(1998) 06 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE CO.LTD — APPELLANT

Vs

J.P.VOHRA INDUSTRIES — RESPONDENT

Date of Decision : 11-06-1998

Acts Referred:

Citation : 1998 2 CLT 195 : 1998 2 CPC 268 : 1998 2 CPJ 409 : 1998 2 CPR 244

Hon'ble Judges : A.L.Bahri , Jasbir Singh , Davinder Kaur Bhamrahs J.

Final Decision : Appeal partly allowed

Judgement

1. AN important question of interpretation of the insurance policy involving rights of the insurer as well as the insured arises in this case. District Forum on December 10, 1996 allowed the complaint filed by M/s. J.P. Vohra Industries and ANother and directed the Oriental Insurance Co. to pay Rs. 83,138.87 with 15% p.a. interest w.e.f. date of loss of goods till payment and a sum of Rs. 1,000/- towards cost to the complainants. The aforesaid order has been challenged by the Insurance Company in this appeal.

2. IN the course of business, the complainant firm used to send consignments of woollen goods from Amritsar to different stations. The complainants took up policy from the INsurance Company for Rs. 3 lacs on payment of Rs. 1103/- premium on November 11,1994. The first instalment of goods despatched was on that very day. The value of the goods was Rs. 26,100/-. The consignments contained woollen chaddar. The necessary documents accompanied by declaration of the goods as required under the policy was made to the Company. Since the goods were lost, the claim was made to Company on February 20, 1995, although information of loss was given on February 13,1995. The second disputed consignment was sent on December 1, 1994, containing woollen clothes valuing at Rs. 38,600/-. This consignment was also sent from Amritsar to Howrah. Likewise information was given to the Company and claim was made on February 20, 1995. The third disputed consignment was for Rs. 18,700/- and the 4th consignment for Rs. 18,100/- on February 4, 1998. The declarations of these consignments were also given to the Company and claims were made. The

amount of the last consignment was paid by the INsurance Company on February 27, 1995. However, in September, 1996, other claims were repudiated on the ground that Company had not declared other consignments sent from Amritsar to different stations as per their own accounts books. This led the complainant to approach the District Forum. The claim was contested. It was alleged that the repudiation was in accordance with the terms and conditions of the policy and liability was denied. Both the parties led their evidence on affidavits and documents on the basis of which the impugned order was passed. In the grounds of appeal, the relevant term of the policy has been reproduced as under: "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 & Insured Post Office/Air Freight/Railways/Lorry Receipt and full particulars furnished as soon as practicable, otherwise no risk to attach hereunder."

At the time of arguments, photo-copy of the policy was also shown. Therein the term and condition is not as reproduced above but is as under: "On consignments said to contain clothes, woollen clothes, blankets, shawls of all kinds securely packed to be despatched from Amritsar to anywhere in India. Despatched particulars to be declared from time-to-time as stated in the Cover Note."

Annexure C-1 is the Cover Note which was issued by the Insurance Company to the complainant at the time of taking the policy. The sum assured is Rs. 3 lacs and the interest covered is described in the Cover Note as under : "On consignment said to contain clothes of all kinds and/or Woollen Clothes and/or blankets and/or shawls of all kinds securely packed in balls 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 contention of the learned Counsel of the Insurance Company is, as per terms and conditions of the policy referred to above, it was incumbent upon the insured to make declarations of the consignments despatched from time-to- time and as per report of the Surveyor, the complainant firm had already despatched goods of the value of more than Rs. 3 lacs on different dates without submitting the necessary declarations. Therefore, the consignments in dispute being beyond Rs. 3 lacs were not covered under the policy. Whereas, according to the contention of learned Counsel for the insured complainant, only such consignments which were declared were covered under the policy. The order consignments despatched by the complainant were at their own risk and were not covered under the policy. The amount of Rs. 3 lacs for which the insurance policy was procured was only to cover such of the consignments which were declared. Since the amount of the declared consignments was well within the upper limit of Rs. 3 lacs, the Insurance Company is liable to indemnify the loss. We have given due consideration to the respective arguments and find no force in the contention of the Counsel for the Insurance Company. Simple meanings are to be attributed to the words used in the document, to understand their meaning. It is only in case of any doubt that intention of the parties is to be gathered which was at the time of the execution of the contract/document. Such interpretation is to be attached to the terms of the contract which would further such intention. 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 fullfilled, 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 been 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 are 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. This stand wisely has not been taken up by the Insurance Company while submitting arguments. The District Forum was, thus, justified in giving correct interpretation to the terms and conditions of the policy referred to above holding that the complainants are entitled to get the loss of the three consignments indemnified from the Insurance Company of which declarations were made and the amount of such of the consignments of which declarations were made did not exceed the upper limit of three lacs.

3. IT was also emphasised by Counsel for the complainants that in practice only such consignments which were sent through rail were got covered for which declarations were submitted. The consignments sent through road were not got covered. Be that as it may, this will have no effect on the interpretation of terms

and conditions of policy as referred to above. The Supreme Court has laid down that in the case of nationalised Insurance Companies, the compensation by way of interest should not exceed 12%. In the present case. District Forum has allowed interest @ 15% p.a. The decision of the Supreme Court is reported in United India Insurance Company v. M.K.J. Corporation, III (1996) CPJ 8 (SC).

4. FOR the reasons recorded above, this appeal is partly allowed. The order of the District FORum is modified to the extent of payment of interest which would be @ 12% p.a. With respect to other relief, the order of the District FORum is affirmed. Appeal partly allowed.