

(2013) 12 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

Padia Exports Pvt. Ltd.

APPELLANT

Vs

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.

RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : 2013 0 NCDRC 881 : 2014 1 CPJ 421

Hon'ble Judges : J.M.MALIK J.

Advocate : S.NANDA KUMAR , P.SINGH , G.N.SAINANI , Sanjit Shenoy , Daves
Vashishtha

Judgement

1. THE controversy in this case swirls around the question, Whether, M/s. Padia Exports Private Ltd., the Complainant, is entitled to recover its claim in the sum of Rs. 2,19,56,271.49, vide Marine Insurance Policy from M/s. Bajaj Allianz General Insurance Co. Ltd., the opposite party, for the loss caused by the devastating fire, wherein the goods (utensils), owned by the complainant, were gutted in fire. THE complainant, is a Private Limited Company, incorporated under the Indian Companies Act, 1956. It is having its Head Office at Kolkata and Regional Office at Delhi for Delhi Region. It has registered office at Yerwada, Pune. It obtained Marine Insurance Policy from M/s. Bajaj Allianz General Insurance Co. Ltd., O.P. As per Institute Clauses (A) - -All Risks from Consignor Warehouse to Consignee's Warehouse at destination for the period of one year from 27.3.2010 to 26.3.2011 to be declared as and when upon receipt of shipping documents. THE policy sum assured was Rs. 5.00 crores and additional shipments, if any. THE premium of Rs. 2,01,048 was collected by O.P., in advance.

2. UNFORTUNATELY , fire broke out, on 10.4.2010 and this news was published in the Newspaper, "The Hindu", on 11.4.2010. On 12.4.2010, i.e., after the incident, the complainant submitted the declaration for the dispatch of the consignment along with the Invoices. The complainant filed a claim of the above said loss, as per Invoice value of 76665.60 USD + 62540.64 GBP + 10% of such value with the O.P., vide Annexure P -4. The Customer Cell of CONCOR was

informed by the complainant, on 12.4.2010 and submitted the following documents - - (i) copies of invoice and packing list;

(ii) copies of goods receipt for transit from Wazipur, Delhi to ICD -TKD;

(iii) copies of checklist issued by CHA Triways Transportation Pvt. Ltd.;

(iv) copies of letters issued to customer cell of CONCOR; and

(v) copies of letters issued for offer of salvage value and clarification of delay intimation.

The said documents were acknowledged by O.P. vide their letter dated 11.10.2010. The intimation to the Opposite Party was given on 7.5.2010, after the lapse of 27 days.

3. O .P. appointed M/s. Puri Crawford and Associates (I) Pvt. Ltd., as a Surveyor to verify the loss and declaration verification with dispatch details from the books of accounts. O.P. demanded ten documents, which were furnished by the complainant.

4. ACCORDING to the complainant, on 4.11.2010, the Chief Manager of ICD -TKD, which is under the control of Ministry of Railways, informed the complainant to settle their claim with their insurer that the fire took place at ICD -TKD and the complainant sustained huge loss of about more than a crore, vide Annexure P -6. Surveyors, B. Ghosh and Co., CHA Triways Transportation Pvt. Ltd., conducted joint survey and submitted their report on 11.5.2010 vide Annexure P -7. The complainant co -operated with the O.P. and sent all the necessary documents vide Annexures P7 to P -10. M/s. Kedia Associates, Chartered Accountants gave their survey report dated 12.4.2011 by declaring the loss of Rs. 41,74,587.65 vide Bill No. PD/001/10 -11, dated 1.4.2010 and for Rs. 34,49,652 vide Bill No. PD/003/10 -11, dated 1.4.2010, which was claimed due to fire loss, vide Annexure P -11.

On 4.7.2011, the O.P. repudiated the claim on the following flimsy grounds. (A) the loss was intimated only on 7.5.2011, which is almost one month from the date of loss and after declaring the dispatch, requested the issuance of certificate against the damaged shipments, which is after the loss, i.e. 12.4.2010, when the goods were already lost and not in existence. The goods were left from the factory on 7.4.2010, and received at ICD -TKD, on 8.4.2010. (B) The complainant's claim was not bona fide and breached the policy conditions, therefore, the claim was repudiated.

5. THE O.P. also refused to issue the certificates in terms of the policy of insurance, vide Annexure P -12. The oral request and communication vide Annexure P -13, did not ring the bell. The repudiation was confirmed vide letter dated 21.11.2011 vide Annexure P -14. The complainant approached the National Consultants. However, the O.P. did not rebut the same.

