(1993) 04 NCDRC CK 0037

In the National Consumer Disputes Redressal Commission

N.RAVINDRANATHA REDDY APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 28-04-1993

Acts Referred:

Citation : 1993 3 CPJ 1487

Hon'ble Judges : A.Venkatarami Reddy , Pothuri Venkateswara Rao , J.Ananda Lakshmi J.

Final Decision : Complaint allowed

Judgement

1. CASE Under Sections 13, 14,17 and 18 of the Consumers Protection Act 1986 praying that in the circumstances stated in the Memorandum of Grounds filed therewith the State Commission will be pleased to (a) direct the opposite party to pay the complainant a sum of Rs. 1,40,000/- (Rupees one lakh forty thousands only) being the insured value of the consignment of fish loaded in lorry No. AEN 1139 covered by Marine (Cargo) Policy No. 051304/21/26/06000/89, dated 28-7-1989 issued by the opposite party with interest @ 12% thereon from the date of the accident till realisation, (b) award damages of Rs. 14,000/- by way of compensation for the loss and injury caused to the complainant by the negligence of the opposite party in setting the claim, (c) grant costs of the complaint, (d) and grant such other and further reliefs which the State Commission deems fit and proper in the circumstances of the case.

2. THIS case coming on for hearing upon perusing the Memorandum of ground filed therein, and upon hearing the arguments of Mr. M.V. Ramana Reddy, Advocate for the complainant and of Mr. S. Hanumaiah, Advocate for the respondent-opposite party. The court made the following Order: Oral order as per Justice A. Venkatarami Reddy, President on behalf of the bench. The complainant who is an agriculturist and Pisciculturist of Kota Village, Nellore District took out a marine insurance policy from the opposite party on payment of Rs. 689/- as premium on 28-7-1989 for a total sum of Rs. 2,75,000/- i.e. being the value of two lorry loads of fish one in lorry AEN 1177 and the other

AEN 1139 valued at Rs. 1,35,000/ - and 1,40,000/- respectively for transportation from Kota Village to Calcutta City. According to the complainant, the authorised agent of the opposite party was present at the time of weighing and loading of the fish in the said lorries on 28-7-1989. One of the lorries AEN 1139 which was loaded with 4500/- Kgs. of fish valued at Rs. 1,40,000/- met with an accident in the early hours of 31-7-1989 near Golamthara Police Station, Orissa State. The driver could contact the complainant on the afternoon of 31-7-1989. There upon the complainant immediately went to the branch office of the opposite party at Nellore and sought necessary advise from the branch manager who gave a letter to the regional office at Visakhapatnam. The regional office deputed a surveyor and both of them reached the accident place on 2-8-1989 by night, due to Godavari floods during that time and consequent breaches on the road. Although the driver contacted the Station House Officer of Golamthara Police Station at the earliest possible time, nothing could be done to save the fish from damage. By the time the complainant and Surveyor reached the spot of the accident on 2-8-1989 all the fish in the baskets fell down and as ice cubes which were put in the polythene baskets alongwith fish melted away, the fish was completely decomposed and started emitting pungent bad smell and also caused public nuisance. Therefore, the decomposed fish was disposed of to the local manure manufacturers at free of cost in the interests of public health. The complainant claimed a sum of Rs. 1,40,000/- being the value of the fish from the opposite party. The surveyor submitted a report on 14-8-1989 stating that tere was total loss, but, the opposite party instead of paying the amount of Rs. 1,40,000/- seems to have appointed an investigator and sent a disproportionate claim voucher on 2-1-1990 for a sum of Rs. 14,817.00 in settlement of claim of the complainant. But did not communicate the basis on the reasons for arriving at the sum of Rs. 14,817.00 and the same is arbitrary. Thereupon the complainant sent a registered notice through lawyer on 20-1-1990 calling upon the opposite party to pay a sum of Rs. 1,40,000/-. A reply was sent to the above said registered notice by the opposite party on 14-6-1990 i.e. after a period of five months stating that on verification from the fisheries department it was found that the average value of the fish insured was Rs. 17/- per Kg. and the value of 2460 Kgs. of fish works out to Rs. 41,820/-. Out of the said amount the sum of Rs. 20,000/- said to have been realised due to sale of 2460 Kgs. of fish was deducted. A sum equivalent to three times premium difference was also deducted and after deducting a further sum of 25% from the balance of Rs. 19,756.00 the amount came to Rs. 14,617/-. In the counter the case of the opposite parties is that (1) the provisions of Section 2(1) (o) of the Act has no application. That as immediately the transhipment of the cargo could not be arranged, the cargo offish got putrefied. The report submitted by M/s. Reliance Surveillance of Visakhapatnam could not get the correct information by the time of their survey. According to the opposite party T.C.R.C. Surveyors are appointed to investigate and they submitted a report on 22-5-1990 to the effect that 2460 Kgs. of fish was reportedly sold to various agencies through M/s. Siddeswari Fish Trading Company, Berhampur, Orissa. M/

s. Siddeswari Fish Trading Company issued a letter dated 1-5-1990 to the effect that 2460 Kgs. of fish was sold on 3-8-1989 and 4-8-1989 for Rs. 20,000/-. In the counter the opposite party valued the fish at Rs. 17/- for 2460 Kgs. which comes to Rs. 41,720/-. After deducting Rs. 20,000/- towards salvage and Rs. 2064/- by way of penalty it arrived at the value of loss at Rs. 19,756-00 and out of that it agreed to pay 75% of the claim i.e. Rs. 14,817/-.

