
(1993) 11 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

PREMJIBHAI RANCHHODBHAI HODAR

APPELLANT

Vs

National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 19-11-1993

Acts Referred:

Citation : 1994 2 CPJ 400

Hon'ble Judges : P.M.Chauhan , R.K.Shah J.

Final Decision : Complaints allowed with costs

Judgement

1. BOTH the complaints involve common questions of fact and law and, therefore, by the request and consent of the parties, evidence is recorded in Complaint No. 30/93 and considered evidence in both the complaints and are disposed of by this common judgment.

2. THE complainant-Premjibhai Ranchhodbhai Hodar in Complaint No. 30/93 has claimed the amount of Rs. 2,50,000/- with interest from 21.1.1988 for the sinking of fishing boat "PREMSAGAR" and the complainant Matsodyog Registered Co-op. Society through Chairman Premjibhai R. Hodar has claimed Rs. 3,00,000/- for the sinking of the fishing boat "MATSYAGANDHA No. 6" with interest from 21.1.1988 till realisation. The undisputed facts in both the complaints above referred, are that the fishing boats were insured with the opposite party-Insurance Company. They were on fishing mission on 24.10.87 in the Indian Ocean near Jakhau Port and on 25.10.87 were forcibly taken away by Pakistani Coast Guards and the tinsel and crew were imprisoned and the above referred fishing boats along with other 7 fishing boats were taken in custody at Karachi Port. Efforts were made by the owners to get the boats released and ultimately they were released by the Pakistani Authorities. The owners' representative had taken possession of the fishing boats and went with the Tinsel of Indian country craft MSV MANDAKINI to Karachi Port to tow the 9 boats. As the said vessels were lying unattended at Karachi Port for about 2/3 months, the owner's representative carried out general repairs to the hull and machinery. MSV MANDAKINI was taken at inner harbour where out often Indian

fishing boats, 9 were ready to tow to Okha Port while remaining one fishing boat "HITESHWARI" was found in unseaworthy condition due to heavy damages and was kept at Karachi Port. The mooring hawsers from all the fishing boats were passed to the vessel "MANDAKINI" and they were adequately secured and the vessel "MANDAKINI" sailed on 19.1.1988 with 9 fishing boats in tow for Okha Port. At that time that the weather was found to be fair and seasonal and there were total 16 crew members including tindel on board. When all the 9 fishing boats were towed they were in perfect seaworthy condition. On January 19, 1988 the vessel had entered Indian waters and thereafter on 21.1.88 there was some turbulence in the sea. The tindel then noticed that the mooring hawsers of five fishing boats had parted and they were adrift from the towing vessel. The tindel manoeuvred the vessel towards drifted boats and were resecured to the vessel. Due to the frequent parting of mooring hawsers the tindel observed his crew members who were kept on board the fishing boats to abandon the fishing crafts and all crew members were picked up on board "MSV MANDAKINI". Efforts to tow the fishing boats continued till 0500 hrs. on January 19, 1988 but owing to heavy swell and rough sea, mooring hawsers were frequently parting and all the fishing boats drifted along with heavy swell at midsea. The towing of the fishing boats was required to be abandoned and all the 9 vessels sunk in the sea. Subsequently one of them was found drifted on the shore. The loss was reported to the Port Authorities and also to the opposite party.

The Opp. Party was then requested to satisfy the insurance claim but by letter dated 27.1.92 they informed that they were in receipt of 9 letters for the claim of the boats and that the claim files were lying with the head office for decision and on receiving the information the complainants would be informed. Subsequently by letter dated 21.9.92 the complainants were informed that the Insurance Company repudiated the claim on the ground of breach of express/implied warranty - Manning warranty and navigation warranty. Before repudiation the Insurance Company appointed J.B. Boda Surveyors Private Ltd. to enquire and submit the survey report. Most of the factual findings as discussed above are in favour of the complainants as is clear from the survey report produced on record. The Surveyors have reported that both the fishing boats were seaworthy and no breach of trading warranty was committed. The Opp. Party while admitting the factual aspects as discussed above have mainly raised the contention that the complainants had not placed adequate persons on the vessel to man it which amounted to breach of manning warranty. The breach of navigational warranty that the craft shall not be towed except as is customary or when in need of assistance was committed and, therefore, the Opp. Party is not liable to indemnify the insured and pay the insured amount. The other contention is that as the claim is repudiated after holding enquiry, this Commission has no jurisdiction to entertain the complaint.

3. THE policy provides various warranties, one of which is that "the vessel shall be manned adequately at all times except when in harbour, sheltered/safe waters when it should be secured properly and adequate watch and ward maintained

through the period it remains therein". THE Institute Fishing Vessel clauses attached to the policy provide for Navigation as under: 1(a) ".....it is warranted that the vessel shall not be towed, except as it is customary or when in need of assistance, or undertake towage or salvage services under a contract previously arranged by the Assured and or owners and /or Managers and/or Charterers. This shall not exclude customary towage in connection with loading and discharge."

