(1994) 11 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

RAHMATH PRODUCE And CO. APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 11-11-1994

Acts Referred:

Citation : 1995 1 CPR 693 : 1995 3 CPJ 158

Hon'ble Judges : P.K.Shamsuddin , C.G.Sethu Lakshmi J.

Final Decision : Complaints allowed without costs

Judgement

1. BOTH these complaints were filed by the Managing Director of M/s. Rahmath Produce & Co., Calicut, a partnership-firm dealing with arecanut and other hill produces. The complainant had a contract of an open marine continuing Policy bearing No. 2176060300045 for Rs. ten lakhs with facility to enchance the sum insured suitably by remitting additional premium from time to time with the Opposite Party, which was started on 52.91. The complainant issued a cheque for Rs. 1850/- to begin with. The complainant despatched goods on 5.2.91 and 7.2.91 for Rs. 3,65,000/-. The cheque was delivered on 5.2.91 and it has come out that it was encashed only on 8.2.91. Two cheques for Rs. 1,850/- each were issued by the complainant on 15.2.91 and 4.3.91. These cheques were encashed only on 21.3.91. On 8.4.91 and 9.4.91 the complainant sent two consignments of arecanuts to M/s. Dwarakandas Bashomal, Indore, by lorry as per Lorry Receipt Nos. 171062 and 171063 for an amount of Rs. 1,32,000/- and Rs. 1,75,000/- respectively. These consignments were covered by cheque No. 0741287 issued by the complainant on 3.4.91 which was drawn on Indian Overseas Bank for the amount of Rs. 1850/- to secure insurance coverage for an amount of Rupees ten lakhs. While the above two consignments were kept at godown at Indore a fire accident occurred on 22.5.91 at 4.50 p.m. This was reported to the Opposite Party at Calicut. The authorised Surveyor and Loss Assessor Mr. V.K. Gupta assessed the total loss at Rs. 1,87,723.80. It appears that the cheque dated 3.4.91 was presented for encashment by the Opposite Party only on 245.91. The complainant asserts that there were sufficient funds in the account of the complainant till date of presentation. It is alleged that the

cheque was returned for want of sufficient funds and the Opposite Party''s Agent personally approached the complainant, and received the cheque amount of Rs. 1850/- as premium in lieu of the dishonored cheque. Exbt. P 2 is the statement of account furnished by the Branch Manager which would indicate that cash was received in lieu of the cheque. There was some correspondence between the parties. The Opposite Party protracted the matter and did not care to settle the claim and, therefore, on 27.8.92 the complainant sent a notice through a lawyer directing the Opposite Party to settle the matter at once. To this reply was sent on 23.10.92 stating that at the time of occurrence there was no coverage of insurance. These are in short the allegations in complaint in O.P. 296/92.

2. O.P. No. 297/92 also relates to claim on the same policy. In that case the complainant issued a cheque bearing No. 0741288 in favour of the Opposite Party drawn on Indian Overseas Bank, Calicut, for an amount of Rs. 1,850/- to secure insurance coverage for an amount of Rs. Ten lakhs. On 11.4.91 and 13.4.91 the complainant sent two consignments to M/s. Dwarakandas Bashomal, Indore, by lorry as per receipt Nos. 171064 and 171072 for an amount of Rs. 1,05,000/- and Rs. 1,10,000/- respectively. The entire consignments reached Indore on 20.5.91. While the above two consignments were kept at godown at Indore a fire accident occurred on 29.5.91 at 4.50 p.m. and the goods were destroyed. This was reported to the Opposite Party. The Surveyor deputed by the Opposite Party assessed the loss at Rs. 1,45,228.25. The cheque issued on 11.4.91 was presented by the Opposite Party only on 24.5.91 and stating that there was no coverage on the date of occurrence, the claim was repudiated in a reply sent to the notice issued by the complainant through a Lawyer on 28.3.92. In this case also the complainant alleged that the goods are covered by valid insurance on the date of occurrence and the repudiation of the claim was illegal. In both these cases, the complainants alleged that there is deficiency in service on the part of the Opposite Party in settling the claim. Versions were filed in both the complaints. In the version in O.P. No. 296/92 it was contended that the cheque dated 3.4.91 was delivered only on 21.5.91 and on presentation on 24.5.91 it was dishonoured and there is no valid coverage and, therefore, the repudiation of the claim was valid. In O.P. No. 297/92 it was contended that the cheque dated 11.4.91 was delivered to the Opposite Party only on 21.5.91 long after the despatch of the consignments and they were despatched without sufficient coverage of the consignments and, therefore, there was a valid repudiation of claim. 4 Following points arise for consideration: (i) Whether there is a deficiency in service on the part of the Opposite Party in settling the claim of the complainant? (ii) Whether there is valid repudiation of the claims in these complaints ? (iii) Whether the complainant is entitled to any relief and if so the quantum ? (iv) What is the order as to the cost ? 3. Point Nos. (i) and (ii): PW 1 is the Accountant of the complainant''s firm. He gave evidence in terms of the averments in the complaint. Since most of the facts are admitted it is unnecessary for us to refer to entire evidence. PW 1 asserted that the cheques issued on 3.4.91 and 11.4.91 were issued on the respective dates on which the

cheques were drawn. He also stated that the cheque issued on 3.4.91 was presented only on 24.5.91. He stated that the agent of the Opposite Party collected cash on 25.5.91 in lieu of the cheque and Exbt. P-2 statement was given to the effect that the cash was collected in lieu of the dishonoured cheque drawn on 3.4.91. He also stated that the cheques were issued in order to secure insurance coverage.