6. ULTIMATELY , this complaint was filed in this Commission on 15.2.2013, with

the following prayers - - (1) allow the Original Petition by quashing the letter dated 4.11.2011 issued by the Respondent by repudiating the insurance claim of Marine Policy by granting compensation and damages for a sum of Rs. 2,19,56,271.49, on considering the facts and circumstances of the case narrated in above; and

(2) pass such further other order or orders as this Hon''ble Commission deem fit and proper in the facts and circumstances of the case narrated in above.

The record further reveals that O.P. did not file the written statement/reply, within the prescribed period of 30 days + 15 days, as required under Section 13 of the Consumer Protection Act, 1986. The defence was closed by following the authority of the 3 -Judges" Bench, in Dr. J.J. Merchant v. Srinath Chaturvedi, III (2002) CPJ 8 (SC) : IV (2002) SLT 714 and Oriental Insurance Co. Ltd. v. M/s. Rajankumar and Bros. (IMPEX), SLP (Civil) No. 24705 of 2013, decided on 13.8.2013 and two other authorities of the Supreme Court. However, the Counsel for the O.P. was permitted to submit the arguments and advanced the arguments on legal point only.

7. WE have heard the Counsel for the parties and perused the written arguments. The O.P., whose defence was struck off, filed written arguments, running into 113 pages. The Counsel for the O.P. vehemently argued that the case is barred by time, under Section 24 -A of the Consumer Protection Act, 1986. He explained that the accident took place, on 10.4.2010, whereas the complaint was filed on 15.2.2013, after the expiry of more than two years. We tried to make him understand that the period of limitation will start from the date of repudiation of the claim, i.e., 4.7.2011. However, the Counsel for the O.P. cited a number of authorities in support of his plea. First of all, he cited an authority reported in Kandimalla Raghavaiah and Co. v. National Insurance Co. and Anr., III (2009) CPJ 75 (SC): Civil Appeal No. 4962 of 2002, decided on 10.7.2009. In this case, no claim was filed for nine years, after the incident. The facts of cited authority, hardly dovetail with the facts of the instant case.

8. COUNSEL for the O.P. also cited another authority, reported in State Bank of India v. B.S. Agricultural Industries, (I), II (2009) CPJ 29 (SC) : II (2009) SLT 793, where Section 24A of the Consumer Protection Act, 1986, was discussed, where so many other authorities were relied upon, but our view is that the limitation will start from the date of repudiation of the claim and the cited authority is inapplicable to this case. He has also cited other authorities, first, from the Hon''ble Supreme Court, reported in Dr. V.N. Shrikhande v. Anita Sen Fernandes, IV (2010) CPJ 27 (SC) : VII (2010) SLT 648 : Civil Appeal No. 8983 of 2010, arising out of SLP (C) No. 5479 of 2009, decided on 20.10.2010, and second of this Commission, reported in RP 2733 of 2011, Smt. Smita Madhav Patki and Anr. v. National Insurance Co. Ltd. and Ors., 0719/2012 : I (2013) CPJ 331(NC) : decided on 6.12.2012. The facts of those authorities have no parallels with the facts of this case. Consequently, this argument does not turn the corner.

9. THE main question involved in this case is, "Whether, the O.P., Insurance Company, was intimated about the loss immediately - Annexure P -12, is the repudiation letter, which goes to show that the incident of fire took place on 10.4.2010, but the intimation was sent to the O.P., on 7.5.2010, i.e., after the lapse of 27 days. It is also interesting to note that the O.P. was provided with the Declaration under Marine Open Cover No. OG -10 -1104 -1006 -00000051, which mentions, as under - - please find enclosed the Declaration of consignment under Invoice No. PD/003/10 -11, dated 1.4.2010, from where New Delhi to who Hamburg, Germany.

10. THE parties entered into an agreement, under Imported Machinery (All Types) Clause, consisting of "Declaration Clause", which reads as under - - the Assured is bound to declare hereunder each and every shipment or sending or risk without exception, falling within the terms of this contract, whether, arrived or not, the insurers being bound to accept the same upto, but not exceeding the limits specified herein.

The duration of the insurance policy is described in Clause 5 of the Inland Transit (Rail or Road) - -Clause B (Basic Cover), runs as follows: DURATION - - 5. This insurance attaches from the time the goods leave the warehouse and/or the store at the place named in the policy for the commencement of transit and continues during the ordinary course of transit including transshipment, if any

11. WHILE we read both these Clauses, in conjunction with each other, it is clear that the risk had started, when goods left the Warehouse at Wazirpur and stored in ICD, Tuglakabad. The Declaration Clause was to be filed at the time of shipment. Since the things were lying in godown, no fault can be attributed on the part of the complainant. However, it must be borne in mind that the Declaration was filed two days after the incident. What surprises this Commission the most, is that, no intimation was sent to the Insurance Company, regarding the damage. The information was sent after 27 days, which appears to be wee bit fatal. The Declaration, Ex. P -3, dated 12.4.2010, also included commercial Invoice, in which, item -wise details were also given. It is well said that "A Stitch in Time, Saves Nine".