THE Opp. Party has mainly relied on the provisions of Section 41 of the Marine Insurance Act which provides that "at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured and at the commencement of the risk. At the commencement of the risk the ship shall be reasonably fit to encounter the ordinary perils of the sea. It also provides that the ship is deemed to be seaworthy if she is reasonably fit in all respects to encounter ordinary perils of the sea of the adventure insured. It is clear from the survey report as well as from the admission of the Opp. Party in the reply that all the nine fishing boats including the two above referred were repaired and were seaworthy at the time of commencement of sea voyage. The contention of the Opp. Party is that even though there were 9 fishing boats, six crew members were provided to man the nine boats and, therefore, breach of warranty regarding manning of the vessels was committed. The Surveyors have, in their report stated that "the craft was at sea under tow, attended to by one crew member only and was therefore, grossly undermanned. Therefore, there is breach of warranty of adequate manning". Under the policy regarding adequate manning, what was necessary is that the vessel should be manned adequately. The adequacy of manning depends upon the actual use of the vessel at the relevant time. The fishing boats were towed with the cargo vessel and were properly secured and, therefore, manning by one member of the crew can be said to be adequate manning of the fishing boat. The boats were towed with the cargo vessel and was properly secured and had to follow the vessel and, therefore, had not to move in any other direction except the direction of the vessel and, therefore, could be adequately manned by one crew member. There was, therefore, no inadequacy of the manning of the fishing boats.

4. IT is urged that there were six crew members to man 9 boats but from the very finding of the surveyor it is clear that for both the boats one crew member was there to attend and man. In view of the findings of the Surveyors the contention that there were only six crew members to attend 9 boats is not much relevant as both the boats were being manned by the crew members. A part from that the evidence of Premjibhai Ranchhodbhai (Exh.26; and Naranbhai Premjibhai (Exh. 27) it is clear that each boat was manned by one crew member. IT should therefore be held that all the 9 boats were manned by one of the crew members. From the report of the Surveyors it is clear that the vessel MANDAKINI and all the 9 fishing boats proceeded comfortably on 19th and 20th October, 1988 and only on 21st Oct. rough weather started and the ropes which were tied started breaking. The crew members all the while saved the boats and re-tied

the ropes but ultimately the efforts were required to be given up. The damage was, therefore, caused only because of the rough sea weather and not because of any inadequacy of manning of the boats. The crew members were ultimately taken up on the vessel as even their lives were in danger. We should therefore hold that there was adequate manning of both the fishing boats and the breach of warranty was not committed. According to the Opp. Party the breach of warranty regarding navigation was committed. The boats were towed with the vessel and as provided in Institute Fishing Vessel Clauses the craft shall not be towed as is customary or in need of assistance. The Surveyors have reported that the craft was reported safely afloat in harbour with her engine in working condition and was neither in distress nor in need of customary towage for loading/ discharging and, therefore, the breach of warranty for navigation was committed. The Opp. Party relying upon the said observation of the Surveyors have asserted the same contention. As per the said condition towage is permissible in two circumstances viz. (1) when it is customary; or (2) when in need of assistance. The boats were taken away by Pakistani coast guards and were lying in Karachi Port for the period of more than 3 months and were required to be repaired for making it seaworthy. The goods were not loaded in boats and were required to be taken to Okha Port by sea from Karachi. Some assistance to such boats was, therefore, necessary and, therefore, the owners entered into a contract and paid Rs. 6,000/- per boat to the owner of the vessel MANDAKINI and despatched for Okha Port through sea. It is clear that the assistance was needed to tow the boats as the boats were lying at Karachi Port for considerable period. Even though they were repaired, the owners must have thought that the boats may not sail safely through sea especially if there is any rough weather. Some assistance was necessary and, therefore, for making the journey more secured, they got it towed. Otherwise there was no necessity for them to spend Rs. 6,000/- for each boat. Need for the assistance therefore was necessary and established. Apart from that it is for the owners of the vessels to consider as to whether any assistance was necessary considering the relevant circumstances at the relevant time. The owners accordingly thought that need was necessary and, therefore, have towed the boats. The Opp. Party, except raising the contention and referring the opinion of the Surveyors has not led any evidence to controvert the decision of the owners that the assistance was needed at that time. Whether the assistance was needed or not has to be considered in light of the relevant circumstances and considering the circumstances, we agree that assistance to tow was necessary and needed at that time. The Surveyors while observing that the assistance was not needed have only considered that the vessels were not in distress at that time. The clause does not provide that the assistance should be needed only in case of distress and, therefore, observation and finding by the Surveyors are not proper and not in accordance with said clause. No breach of the navigation warranty was, therefore, committed by the complainants. The provisions of Sec. 41 of the Marine Insurance Act are not much relevant to the facts of the instant case as it is admitted that the boats were seaworthy at the time of the commencement of the voyage. Shri C.P.

Sindhava, learned Advocate for the complainants has referred Section 36 of the Act which provides that non-compliance of the warranty is excused when by reason of change of circumstances, the warranty ceases to be applicable to the circumstances of the contract. In view of our finding above, it is not necessary for us to consider the application of Section 36 of the Act. The submission that the claim is repudiated after holding proper enquiry and considering the report of the Surveyor and, therefore, this Commission has no jurisdiction to entertain such complaint, is required to be mentioned only to dismiss it. Proper enquiry was not held by the Insurance Company and as discussed above, the report of the Surveyor also is not impartial and proper. While considering the condition about Navigational warranty and adequacy of manning, we have not accepted the findings of the Surveyor for the reasons recorded above. Much delay was caused by the Insurance Company in considering and taking the final decision and after considerable period suddenly repudiated the claim without sufficient and adequate reasons. There was, therefore, deficiency in service by the Insurance Company. In view of the discussion above, the claim of the complainant should be allowed with 12% interest and cost. We, therefore, pass the following order. ORDER Complaint No. 30/93 The Opp. Party shall pay Rs. 2,50,000/- with 12% interest from 21.1.1988 till realisation and Rs. 2,000/- for the cost of this complaint within one month from the date of receipt of the order and bear their own cost. Complaint No. 31/93 The Opp. Party shall pay Rs. 3,00,000/- with 12% interest from 21.1.1988 till realisation and Rs. 2,000/- for the cost of this complaint within one month from the date of receipt of the order and bear their own cost. Complaints allowed with costs. _____