(2005) 10 NCDRC CK 0075

In the National Consumer Disputes Redressal Commission

Oriental Insurance Co. Ltd. APPELLANT

Vs

KHANDWA OILS UNIT OF ITARSI OILS And FLOURS LTD. RESPONDENT

Date of Decision : 06-10-2005

Acts Referred:

Citation : 2006 1 CLT 611 : 2006 1 CPJ 327

Hon'ble Judges : N.K.Jain , Pramila S.Kumar J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is by opposite party the Oriental Insurance Company Ltd. directed against the order dated 3.7.2003 passed by District Consumer Disputes Redressal Forum, Khandwa in Case No. 134/99 directing appellant-insurer to pay to respondent-insured Rs. 3,28,610 with interest @ 9% p.a. from 17.2.1999, besides cost of litigation Rs. 1,000.

2. RESPONDENT-complainant had on 25.6.1998 dispatched 1263:165 metric tons of Soya DOC (yellow) from Siltiya, ex-Khandwa to Wadi-Bunder (Mumbai) by rail. The entire goods were dispatched under a marine insurance policy obtained by the respondent from appellant-Oriental Insurance Company Ltd. for a total sum of Rs. 85,00,000. It is no more in dispute that a part of the goods insured were damaged by rains during transit partly at Khandwa railway station and then at Wadi-Bunder railway station. The Surveyors appointed by appellant-Insurance Company has assessed the loss at Rs. 80,309 and Rs. 2,38,722 for the damage caused to the goods by rains at the aforesaid two places respectively. A further loss of Rs. 1,42,285 was also assessed to have been caused due to shortage. However the respondent''s claim was repudiated in toto by appellant-Insurance Company vide its letter dated 17.2.1999 in following terms: "That as per the marine policy conditions, you have not lodged the monetary claim on carriers (railways) within 6 months from the date of RR and also not submitted the damage certificate of railways hence we have lost the recovery rights against the carriers. In view of above your claim is not payable, however we have considered the claim as ''non-standard'' category but still the amount of loss comes under

excess clause of the policy and thus our liability becomes nil."

The repudiation was thus based on two grounds: one, failure to lodge claim with the railways within the stipulated period of six months and two, that the claim when worked out on non-standard basis (on account of non-observance of the aforesaid policy condition) fell below the excess clause of 2% hence not payable. The Forum below has overruled and in our opinion rightly, both the grounds of repudiation but awarded compensation Rs. 3,28,610 only for the damage caused to the goods by rains not for the loss sustained due to shortage. The respondent''s claim due to shortage has been rejected by the Forum below on the ground that any such damage by shortage was not covered by the policy. The respondent has not filed any appeal against this rejection and so we are required to adjudicate whether or not the repudiation of respondent''s claim by appellant on the grounds as aforesaid was justified. We shall deal with both the grounds of repudiation one by one.

Taking the first ground first, at the out-set it may be observed that no condition requiring respondent-insured to lodge claim with the railways within a time-frame, is incorporated in the schedule of the policy issued by the appellant and filed in evidence by respondent (at page 35). The appellant-insurer has also not filed or proved any other document evidencing any such condition. It is now too well settled that all the conditions governing any such contract of insurance based on uberrimae fide should be made known to the insured at the very inception of the contract, before the same can be pressed into service by the insurer for repudiation of insured''s claim. See the decisions of the Supreme Court in the case of M/s. Modern Insulators Ltd. v. The Oriental Insurance Co. Ltd., I (2000) CPJ 1 (SC) and United India Insu. Co. Ltd. v. M.K.J. Corporation, III (1996) CPJ 8 (SC). In the instant case as already pointed out the appellant-Insurance Company did not do so and was, therefore, not entitled to take recourse to any such hidden condition.

3. IT appears that the appellant-Insurance Company itself was not very sure or serious as to the observance of the said condition inasmuch as it was prepared to settle the claim on non-standard basis. All this apart, there is evidence to show that the respondent-complainant had actually lodged claim with the railways well in time. The claim was lodged on 18.8.1998 with Divisional Railway Manager, Wadi-Bunder (Mumbai) claiming compensation for the entire loss. Thereafter the reminders were also issued on 24.9.1998 and 11.1.1999. All these letters were sent under certificate of postings to the DRM, Mumbai. It was however contended by the learned Counsel for the appellant that submission of claim to DRM was not sufficient. He drew our attention towards certain provisions of the Indian Railways Act, vide Sections 2(32) and 106 and submitted that the claim ought to have been submitted to the General Manager, Railways. We are not at all impressed by the argument and we are in full agreement with the view taken by the District Forum that lodging of the claim as aforesaid was substantial compliance of the legal requirement inasmuch as railways stood fully informed

about the loss both in terms of quantity of the goods damaged and its money value.

4. AS a last leg the appellant''s Counsel contended that the respondent-complainant in any case is not entitled to the entire amount of loss as assessed by the Surveyor. He was at pains to explain that in view of the excess clause contained in the policy (not disputed by any party) the amount is liable to be reduced by 2% of the sum assured (i.e. Rs. 1,70,000). We are again not persuaded by the argument. It is true that as per policy condition, every loss due to any of the perils as enumerated in the schedule was subject to excess clause of 2% i.e., to say that if the loss was 2% or less of the sum assured the same was liable to be ignored. The total sum assured in the instant case was Rs. 85,00,000 and 2% of which thus comes to Rs. 1,70,000. So if the loss was upto Rs. 1,70,000 only the same could be ignored by the insurer-company but if it was more than that, then whole of it would become recoverable by the insured. To say that in the latter situation the amount of loss may be reduced by the excess amount, is wholly illogical and would rather lead to absurdity. For example, if the loss in the instant case was assessed at Rs. 1,70,001 then if one goes by the interpretation of the excess clause as advanced by the Counsel for the appellant then the liability of the Insurance Company would be only of Re. 1 as against the total loss of Rs. 1,70,001 sustained by the insured. This kind of interpretation, on the face of it appears illogical and absurd. The object of the excess clause seems to ignore petty claims, but once the claim exceeds the excess limit then the same has to be paid in full. The appellant-Insurance Company has invented yet another ground to repudiate the claim by splitting up the claim in two parts on the ground that the damage caused to the goods at Khandwa and Wadi-Bunder are to be treated as two different claims and since each such claim is within the excess clause limit, none is payable. The interpretation, we must say again, borders imprudence. It was one single marine policy under which the goods were dispatched and as per terms and conditions of the policy, the appellant-Insurance Company has undertaken to indemnify the entire loss which the subject goods might suffer during transit right from loading at Siltiya to shipment at Wadi-Bunder (Mumbai). There was no scope of splitting up of claim for such losses under the policy. For what we have said above, this appeal fails and is dismissed with cost of Rs. 2,000. Appeal dismissed.

