
(1994) 05 NCDRC CK 0079

In the National Consumer Disputes Redressal Commission

Oriental Insurance Co. Ltd.

APPELLANT

Vs

GENERAL SALES LTD.

RESPONDENT

Date of Decision : 04-05-1994

Acts Referred:

Citation : 1994 2 CPC 78 : 1994 2 CPJ 86 : 1994 2 CPR 617

Hon'ble Judges : V.Balakrishna Eradi , Y.Krishan , B.S.Yadav J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the order of 17th July, 1992 passed by the State Commission of Delhi in Case No. C-312/91. The State Commission, by the above said order held that the respondent-complainant had received 75% not in full and final settlement of its claim under the Insurance Policy but only under protest. It, therefore, allowed, (i) the balance amount of Rs. 1,10,213/- (or Rs. 1,10,200) (ii) interest of Rs. 1,01,000 on the full claim of Rs. 4,15,729/- at the rate of 18% p.a. from 8.4.1990 to 14.8.1991 (iii) interest of Rs. 5,940/- at the same rate on Rs. 1,10,200/- from 15.8.1991 onwards till 3.12.1991 when he filed the complaint. Thus, it directed the appellant to pay in all Rs. 2,17,147/- with interest at the rate of 18% from 3.12.1991 till the date of payment. Hallowed Rs. 1,500/- by way of costs.

2. THE appellant Insurance Company has attacked the order of the State Commission on three counts : 1. That the amount of Rs. 2,84,516 paid on 14th August, 1991 was in full and final settlement of the claim; 2. THE respondent-complainant was advised to "open up the consignment" so as to reduce and minimise the damage likely to be caused to the consignment by getting wet/ water stained/toin/pressed with the contents and rusty. But he failed to do so. 3. THE respondent-complainant was advised to file a suit against the carrier before 22nd of August, 1990 to protect its rights of subrogation under the contract of insurance. He, however, did not do so prejudicing the appellants rights against the carrier.

The State Commission has gone into these questions in detail. It has observed

that on the arrival of the vessel at the Bombay Airport in August, 1989, a pre-inspection of the consignment was made on or about 27th of August, 1990 jointly by the representatives of M/s. C. & F, agents of the respondent-complainants and the customs officials. It has been noted by the State Commission that this was according to the prevailing practice. On cutting up of the seal of the container it was found that it was full of water and that the consignment was totally wet and damaged. This was followed by a pre-despatch survey of the consignment by M/s. Ericson & Richards (ENR) appointed by the respondent-complainant. In this pre-survey also water was found up to the height of 15 inches in the container. The Surveyors found 478 cartons as outwardly wet/ water stained/toin/pressed and their contents rusty. After this pre-despatch survey the consignment was sent from the port to Malegaon under supervision of Surveyors.

In October, 1989 a detailed survey was conducted in Malegaon and all the cartons were found rusted and unusable for packing food items. It was on the basis of this evidence that the State Commission accepted the factum and quantum of damage caused to the consignment.

3. REGARDING the question of having accepted the amount of Rs. 2,84,516 (Rs. 305516 less salvage value) in full and final settlement of his claim under the policy viz. Rs. 4,15,729, the State Commission has noticed that at first the appellant insurer reduced the claim by 50% but subsequently raised it to 75% and did not disclose the reasons for deducting 25% of the claim. The State Commission has stated that "the respondent was deliberately delaying settlement of the claim on one pretext or the other so that the complainant may agree to the terms offered by them". After hearing Counsel for the parties, we see no reason to disagree with the findings of the State Commission. As regards the question of the failure of the respondent-complainant in not filing a suit against the carrier the Insurer's rights by way of subrogation against the carrier did not become time barred. The respondent in his counter has pertinently pointed out that there was no justification for the appellant to advise the respondent to file a suit against the carrier without its agreeing to bear the legal expenses. Nonetheless it got a legal notice issued to the carrier and requested the appellant to confirm in advance that it would bear the expenses of the suit but the appellant did not give any reply.

4. IN view of what has been stated above, there is no merit in the appeal. IN the result, the order of the State Commission is confirmed and the appeal is dismissed. The Appellant will pay Rs. 5,000/- as costs to the Respondent. Appeal dismissed.