As against this evidence RW 1 gave evidence that the cheque drawn on 3.4.91 was delivered only on 21.5.91 but it was dishonoured on 24.5.91 on presentation. He however admitted on the next day the Field Officer of the Opposite Party went to the complainant and collected the amount in cash in lieu of dishonoured cheque. The contention is that on the dates on which the goods were despatched there was no insurance coverage. We have to examine the validity of this contention. It is not in dispute that the fire occurred on 22.5.91 and the goods were destroyed as indicated above and the Surveyor deputed by the Opposite Party assessed the loss in both the cases. The plea taken by the Opposite Party is that though the cheque was dated 3.4.91 it was delivered only on 24.5.91 and on presentation the cheque was dishonored and that cash was collected only on the next day. In regard to cheque dated 11.4.91 the encashment was later than the date on which the consignments were sent. The Opposite Party contended that in the circumstances there is no valid insurance coverage.

3. THE question to be considered is whether there was coverage of insurance when the consignments involved in these cases were sent. Exbt. P-2 is the statement furnished by the Insurance Company to the complainant of various cheques and payments made to the Insurance Company. Exbt. P-1 is the Insurance Certificate signed by the Opposite Party. Exbt. P-1 (a) and Exbt. P-1(b) consignments involved in O.P. No. 196/92 would cover the consignment in O.P. No. 197/92. THE photocopies of these receipts were produced along with the survey Report. Exbt. P-1(c) and Exbt. P-1(d) are the counterfoil and Exbt. P-8 series are the photo copies of the original of the receipts. We find that the open policy Number has been recorded on the date of expiry of the policy and undeclared balance has also been mentioned. THEse documents are signed by duly constituted attorney of the Opposite Party. Going by these documents we find that there is actual coverage and also balance. Exbt. P-l (a) shows the balance is Rs. 3,02,250/-. Exbt. P-l (b) shows that balance as Rs.1,27,250. Exbt. P-l(c) shows the balance as 22,250/-. Exbt. P(d) shows the balance as Rs. 9,12,250/-. In the light of these documents it is difficult to accept the case of the Opposite Party that there is no coverage on these dates. In this connection it may be stated that the complainant issued notice through the lawyer, but no reply was sent saying that there was no coverage. Section 118 of the Negotiable Instruments Act states as follows:- "Presumptions as to negotiable instruments - Until the contrary is proved, the following presumptions shall be made: (a) of consideration- that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted,

endorsed negotiated or transferred, was accepted, endorsed, negotiated or transferred, for consideration; (b) as to date - that every negotiable instrument bearing a date was made or drawn on such date. (c) as to time of acceptance - that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity."

4. THOUGH RW 1 had stated that both these cheques were delivered only on 20.5.91, there is nothing to show that the cheques were made or drawn on different dates. Moreover having admitted the coverage by in Exbt. P-1 (a), P-1(b), P-1(c) and P-1(d) (Exbt. P-8 series are also the same), the Opposite Party cannot be heard to say that there was no coverage on the dates on which consignments were sent and the incident took place. It is true that the cheque issued on 3.4.91 on presentation on 24.5.91 was dishonored but it is admitted that the Opposite Party received cash in lieu of cheque. Exbt. P-2 letter given by the Branch Manager to the complainant clearly shows that the Opposite Party received the cash in lieu of dishonored cheque. In these circumstances we find no merit in the contention that there was no coverage of the consignments involved in the accident. In this contention reference may be made to the decision of Gujarat High Court in United India Insurance Co. Ltd. v. Thakor Swarupji Dhiraji and Others, 1993 (2) T.A.C. 322. It was held therein- "Where the insured applied for renewal of his policy and made payment through cheque which was dishonoured and the insured paid cash, it was held that having accepted the premium in cash subsequently, the insurance company cannot urge that it had covered the risk from the date of receipt of payment and not from the date when the policy was issued."

We are in respectful agreement with the principle laid down in the above decision. This apart, we may also point out that from the affidavit filed by the complainant and the statement filed along with it, it can be seen that if we take the actual encashment as the date of actual payment, the amounts paid earlier by the complainant did not cover the consignments, sent earlier and those amounts will cover the subsequent consignments including the consignments in dispute. The policy was started on 5.2.91 and the complainant gave a cheque for Rs. 1,850/-. It was encashed only on 3.6.91. The consignments were despatched on 5.2.1991 and 7.2.91 for Rs. 3,07,000/-. If we take into account the dates of encashment as the crucial dates, the consignments in dispute are clearly covered by insurance without taking into account the disputed payments. This aspect has not been specifically denied by the Opposite Party. The Opposite Party has not produced any documents to show that the details furnished by the complainant are wrong. As a matter of fact, the complainant filed a petition to direct the Opposite Party to produce document relating to policy showing the cheque number, date of collection and particulars of coverage, but the Opposite Party did not produce the documents stating that they required more time. The affidavit and statement filed by the complainant give full details of the dates of issue of cheques, dates of encashment, the dates of despatch of consignments and the amount insured. On going through these details we have no hesitation to hold that there was valid coverage of consignments on the dates on which the incident took place. In the circumstances the repudiation is clearly invalid. It follows that there is deficiency in service on the part of the Opposite Party in not settling the claim. 8. Point No. (iii): The next question to be considered is What are the reliefs to which the complainant is entitled. The Surveyor assessed the damage in O.P. No. 296/92 at Rs. 1,87,723.30 and in O.P. No. 297/92 at Rs. 1,45,228.25. The Opposite Party has not disputed the correctness of the assessment. The complainant is therefore entitled to get these amounts along with interest at the rate of 12% per annum from 22.5.92. We accordingly direct the Opposite Party to pay to the complainant the amount together with interest at 12% from 22.5.1992. We do not find any ground to award further compensation. In the peculiar circumstances of the case, we direct the parties to bear their respective costs. Complaints allowed without costs.