(2005) 07 NCDRC CK 0078

In the National Consumer Disputes Redressal Commission

Oriental Insurance Company Ltd. APPELLANT

Vs

DHARMENDRA KUMAR LALL RESPONDENT

Date of Decision : 04-07-2005

Acts Referred:

Citation : 2005 2 CPR 89 : 2005 4 CPJ 122 : 2006 1 CLT 302 : 2006 1 CPC 58

Hon'ble Judges : K.S.Gupta , B.K.Taimni J.

Advocate : A.K.Raina , S.K.Pattajoshi

Final Decision : Allowed

Judgement

1. THIS order will govern the disposal of FA Nos. 365/2001 and 377/2001 which arise out of a common order dated 19.10.2001 of Consumer Disputes Redressal Commission Rajasthan, Jaipur whereby opposite parties (respondents in FA 377/2001 and appellants in FA 365/2001) were directed to pay to the complainant (respondent in FA 365/2001 and appellant in FA 377/2001) Rs. 14,01,993.75 equivalent to US $ 41,667/- being the value of damaged handicraft items, Rs. 54,530/- towards airfare, Rs. 50,000/- expenses of stay of complainant between 19.9.1994 to 23.9.1994 at Athens, Rs. 3,500/- being the expenses incurred by complainant for going to Bombay, Rs. 7,233/- spent by the complainant to contact the insurance authorities and Seascan Services Ltd., Surveyors, Rs. 20,000/- by way of compensation besides cost of Rs. 10,000/-. In FA No. 365/2001, opposite parties seek setting aside of the said order dated 19.10.2001. In FA No. 377/2001, complainant seeks enhancement of amount as claimed in para No. 20 of the complaint with interest @ 15% p.a.

2. COMPLAINANT is an exporter of handicraft items. On receiving order dated 18.3.1994 from M/s. Epiplo S.A. of Athens (Greece), he despatched various handicraft items to it. Insurance coverage of items from the warehouse of complainant at Jodhpur to the terminal point of said buyer in Athens for Rs. 35 lakhs was obtained from Oriental Insurance Company Ltd./opposite party on 21.7.1992. Items were packed in 354 boxes and before despatch were inspected, by the representative(s) of insurance company. COMPLAINANT alleged that the

value of handicraft items despatched in US $ was 1,02,196/- and during transit items worth US $ 41,668/- equivalent to Rs. 14,01,993.75 were damaged. Despite efforts of complainant to get the damaged items assessed, insurance company did not depute any Surveyor in Athens. Damaged items were re-despatched from Athens to Bombay on 14.12.1994. On claim being repudiated by insurance company, by the letter dated 4.4.1995, a complaint was filed claiming a total sum of Rs. 70,32,190.75, the break-up whereof is given in para No. 20 of the complaint. Opposite parties contested the complaint by filing written version. Main thrust of argument advanced by Mr. A.K. Raina for opposite parties was that the alleged damaged items for the purpose of valuation were not got inspected by the complainant or the buyer either at Athens by M/s. Koralsios Maritime Company Ltd., Claim Settling Agent at Athens or by M/s. Seascan Service Private Ltd. at Bombay and without valuation of loss, the State Commission was not justified in awarding amount of Rs. 14,01,993.75 towards the damage caused to handicraft items. Reference to the letters dated 1.10.1994, 22.9.1994, 15.11.1994, 12/21.11.1994, 25.1.1995, 7.2.1995, 18.2.1995 exchanged between the parties and credit note of consignee (copy at p. 135 in FA 365/2001) is necessary to appreciate the said submission. Letter dated 1.10.1994 was sent by the complainant to opposite party No. 1 informing that handicraft items worth US $ 41,668/- covered by insurance policy dated 21.7.1994 were damaged during transit from Bombay at Athens. Letter dated 22.9.1994 was sent by the consignee/buyer to opposite party No. 3 mentioning that the value of broken items was US $ 41,668. Letter dated 15.11.1994 was issued pursuant to personal discussion and telephonic conversation with the complainant, by opposite party No. 1 intimating that M/s. Koralsios Maritime Co. Ltd., 100, Koloklorolí''s Street, Pireeus, Greece was its Claim Settling Agent at Athens. Letter dated 12/21.11.1994 was sent by opposite party No. 1 in continuation of letter dated 15.11.1994 wherein fax number of said Claim Settling Agent was given. Letter dated 25.1.1995 was also written by opposite party No. 1 to the complainant. Omitting immaterial portion, this letter which is material, reads thus: "With reference to your letter dated 3.1.1995, we have to bring to your notice as under: (1) That we do not accept your notice of abandonment and that the damaged cargo in question would remain at the risk and responsibility of your own only. You must approach our Marine Cargo Department, Bombay Regional Office 1, Oriental House, 2nd Floor, 7, Jamshed Tata Bombay-400020 for appointment of a Surveyor for survey. (2) You must comply with all the necessary formalities for clearing the goods (after survey by all concerned) from Bombay Port. All necessary loss minimization measures as advised by the Surveyors must be undertaken by you without any fall. (3) Please submit us the documentary evidence of having approached our Claim Settling Agent at Athens by you and their refusal to act on our behalf. (4) Please also state as to why you have decided all of a sudden to ship back the cargo without the prior consent of us. (5) We may also state that we are extending all the cooperation in settlement of the unfortunate claim suffered by you on merits and hence all the necessary legal requirements and formalities will have to be complied with by you at your own cost, expenses and responsibility, which kindly note."