In view of the allegations made in the complaint as well as in the counter the points that arise for consideration are : (1) What is the weight of the fish loaded into the lorry No. AEN 1139? (2) Whether the value of the fish must be taken to be as mentioned in the Insurance Policy or whether the opposite party is justified in valuing the fish at Rs. 17/- per Kgs. as arrived at by them according to fisheries department? (3) Whether there is any salvage which was sold for Rs. 20,000/-? (4) Whether the opposite party was en-titled to deduct any sum from the amount payable to the complainant on the ground that the complainant failed to give notice to the carriers thereby preserve the claim of the opposite party?

3. TAKING up the first point, according to the complainant 4500 Kgs. of fish was loaded in the lorry AEN 1139 on 28-7-1989 in sixty baskets. Mr. Parthasarathi, the authorised agent of the opposite party was present at the time of weighment and loading of the fish. In the Surveyor''s report dated 14-8-1989, it was mentioned that the Surveyor verified the weighment sheet and the quantity loaded and found that the quantity of 4500 Kgs. weight of fish was loaded into sixty baskets. It was also mentioned that the bill of lading also shows that sixty baskets of fish was loaded and its value being Rs. 1,40,000/-. In the absence of any material produced by the opposite party that the fish loaded into the lorry at Kota on 28-7-1989 was not 4500/- Kgs. we have to accept the case of the complainant which was supported by the surveyor''s report dated 14-8-1989, that the weight of the fish loaded into the lorry AEN 1139 was 4500 Kgs. in 60 baskets. On the second point, the opposite party initially contended that the fish have to be valued at Rs. 17.00 per Kg. in accordance with the information received from the Fisheries department. But as the policy taken in the instant case is a marine insurance policy it was mentioned that the value as mentioned in the policy only to be taken into consideration and not the market value prevailing as on the date of the policy. Hence as the policy is marine insurance policy we hold that the value of fish should be taken as Rs. 1,40,000/- as mentioned in the policy,

4. THE third point is whether any salvage was sold for Rs. 20,000/- as claimed by the opposite party. In this regard, the reference may be made to the Surveyor''s report dated 14-8-1989. In the said report it was mentioned that the fish in baskets became putrefied emitting unbearable foul smell. THE police authorities did not allow to unload the baskets for the reason of pollution and public health hazard to the other villages which are nearby. With regard to the salvage it was mentioned that the damaged fish was disposed of to the local manure dealer who

was manufacturer at no cost of either parties. But the opposite party filed the copy of the letter addressed by TCRC Surveyors and assessors dated 22-5-1990 wherein it was stated that the investigators have proceeded to Berhampur on 31-4-1990 and met M/s. Sidheswar Fish Trading Company, who have confirmed about the purchase of the fish weighing 2460 Kgs. in 49 baskets at a sum of Rs. 20,000/-. THE opposite party also produced a photostat copy of bill dated 1-5-1990 from M/s. Sidheswari Fish Trading Company which mentions that on 3-8-1989 the fish from the accident lorry was purchased and loaded into another truck and sold 1520 Kgs. offish on 3-8-1989 and 940 Kgs. on 4-8-1989. Thus, the letter dated 1-5-1990 mentions that certain transaction took place on 3-8-1989 and 4-8-1989. But none connected with this bill was examined, to prove the transactions alleged to have taken place on 3-8-1989 and 4-8-1989. Moreover this letter was obtained on 1-5-1990 much later to the accident. In the absence of proof of the transactions took place, we are not inclined to place any reliance on the photostat copy of the bill produced. THE surveyor and the complainant visited the accident spot on 3-8-1989. In the report filed by the first surveyor it was clearly mentioned that the damaged fish was disposed of to the local manure dealer cum manufacturer at no cost of either parties. Thus, it is evident that with a view to avoid health problem and foul smell the entire damaged fish was handed over to manure dealer without receiving any money, as he has to transport the same at his own cost. This is supported by the affidavit of manure dealer. Had there been real sale on that day by the complainant, the Surveyor who was present alongwith the complainant should not have failed to notice the same and report the same in his report. It might be that the local manure dealer might have got money by disposing of the same fish. But there is no material to show that the complainant received any money. In these circumstances we hold that there is no proof that the same fish was sold by way of salvage for Rs. 20,000/- as complainant received the same. We therefore reject the contention of the opposite party in this regard. The complainant claimed Rs. 14,000/- by way of compensation for the loss and injury caused to the complainant by the opposite party for not settling the claim. Since we are awarding interest on the same claim, the plaintiff is not entitled to damages. Moreover there is no proof adduced by the complainant that he has suffered any damage. Hence we reject the claim of the complainant for damages. With regard to the fourth point it is submitted by the learned Counsel for the opposite party that the assured is bound to preserve the rights of the Insurance Company against the carriers by giving notice. But, it is to be seen that immediately after the accident, the complainant informed about the same to the Insurance Company, the Insurance Company appointed the surveyor who submitted a report on 14-8-1989. There is nothing that prevented the Insurance Company from giving a notice to the carrier putting forth their claim if any. Moreover, the Insurance Company did not settle the claim of the complainant to enable the same to be reimbursed from the carrier. In the circumstances we are not inclined to accept this contention, of the learned Counsel of the opposite party.

5. IN the result we pass an order directing the opposite party to pay a sum of Rs. 1,40,000/- to the complainant with interest at 12% p.a., from the date of the submission of claim no. 57304/76/101/89 at the Divisional Office of the Opposite Party at Nellore, till payment. The opposite parties are directed to pay the aforesaid amount within a period of two months from the date of the receipt of order after deducting the amount deposited pursuant to in version order. There shall be no order as to costs. Complaint allowed.

