to the above you have lodged the said, claim on open policy declaration No. 6. On verification of your books of accounts by the Chartered Accountant, it reveals that you have failed to declare the earlier despatches of

similar consignments. As per the open policy conditions, all the despatches are to be declared for the purpose of insurance. THEre was no balance of sum insured available on the date of accident as such we have no other alternative than to repudiate your claim."

This was questioned by the complainant before the District Forum. The policy was admitted by the appellants. They contended that the repudiation was justified because the complainant did not comply with the following conditions of the open policy : "It is a condition of this insurance that assured is bound and will declare each and every despatch coming under the scope of the Open Policy without any exception within 24 hours from the time of issue of the Railway receipt/Lorry receipt/Postal receipt/Bill of Lading/Airway Bill and obtain the Certificate of Insurance from the Company''s office at the place of issue."

It was the case of the appellants before the District Forum that after the claim was made by the complainant they got the books of the complainant examined by their auditors and it was discovered that the complainant already despatched the starch worth Rs. 12,72,500/- by 10 despatches and that they declared only 4 of them and thus violated the above condition.

The District Forum held that on a fair and reasonable interpretation of the condition, the appellants'' repudiation had to be held to be bad. The District Forum held that admittedly the despatches earlier declared did not exceed Rs. 4,00,000/- and the despatches which were not declared prior to the despatch in question were not covered by the policy for the simple reason that they were not declared as required by the policy cover itself. The District Forum held as follows : "When the documents filed by the complainants and the documents relied by the respondents clearly shows the despatches as declared by the complainants to the respondents, the repudiation of the claim is unjustified. The Marine (Cargo) policy otherwise called as Open Policy, is governed under the provisions of Marine Insurance Act, 1963. Section 19 of the Act says the insurance is Uberrimae Fidei- a Contract of Marine Insurance is a contract based on the utmost good faith and if the utmost good faith is not observed by either party, the contract may be avoided by the other party. The respondents blaming the complainant that the insured failed to disclose the despatches. We do not accept the contentions of the respondents as it is evident from Ex. Bl, Ex. B2 and Ex. B3, Ex. A7 and Ex. A8 and Ex. A9. By the time of despatching of the present consignment there is a balance of Rs. one lakh under the policy. R-2 without applying his mind repudiated the claim and he failed to prove that the complainant/insured violated the special conditions and, warranties of the policy. The Law-Courts universally acknowledged however the doctrine fides uberima is certainly not intended to be one way traffic but calls for a reciprocal obligation resting on the Insurance Company of placing before a Court all the evidence in its possession without reserve. In the present case, the respondent Insurance Company has not filed any supporting evidence to show any breach of warranty by the insured. Even otherwise, a breach of warranty may be waived by the insurer even after the loss if the omission or declaration was made in good faith, the bona fide omission to declare may be rectified. Any stipulation in floating policy as to the method to be adopted in making declaration must be strictly complied with and declaration must be limited to the interests intendsd to be covered. The burden of proof lies with the insurer but they have not discharged the burden."

3. WE are inclined to agree with the reasoning of the District Forum. The contention related to declaration and it is stated that the declaration should be of "each and every despatch coming under the scope of the Open Policy". But the Marine Policy issued to the complainant itself categorically described the subject matter insured as follows : "On consignments said to contain starch packed in new single gunny bags and declared for insurance as and when despatched. The maximum value of each consignment despatched by Road shall not exceed Rs. 1,00,000/-." (Emphasis supplied) It also stated as against Vessel and/or Conveyance : "By Road", It was also further stated as follows against the heading "Special Conditions and Warranties'' : "Warranted that the goods carried by Road are fully covered with serviceable tarpaulins duly tied up. This policy is subject to Inland Road transit Clause - B, TPND and SRCC clause and Open Policy conditions attached hereto". From the above it is clear that policy covered only despatches by road, i.e., by lorries and not by rail. The appellants repudiated the claim taking into consideration also the despatches by wagon i.e., by rail. Even as per the statement furnished by the appellants, if despatch by wagons were excluded, the value of the earlier despatches i.e., prior to 17.5.1994, by road would come to only Rs. 4,75,000/-. But only despatches of the value of Rs. 4,00,000/- were declared. This is not in dispute. The subject matter insured specifically stated that only "consignments said to contain starch packed in new single gunny bags and declared for insurance as and when despatched" were covered. In view of the specific statement as regards the subject matter insured, we are inclined to hold that the despatches coming under the open policy in question were only such of those despatches by road which related to consignments containing starch packed in new single gunny bags and declared. The undeclared despatches were excluded from the subject matter of the insured. WE are of the view that even assuming that there is ambiguity in the meaning to be given to the relevant clauses, that ambiguity has to be resolved in favour of the insured as per the decisions of the Supreme Court in Shashi Gupta v. L.I.C. of India, II (1995) CPJ 15 (SC), and Life Insurance Corporation of India v. Raj Kumar Rajgarhia, II (1999) SLT 362=AIR 1999 SC 2346, and of the National Commission in United India Insurance Co. Ltd. v. Pushpalaya Printers, I (1998) CPJ 5 (NC). In Raj Kumar Rajgarhia the Supreme Court held referring to its earlier decision in Shasi Gupta v. L.I.C. of India (supra), that "while interpreting the terms of the insurance policies if two views are possible, Courts will accept the one which favour the policy-holders". In Shashi Gupta it was stated that this interpretation advances the purpose for which a policy is taken and would be in consonance with the object to be achieved for getting lives