12. THE Insurance Company gave clarification vide Annexure P -14. In response to that, the Complainant sent reply, marked as Ex. P -15. The complainant, who appeared in person, along with his Counsel argued that the complaint was lodged under the policy of Marine Insurance and not under Fire Insurance. He further submitted that there is no provision under Marine Policy for the time limit, except under Law of Limitation. The fire was a big blaze and most of the Newspapers and Media, carried the news and information to the public and to those who were concerned about it. The complainant had submitted Invoices, as many as 23, in number. The complainant also invited our attention towards the terms and conditions of the Policy under the Heading, "Claims Procedure", Para No. 5, reads as follows - - 5. To give notice in writing to the Carriers or other Bailees within 3 days of delivery if the loss or damage was not apparent at the time of taking

delivery.

13. THE complainant contended that the needful was done. Information was given to the above said persons, which is an indisputable fact. The complainant also invited our attention towards Annexure P -6, which is written by Container Corporation of India (in short "CONCOR"), under Ministry of Railways, Tuglakabad, dated 4.11.2010, wherein the complainant was advised to settle its claim with his insurer, the OP. There is an Interocean Surveyors Pvt. Ltd., Joint Survey Report, which shows that the complainant had got 3840 pkts., weighing 14760.00 kgs., which contained utensils.

14. THE complainant has also filed the report of M/s. Kedia Associates, Chartered Accountants, dated 12.04.2011, which runs as follows - - TO WHOM IT MAY CONCERN We hereby Certify the details of EXPORT SALES (including other details) of M/s. Padia Export Pvt. Ltd., of 40, Strand Road, 2nd Floor, Kolkata - 700 001, for the period from 1.1.2010 to 31.3.2010, which are as under, as per the statements and other records produced before us and as per the information and explanation provided to us.

Our attention was also invited towards the policy of Bajaj Allianz General Insurance Company Ltd., GE Plaza, Airport Road, Yerawada, Pune, which is Marine Open Cover, Ex. Annexure P -1, which shows the consignment details. Its relevant portion is reproduced, as follows: Consignment Details Thereafter, it mentions premium rate. Its relevant portion runs as follows: - Premium Rate: As Agreed Basis of Valuation: CIF + 10% Initial Estimated Sum Insured: Rs. 5,00,00,000 Per Location Limits 50,00,000 This insurance is subject to Advance Premium deposit A/c with statutory balance. The Counsel for the O.P. vehemently argued that the complainant at best, is entitled to Rs. 25.00 lakh and not Rs. 50.00 lakh.

15. WE see force in the arguments raised on behalf of the complainant, in a measure. First of all, we would advert to the policy itself. The policy itself mentions, as under - - Note: It is necessary for the Assured when they become aware or an event which is "held covered" under this insurance to give prompt notice to the Underwriters and the right to such cover is dependent upon compliance with this obligation.

This provision of law was not complied with. It is surprising to note that this should have been brought to the notice of the O.P., on 12.4.2010, itself. The O.P. would have got an opportunity to see even the ashes to find out how much loss was committed. It could not get an opportunity to find out whether all the utensils were burnt to ashes or they were half -burnt utensils. This is a moot question, how all the utensils could turn into total ashes? The answer to this question of infinite importance lies with the Surveyor's report of O.P., if any. The Surveyor could have assessed the total consignment and its value.

16. NOW , we turn to the delay of intimation to the O.P. It is crystal clear that the complainant has failed to explain the delay of 27 days in informing the