By the letter dated 7.2.1995, opposite party No. 1 informed the complainant that M/s. Seascan Services Ltd. had been appointed as Surveyors for survey of the damaged items at Bombay. In response to this letter, the complainant sent letter dated 18.2.1995. This letter notices that damaged items had reached Bombay, amount of Rs. 1,84,225/- was being claimed as transportation and other incidental charges and as damaged items were the property of insurance company the payment of transportation charges from Athens to Bombay be made by it and delivery of cargo obtained from the port. At this juncture, orders dated 8.1.2003 and 25.3.2003 passed by this Commission need be referred. Considering the fact that no survey of damaged items had been made by them, it was directed by the order dated 8.1.2003 that delivery of damaged items will be taken by the complainant from the Port authorities at Bombay and the opposite party-insurance company will depute a Surveyor who will inspect the items and file his report along with notes and case was postponed to 25.3.2003 for further proceedings. Order of that date would show that a fax message dated 21.3.2003 was received from Jawaharlal Nehru Port Trust mentioning that the ground charges of the cargo payable to it as on 20.3.2003 was around Rs. 22 lakhs and delivery of cargo could be given only on receipt of those charges. Order dated 25.3.2003 further notices the statement made by the Counsel of complainant that complainant is not in a position to pay the said amount. Admittedly, damaged items were re-despatched from Athens to Bombay on 14.12.1994. Complainant did not adduce any evidence nor even averred in complaint that he had asked the buyer to contact ''aforesaid Claim Settling Agent at Athens or the Agent refused to inspect the damaged items to assess the extent of loss. From the correspondence referred to above and the two orders, it is manifest that despite insurance company-opposite party''s having appointed Claim Settling Agent/ Surveyor, the damaged items were not made available for inspection to assess the extent of loss. Under Section 64UM of the Insurance Act, 1938, a claim of loss exceeding Rs. 20,000/- cannot be settled by the insurer unless a report is obtained from a licensed Surveyor or a Loss Assessor. To be only noted that in aforementioned credit note issued by consignee, the items are noted to have been returned due to unsuitability in Greek market and not their having been damaged during transit from Bombay to Athens. Therefore, survey of items was all the more necessary. Non-survey and assessment was the primary ground for repudiating the claim by the letter dated 4.4.1995. In this backdrop, State Commission gravely erred in passing award for Rs. 14,01,993.73 equivalent to US $ 41,668/- on the basis of averments particularly made in paras 8, 9, 19 and 21 of the complaint having not been denied in the written version by the opposite parties.

3. AS regards award of Rs. 54,530/- the airfare and Rs. 50,000/- towards expenses of stay of complainant between 19.9.1994 and 23.9.1994 at Athens, plea taken by the opposite parties in written version is that there was no

occasion for the complainant to have gone to Athens on 19.9.1994 in connection with damage to the cargo in this case as according to complainant''s own showing, he learnt of the damage only from the letter of buyer sent from Athens on 21.9.1994. Further, the insurance company had not permitted the complainant to visit Athens, on 19.9.1994 as alleged. It is not the case of complainant in the complaint that he had come to know regarding damage through a source other than the said letter dated 21.9.1994. It may be stated that aforesaid letter dated 1.10.1994 which was written by the complainant on return from Athens, is conspicuously silent in regard to his having been allowed by the insurance company to visit Athens, on 19.9.1994. Stand of insurance company to the said effect being more probable, thus, deserves to be accepted. Further, award of Rs. 3,500/- for stay at Bombay and of Rs. 7,233/- being the amount spent to contact insurance authorities and the said Surveyor at Bombay was totally uncalled for as it is the complainant who failed to take delivery of the damaged items from the Port authorities for inspection by the Surveyor of the insurance company. Insurance company also could not have been saddled with the amount of Rs. 20,000/- by way of compensation. For the foregoing discussion, the order of State Commission deserves to be set aside being not legally sustainable and cross-appeal filed by complainant dismissed.

4. CONSEQUENTLY, while allowing FA No. 365/2001, aforesaid order dated 19.10.2001 is set aside and complaint dismissed. FA No. 377/2001 is dismissed. No order as to cost. Ordered accordingly.

