(1992) 04 NCDRC CK 0038

In the National Consumer Disputes Redressal Commission

OVERSEAS CARPETS LIMITED , KASHMIR ARTS	APPELLANT
Vs	
National Insurance Co. Ltd.	RESPONDENT

Date of Decision : 20-04-1992

Acts Referred:

Citation : 1992 2 CPJ 388 : 1992 2 CPR 107 : 1993 1 CLT 63

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

Advocate : Manoj Swarup , Kishore Rawat

Final Decision : Allowed

Judgement

1. BOTH these complaints are essentially identical in their nature and against the same opposite party. Hence they are being disposed of by a common order.

2. BOTH these complainants (M/s. Overseas Carpets Ltd. Original Petition No. 86 of 199 land M/s. Kashmir Arts in Original Petition No. 90 of 1991 are engaged, inter alia, in the business of export of carpets to foreign countries. Both the complainants had taken out Open Insurance Policies from the opposite party under which the exports of the complainants were covered against "Ail Risk" war, strike, and Civil Commotion for CIF value plus 10% thereof. In the case of the petitioner in Original Petition No. 86, the open policy was operative from 22nd February, 1990 to 21st February, 1991 and in the case of the petitioner in Original Petition No. 98 the same was operative from 14th March, 1990 to 14th March, 1991.

The petitioner in Original Petition No. 86 despatched a consignment of carpets to Zurich through M/s. Kulwaiti Airways on the 25th July, 1990. The CIF value was US $ 52,760.76.

3. LIKEWISE, the petitioner in Original Petition No. 98 despatched a consignment of carpets one to Zurich on 24th July, 1990 of the CIF value of Rs. 6,13,690.50 p. through the Kulwaiti Airways and another consignment to Frankfurt of the CIF value of DM 57,875.60 on 28th July, 1990 through the Kuwaiti Airways. Both these consignments were covered by certificates of insurance issued by the

opposite party. The policies specifically covered the risk of loss as a result of war.

4. THE said consignment did not reach the destination Zurich/Frankfurt. On enquiries, the carrier M/s. Kuwaiti Airways informed the consignors on the 8th and 9th of August. 1990 that they were to be transported from Kuwait to destination stations but due to the then prevailing situation in Iraq. THEy could not do so. The complainants in August and October, 1990 lodged claims on the Carrier for the value of the goods lost The Carrier, M/s. Kuwait Airways by its letters of 19th March, 1991 to M/s. Overseas Carpets limited (Petitioner in Original Petition No. 86) and on 24th April, 1991 to M/s. Kashmir Arts (Petitioner in Original Petition No. 98) informed them as under: "The Kuwait Airways regret that the consignment has become unavailable, lost or destroyed as a result of the activities of the Government of Iraq and its Armed Forces..This is an extreme case of force majeure and that it was totally impossible for Kuwait Airways to take any measures of whatever to avoid loss. Consequently, Kuwait Airways cannot have any legal liability for the loss of the consignment."

5. THEREUPON the complainants approached the Settling Agent of the Insurer who eventually, in July, 1991 forwarded both the claims to the opposite party, Insurance Co.

6. IN October, 1991, the opposite party, INsurance Company informed the complainants that "in the absence of satisfactory evidence to prove the loss in terms of the policy, it is not possible for us at this stage to examine your claim." The opposite party, INsurance Company, also advised the complainants to lodge their claims with the Ministry of External Affairs, Government of INdia which they did. The Ministry of External Affaifs, however, informed the complainants that the resolution of 3rd April, 1991 of the United Nations Security Council with reference to which the Ministry of External Affairs had desired to process the claims of Indian citizens for loss or damage to property etc. held in Kuwait, was not applicable to these two cases under consideration. Even after this, the opposite party, Insurance Co., did not settle the claims under the policy of insurance.

During the hearing the Counsel for the Insurance Co., could not justify the withholding of the claim under the Insurance policies keeping in view the categorical statement made by the Carrier that the consignments had become unavailable, lost or destroyed as a result of activities of the Government of Iraq and its armed forces and that this was a case of force majeure which relieved the Carrier of legal liability for the loss of the consignments. It was pointed out to him that we were totally unable to understand the contention of the opposite party, Insurance Co., that the claimants had not been able to furnish satisfactory evidence to prove their loss in terms of the policies. In fact, we are constrained to observe that the opposite party. Insurance Co., failed to perform its obligation under the contracts of insurance and resisted the claims on grounds which were palpably untenable and which only amounted to harassment of the insured. We cannot resist observing that the opposite party, Insurance Company''s conduct in dealing with the bona fide claims of the insured would defeat the very purpose of insurance and is contrary to the philosophy of insurance.

7. THE insured bad obtained post-shipment credits from the Indian Overseas Bank in the case of Original Petition No. 86 of 1991 and Canara Bank in the case of Original Petition No. 98 of 1991 to finance the export of carpet consignment and they have to pay substantial interest thereon. In fact, the petitioner in Original Petition No. 86 of 1991. M/s. Overseas Carpets Ltd. claims to have repaid a sum of Rs. 8.06 lacs (including interest) to its banker resulting in strain on its own working funds and financial stringency which resulted in loss of business etc. We order that the complainants be paid as under: (a) The Petitioner (M/s. Overseas Carpets Ltd.) in Original Petitio?i No. 86 of 1991 : (i) A sum of Rs. 9.14 lacs being the value of the consignment lost: Considering the avoidable delay in the settlement of the claims of insurance and the financial embarrassment caused to the complaints. (ii) Interest at the rate of 18 % per annum from 19th March, 1991, the date of which the carrier finally informed the complainant that the consignment had been lost or destroyed till the date of the settlement of the loss claim by the opposite party. We consider it reasonable to award a compensation of Rs. 25,000/- to the Complainant for the harassment caused to it (iii) In addition, a sum of Rs. 3,000/- will be paid to the Complainant by the Opposite Party as costs. (b) Petitioner (M/s. Kashmir Arts) (Original Petition No. 98 of 1991): (i) A sum of Rs. 13,81,330/- CIF value of the consignment lost; (iii) Interest at the rate of 18% per annum from 24th April, 1991 when the Carrier finally informed about the loss of the consignment till the date the loss claim is paid.

8. WE consider that this Complainant is also entitled to be reasonably compensated for the harassment caused to it by the persistent denial of the claim by the Insurance Company. In our opinion it will be just and reasonable to fix the amount of compensation at Rs. 25,000/- and we direct that the said amount shall be paid to the Complainant by the Insurance Company. (iii) A sum of Rs. 8,000/- will be paid to the Complainant by the Opposite Party as costs. Complaint allowed with cost.