Insurance Company. On the contrary, it casts an aura of suspicion over its activities. It is difficult to fathom, when it could file the Declaration, on 12.4.2010, why it could not give this information to the O.P.?. Information given to the Carriers or Baillies, is a different thing. Carriers are not to pay the compensation. Compensation is to be paid by the O.P. While coming to know about the incident, giving the Declaration, within two days, withholding the information for a sufficient time, envelops this case with an integument of doubt. Counsel for the O.P. has rightly referred to the authority reported in *Suraj Mal Ram Niwas Oil Mills (P.) Ltd. v. United India Insurance Co. Ltd. and Anr.*, VIII (2010) SLT 375 : IV (2010) ACC 653 (SC) : IV (2010) CPJ 38 (SC) : (2010) 10 SCC 567, wherein, it was held in paras 21, 22 and 23, as under - - 21. Lastly, learned Counsel urged that there must be strict compliance with the terms and conditions of an insurance policy, and the appellant having breached a fundamental condition of the policy, the respondent is not liable to pay any amount to them. In support of the contention that in a contract of insurance, rights and obligations are strictly governed by the terms of the policy and no exception or relaxation can be given on the ground of equity, learned Counsel relied on the judgments of this Court in *Deokar Exports Private Limited v. New India Assurance Company Limited*, I (2009) CPJ 6 (SC): I (2009) ACC 93 (SC) : (2008) 14 SCC 598, *United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal*, IV (2004) CPJ 15 (SC) : V (2004) SLT 876 : (2004) 8 SCC 644 and *Vikram Greentech India Limited and Anr. v. New India Assurance Company Limited*, II (2009) CPJ 34 (SC) : IV (2009) SLT 35 : (2009) 5 SCC 599.

22. Before embarking on an examination of the correctness of the grounds of repudiation of the policy, it would be apposite to examine the nature of a contract of insurance. It is trite that in a contract of insurance, the rights and obligations are governed by the terms of the said contract. Therefore, the terms of a contract of insurance have to be strictly construed, and no exception can be made on the ground of equity. In *General Assurance Society Ltd. v. Chandmull Jain*, 1966 ACJ 267 (SC), a Constitutional Bench of this Court had observed that - -

In interpreting documents relating to a contract of insurance, the duty of the Court is to interpret the words in which the contract is expressed by the parties, because it is not for the Court to make a new contract, however reasonable, if the parties have not made it themselves.

23. Similarly, in *Harchand Rai Chandan Lal's* case, 2005 ACJ 570 (SC), this Court held that: "Terms of the policy have to be construed as it is and we cannot add or subtract something. Howsoever, liberally we may construe the policy but we cannot take liberalism to the extent of substituting the words which are not intended."

He also referred to two other authorities of this Commission which are to the same effect.

17. IT is mandatory that the information must be given immediately. The Hon''ble Apex Court in Oriental Insurance Co. Ltd. v. Parvesh Chander Chadha, Civil Appeal No. 6739 of 2010, decided on 7.8.2010, had taken the same view in the case of "theft of a vehicle". The same analogy will be applicable to this case, as well.

18. THE law requires that when the goods left the godown of the complainant, on 7.4.2010, it must be, which is mandatory, accompanied, by all the Invoices. The case of the complainant was not bolstered by such like evidence. It has deleterious effect on the complainant's case. The Books of Accounts and Income Tax Returns did not see the light of the day. It dampens the ardor of complainant's case.

19. HOWEVER , this is not the end of road for the complainant. The claim of the Complainant cannot be brushed aside, in its totality. The record reveals that the OPs stored the articles by CONCOR, which is under the control of Ministry of Railways. The risk had started when it was received by the said Godown. There is no dispute that the said goods of the complainant were burnt at the said Godown. The Interocean Surveyors Pvt. Ltd., Joint Survey Report, placed on record, goes to show that the number of packets were 3840, weighing about 14760 kgs. The repudiation letter itself mentions, as under - - Consignment of utensils under Export Sale Invoice # PD/001/10 -11 dated 1.4.2010 and Invoice # PD/003/10 -11 dated 1.4.2010 damaged in fire on 10th April 2010, whilst these were lying at Inland contained depot, Tughlakabad.

This letter further shows that those goods have arrived at ICD -TKD on 8.4.2010. There was no occasion to declare those goods, because these were to be declared at the time of shipment of goods. The repudiation letter further mentions, as under - -

The above Open Cover was issued to you for the period 27th March, 2010 to 26th March, 2011 covers the export shipments from anywhere in India to anywhere in the world and it is a condition precedent that all shipment within the scope of the policy be declared without any exception to the full extent. However, from CA's report we observe that prior to these invoices about 15 Nos. of Sales Invoices worth Rs. 2.35 crores have been issued and out of these only 3 invoices were declared. Even value declared against these 3 invoices is much lesser than original value of invoice. Rest of the 13 shipments were never declared and no certificates were requested.

20. HOWEVER , there can be no denial that the goods of the complainant were burnt. This was published in so many Newspapers, which was never denied. The fire took place and all the goods belonging to the complainant as well as to others, were gutted in fire. However, it would have a been better step to inform the O.P., immediately, so that they could have the occasion to assess the situation. The complainant is not entitled to the entire loss. It would be given compensation, as per the consignment details. In the light of the above

discussion, we grant it Rs. 25,00,000 with interest @ 9% p.a. from the date of the incident, i.e. 10.4.2010, till its realization, payable by the Opposite Party.