(1996) 12 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE CO. LTD. THE SR. DIVISIONAL MANAGER — APPELLANT

Vs

GUJARAT LYKA ORGANICS LTD. — RESPONDENT

Date of Decision : 18-12-1996

Acts Referred:

Citation : 1996 3 CPJ 175 : 1996 3 CPR 50

Hon'ble Judges : V.Balakrishna Eradi , S.S.Chadha , R.Thamarajakshi , S.P.Bagla J.

Final Decision : Appeals dismissed with costs

Judgement

1. FIRST Appeal No. 697/93 is directed against the Order dated 3rd November, 1993 passed by the Maharashtra State Commission at Bombay in Complaint Case No. 250/93 and FIRST Appeal No. 698/93 is directed against the same Order dated 3rd November, 1993 of the Maharashtra State Commission at Bombay in Complaint Case No. 251/93. The State Commission felt that common question of facts and law were involved in the two complaints and hence the two complaints were disposed of by one common order. In Complaint Case No. 250/93, the opposite party viz. Oriental Insurance Company Ltd. was directed to settle the insurance claim and to pay to the complainant Rs. 7,18,528/- together with interest at the rate of 18% per annum calculated from one month after the receipt of the survey report till realisation. In Complaint Case No. 251 /93, the opposite party was directed to settle the insurance claim and to pay to the complainant Rs. 4,83,340/- together with interest at the rate of 18% per annum calculated from one month after the receipt of survey report till realisation. The opposite party was also burdened with costs of Rs. 500/- in each complaint.

2. M/s. Gujarat Lyka Organics Ltd. is the complainant in both the complaints and which is engaged in the manufacture and sale of life saving antibiotics. In Complaint Case No. 250/ 93 the complainant alleged that it had purchased from M/s. Hindustan Antibiotics Ltd. Pimpri a raw material of Penicillin "G" for being used as a critical raw material for production of life saving drugs against the

Complainant''s Order No. GLOI/RM/218 dated 22.4.87. M/s. Hindustan Antibiotics Ltd. delivered the consignment from their Bombay godown in 26 fibre drums and its transport was arranged by the complainant to their Ankleshwar factory through M/s. Vijay Transport. The consignment was despatched under invoice-cum-delivery Challan No. AA5/ 0220 dated 16.10.87. The consignment was despatched from Pune on 16.10.87 and later transported from Andheri to Ankleshwar by Truck No. MRL 3260 under Lorry Receipt No.AA14965 dated 21.10.87. The complainant had obtained an open Marine Policy of Rs. 2 crores from Oriental Insurance Company Ltd. The despatch of the aforesaid consignment was reported to the Insurance Company in terms of their Open Marine Policy. The consignment of 26 fibre drums were valued at Rs. 7,18,528/- as per Invoice No. AA5/0720 dated 16.10.87. The facts in Complaint No. 251/93 are these. The complainant M/s. Gujarat Lyka Organics Ltd supplied 11 drums of Ampicillin, Trihydrate (ATH) total quantity being 250 kgs. to M/s. Pace Labs Pvt. Ltd., Bombay. The said consignment was covered under Invoice No. 018/ ATH/87/88 dated 1.12.87 and was sent through M/s Ajay Transport Company vide Lorry Receipt No. 170057 dated 1.12.87 fromAnkleshwar to Bombay. This consignment was also reported for insurance under all risk insurance policy which had been obtained by the complainant from the opposite party being Policy No. 12150/000/00000/20/87/00687 with expiry date as 21.5.88. The consignment was received by the consignee on 4.12.87. The said consignment was rejected by M/s. Pace Laboratories as being not in conformity with the specifications and a rejection report was prepared on 10.12.87. The consignment was returned back to the complainant vide Lorry Receipt No. 18874 dated 12.12.87 and was received at Ankleshwar by the complainant on 14.12.87.

The complainant alleged in both the complaints that their goods suffered adulteration during the transit as a result of which the complainant suffered total loss of the two consignments. The adulteration of their goods during transit was reported by the complainant to the Gujarat Police. The Gujarat Police at Ankleshwar Police Station registered the offences against the Driver and Cleaner of the Transport Company and both the accused were arrested. The criminal prosecution is pending for decision before the appropriate criminal Court. The complainant tested the samples in their laboratory of both the consignments and found that Penicillin ''G'' in powder form was stolen and replaced by some other inferior material. Similarly the rejected Ampicillin Tryhiderate (ATH) samples were sent to their quality control department and it was found that the costly chemicals were stolen and some inferior materials were mixed up to make up the stolen quantity. The complainant lodged claims with all concerned including the Insurance Company on 29.3.88 and 5.1.88 respectively. The opposite party appointed the Surveyors who inspected the consignments obtained the samples and got them tested in a separate laboratory. In Complaint Case No. 250/ 93 the Surveyor quantified the loss at Rs. 7,31,228.82. In Complaint Case No. 251/93 the Surveyor assessed the loss at Rs. 4,83,340/-. The opposite party did not settle the claim for a considerable period of 3 to 4 years and thereafter the complainant filed the two complaints alleging deficiency in service on the part of the opposite party in settling the just claim.