assured. In United India Insurance Co. Ltd. v. Pushpalaya Printers (supra), the National Commission held as follows : "It is settled law that in a contract of insurance, if there is ambiguity or doubt, the contract is to be construed contra proferentem that is against Insurance Company (AIR 1966 SC 1644). The rule of construction against the insurer and favourable to the insured stems from the rule of contract proferentem which is based on the maxim verba chartarum fortus accipiuntur contra proferentum. It is also settled law that the Courts will lean against forfeiture of policy."

The learned Counsel for the respondent had placed before us a decision of the Punjab State Commission in Oriental Insurance Co. Ltd. v. J.P. Vohra Industries, II (1998) CPJ 409, which supports the view taken by us. The clause dealt with in that decision was as follows : "It is a condition of this Open Policy that each and every in date order and without exception, whether arrived or not, should be declared by the Insured to the Company''s office at Amritsar immediately after the issue of the Registered Post Office/ Registered and Insured Post Office/Air Freight/Railways/Lorry Receipt and full particulars furnished as soon as practicable, otherwise no risk to attach hereunder."

The cover note in that case was as follows : "On consignment said to contain clothes of all kinds and/or woolen clothes and/or blankets and/or shawlsof all kinds securely packed in bails and/or in cases and/or in cartons to be despatched from Amritsar to anywhere in India. Particulars to be disclosed at the time of each declaration : By Rail/Road Risk. Marine Inland. Transit all. Risks including the risk of SRCC Warehouse to Warehouse."

The Punjab State Commission held as follows : "The other principle is to be kept in view is that in case there are two interpretations possible, one favouring the consumer is to be adopted. The contract of insurance is between the parties. The intention of the insured is to get the risk covered. It is entirely upon him to get such risk covered which he intends to, meaning thereby no contract can be thrusted upon him against his wishes. There is no bar for the traders to get insured articles of consignments on consignment basis. In case the trader does not want any particular consignment to be insured, the Insurance Company cannot insist on that. It is a matter of convenience that open policy is taken for a particular sum by the manufacturers of goods to despatch goods from time-to-time during the year. If they cover the entire stock of goods to be despatched, it is open to them and after the limit prescribed is fulfilled, on payment of fresh premium they may get extension of the policy. It is their choice to decide whether all the consignments are to be insured or not. If they exercise this option and choose not to get insured all the consignments but only such consignments, of which, they make declarations to the Insurance Company, the upper limit prescribed in the policy would cover only such of the consignments despatched from time-to-time of which declarations have bee made to the Insurance Company. The terms and conditions of the policy as referred to above makes it abundantly clear that the declarations of the consignments were to be made from time-to-time and only then the Insurance Company would be liable. This per se indicates that for consignments for which no declarations were issued would not be covered and the Insurance Company would not be liable to make payments. If that is so, there is no reason to calculate the amount of such consignments made by the complainant for which no declarations were submitted to the Insurance Company. The position would have been different if the Insurance Company had put up the stand that though declarations were not submitted but consignments were sent, were also covered."

We are, therefore, satisfied that the order of the District Forum does not require any intervention.

4. THE appeal is, therefore, dismissed. No costs. Pursuant to our order in FA. IA. No. 1028/ 1998 dated 8.10.1998 the appellants deposited Rs. 75,960/- before this Commission. It is open to the respondent/complainant to withdraw the said sum by filing a cheque petition. Appeal dismissed.