3. ON being noticed the opposite party filed its written version. The opposite party admitted that it had granted open Marine Policy and All Risk Insurance Policy to the complainant for the value mentioned therein and the policies issued covered the risks for which the claims were lodged by the complainant. In other words, it was admitted that the opposite party had undertaken to indemnify complainants loss during transit of the two consignments under the terms and conditions of the insurance policy. It was also admitted that the Police of Ankleshwar Police Station had taken cognizance of the offences against the Driver and Cleaner of the truck of the Transport Company and the cases are pending before the Criminal Court. It was also admitted that M/s. Trans Ocean Marine & General Survey Agencies Pvt. Ltd., Bombay were appointed as Surveyor to survey and assess the loss suffered by the complainant. It was, however, pleaded that once the goods are delivered at the destination by the open delivery, their liability under the terms and conditions of the insurance policy ceased to exist. It was pleaded that the delay in settlement of the claim of the complainant was due to the fact that the documents asked for by the opposite party were not furnished by the complainant. The opposite party also disputed the quantum of loss claimed by the complainant in the claim petition. The State Commission on a consideration of the allegations contained in both the complaints and the defences put forward by the opposite party framed two points for determination namely : (i) whether there has been deficiency in the service of the opposite party and that was due to the negligence of the opposite party; and (ii) whether the complainant suffered loss and is entitled for compensation ? The State Commission after a detailed discussion of the material contained in the record came to the conclusion that the opposite party was fully aware of the loss caused to the complainant due to adulteration of the raw materials and /or finished Ampicillin Trihydrate and since the risk of pilferage was covered under the insurance policy, there was no difficulty whatsoever for the opposite party to settle the complainant''s insurance claim on the receipt of the Surveyor''s report. Having regard to the facts and circumstances which were not in dispute the State Commission found that the opposite party has been negligent in not settling the complainant''s insurance claim in terms of the agreement of policy. As regards the quantum the State Commission relied on the Surveyor''s report and found that the complainant did suffer the loss of Rs. 7,18,528/- in respect of the consignment of 26 drums and Rs. 4,83,340/- in respect of 11 drums. The State Commission granted reliefs already noticed.

4. WE have heard Mr. A.K. Raina, the learned Counsel for the Appellant in both the Appeals and Mr. S.K. Sharma, the learned Counsel for the complainant-respondent and have gone through the records. Mr. A.K. Raina, the Counsel for the Appellant urged that the State Commission has failed to appreciate that the final report of the Police investigation and the Court judgment against the Driver and the Cleaner had not been received as yet and in the absence of this vital

information, it was not possible to settle the claim of the complainant and thus there was no deficiency in service. It is also feebly urged that the complainant had not furnished the documents called from him and for this reason the claims could not be processed and finalised. These submissions are stated to be rejected. This Commission had taken consistent view that any inordinate delay in settling insurance claims amounts to deficiency in service. It is admitted that the Surveyor appointed by the Appellant in Compliant Case No. 250/93 submitted its report dated 5.9.89 to the opposite party. The Surveyor definitely came to the conclusion that the subject loss was due to pilferage of material and cheaper material was added and this had taken place in transit from Bombay to Ankleshwar, that the loss/damage occurred during the policy period and the loss quantification was based on the invoiced cost of 26 drums i.e., Rs. 7,18,528.82. It has not been indicated either in the written version or shown at the time of hearing as to which material documents had not been furnished by the complainant. The complaint was filed on 21st April, 1993. The delay in settling the claim amounts to deficiency in service with in the meaning and scope of the Consumer Protection Act. Similar is the factual situation in Complaint Case No. 251/93. The Surveyor had submitted its final report on 26th November, 1988 assessing the loss at Rs. 4,83,340/- of the quantity found contaminated on analysis. In a subsequent report dated 15.5.89 by the Surveyor it was stated that Ampicillin Trihydrate is highly unstable, Aqueous solutions of Ampicillin Trihydrage deteriorate rapidly on storage and that it is advisable to avoid reprocessing for this material as the yield is low and final product could probably toxic. The Appellant thus failed to settle the claim till the filing of the complaint. Thus we uphold the conclusion of the State Commission that there is deficiency in service on the part of the opposite party. Another submission of Mr. A.K. Raina the learned Counsel for the Appellant is that the State Commission has not considered the value of the alleged material and the quantum of actual loss suffered and thus the order passed by the State Commission is unjustified and arbitrary in nature. In our view, the State Commission has based its finding on the quantification of the loss made by the Surveyor appointed by the Insurance Company. In Complaint Case No. 251/93 the damage certificate at Exhibit ''D-2'' shows the value of 11 drums of the Rs. 4,83,341 /-and in Complaint Case No. 250/93 the damage certification at Exhibit ''D-2'' shows the value of consignment at Rs. 7,10,520.82 in respect of 26 drums. These two certificates were issued by M/s. Vijay Transport Agencies Pvt. Ltd. immediately after the incident of the pilferage of the material. The Surveyor in the two reports verified the quantum of loss suffered by the complainant and assessed it at Rs. 4,83,340/- in respect of 11 drums and at Rs. 7,18,528/- in respect of consignment of 26 drums. Thus the quantification of loss suffered by the complainant is supported by cogent and convincing evidence and is upheld. Lastly it was contended that the complainant should have mitigated the loss by blending material in order to find out the use and the complainants showed their inability for the same. It is submitted by Mr. Sharma, the learned Counsel for the complainant that the charge of non-cooperation in blending has no foundation. M/s. Hindustan Antibiotics Ltd. is a giant public sector Company manufacturing raw materials for life saving drugs and having their own well-established laboratory. It is submitted that according to M/s. H.A.L. contaminated material could not be blended or reprocessed and they suggested destruction of the material. In this case the Surveyors had taken samples and given to M/s. Unilab to blend for finding out yield. As already noticed even the Surveyors report dated 15.5.89 has opined that it is advisable to avoid reprocess for this material as yield is low and final product could probably be toxic. We do not find any merit in any of the submissions of the appellant.

5. THE two appeals are dismissed and the findings of the State Commission and the quantification of loss is upheld. THE appeals are dismissed with costs assessed at Rs. 2000/- (consolidated) Appeals dismissed with costs.

