
(2012) 12 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

Rajesh Sharda

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD

RESPONDENT

Date of Decision : 10-12-2012

Acts Referred:

Citation : 2013 0 NCDRC 407 : 2013 1 CPJ 12

Hon'ble Judges : J.M.MALIK , VINAY KUMAR J.

Final Decision : Petition dismissed

Judgement

1. SH . Rajesh Sharda, the complainant/petitioner in this Revision Petition, took one Marine Policy from the New India Assurance Co. Ltd., OP1, in the sum of Rs. 50,00,000, valid for the period 10.8.2009 to 9.8.2010 covering the risk of theft, pilferage and non-delivery, strike riots and civil commotion besides rail/road risks during transit and paid a premium of Rs. 13,789. On 10.10.2009, the complainant despatched a consignment of 592 boxes of apples from Chandigarh to M/s. Manjunath Fruit Company, Kothapet, Hyderabad, vide GR No. 10367 for a consideration of Rs. 7,90,000. The said consignment was sent through M/s. Link Roadways, OP3. As required by OP1, a Declaration Form was also submitted by the complainant to the OP1. The Complainant also paid a sum of Rs. 20,000 as advance freight against total freight of Rs. 49,800 to OP3 and the remaining amount of Rs. 29,800 was to be paid at the destination place, i.e. Hyderabad.

2. ON 16.10.2009, the complainant was telephonically informed by the consignee that the consignment had not reached its destination. The complainant, while working, hand in hand with OP3, tried to trace out the truck but their efforts failed. OP3 lodged FIR on 22.10.2009. The complainant also lodged claim with OPs 1 and 2 and submitted all the required documents. A monetary claim was also lodged upon OP3. Legal notice dated 15.1.2010 was also served upon the OPs but it did not produce the desired result. Ultimately, the complaint was filed with the District Forum. The District Forum allowed the complaint filed by the complainant. It directed the OPS to pay a sum of Rs. 7,90,000, compensation in the sum of Rs. 1,00,000 and Rs. 7,000 as costs of litigation.

3. AGGRIEVED by that order, the Insurance Company filed appeal with the State Commission. The State Commission, vide its order dated 24.2.2012, accepted the appeal. The Appellant/Insurance Company was granted litigation costs of Rs. 10,000 from the complainant.

4. WE have heard the Counsel for the parties. The learned Counsel for the petitioner has tried to produce some documents which were not filed before the District Forum. No prior permission from this Commission was obtained. Those documents were returned and are not being considered. The learned Counsel for the petitioner contended that all the facts have been placed on record; the case of the petitioner is clear; the order passed by the District Forum should be restored.

5. AFTER having subjected the evidence on a closet scrutiny, we find that the complainant made attempts to obfuscate the real issue. The attention of the Commission was invited towards the complaint filed by the petitioner himself. Its para No. 1, runs as follows: "That the complainant is running a shop in his home at shop No. 39 in the Sabzi Mandi, Sector 26, Chandigarh, and is dealing with the trading/marketing of all types of fruits, throughout the country, for the last many years. " On the other hand, he is running Sharda Fruit Agency. Its Form I was produced before us, which is reproduced as follows: Book No. Form No. 1 Ph: Off: 0172-2790534 See Rule 24(12), 24 (16) Market Committee, Chandigarh Sharda Fruit Agency S. No. :..... Shop No. 39, Subzi Mandi, Chandigarh Date: 10.10.2009 Name and Address of Purchaser : RAJESH SHARDA Name Weight Cost Market Total of Tax Cost item Apple- 550 x 1300 7,15,000 Commission 36,926 592 box 42 x 560 23,520 Market Fees 14,770 7,38,520 Labour - Commission + 51,696 Telephone - 7,90,216 Misc. Expenses Total 51,696 Sd/- Sd/- Signature of Seller/his Signature of Kacha Aarti Agent or his Representative

6. IT is also interesting to note that the complainant submitted his affidavit, dated 19.4.2010, stating that he is the Proprietor of Sharda Fruit Agency, Shop No. 39, Subzi Mandi, Chandigarh. It, therefore, means that vide Form No. 1, he has sold the apples to himself and charged a commission of Rs. 51,696. A veil of suspicion covers the complainant 's case. Secondly, no documentary evidence was produced that Sharda Fruit Agency, Proprietorship was having such apples in stock. No Stock Register was produced. It was not explained from where those apples have been bought. The complainant has tried to wrench the facts from their real significance.

7. THEREAFTER , those boxes were despatched. No intimation was sent by the complainant to the petitioner regarding despatch of consignment of apples in 592 boxes on 10.10.2009 from Chandigarh to Hyderabad. OP3 was not covered under the policy. It was not brought to the knowledge of the petitioner that the consignment was transported through OP3. Again, no inspection was carried out by the agent of Insurance Company, at any stage.

8. THERE is no evidence on record which may go to show that any effort was made by the complainant to indemnify the loss from OP3. OP3 was proceeded against ex parte. OP 3 did not care or bother about this case. The allegation made by the petitioner that the complainant and OP3 were working in cahoots with each other, assumes importance. The most important aspect of this case is that according to the FIR, the goods were sent in Truck Bearing No. HR 38M 9277. It is surprising to note that the Truck is not available. In the FIR, it was mentioned that the Truck driver was Dharmendar Singh (Sonu) but his address was not mentioned. It was further explained that the Truck was owned by his maternal uncle, Gurwinder Singh, S/o Nishan Singh. No address of Gurwinder Singh was furnished. The complainant should have produced the correct address or copy of the registration letter regarding the Truck. Dallops of mystery surround this case, in absence of this important evidence. It appears that the story furnished by the complainant is made out of whole cloth. Even till the filing of the revision petition, no answer was coming to this important question. No evidence was led, nor any action was taken against OP3.

9. ACCORDING to the complainant, it had come to his knowledge that the Truck was lost on 16.10.2009. However, the FIR was delayed for four days. The police was informed about it on 22.10.2009. The Insurance Company was informed about this on 4.11.2009. So much delay is fatal. Again, no effort was made to procure an affidavit from OP3.

10. THE revision petition just does not stack up and is dismissed with costs of Rs. 10,000 to be paid by the petitioner/complainant to the Respondent Nos. 1 and 2, in equal share, within 30 days from the date of this order, otherwise it shall carry interest @ 9% per year, till its realization. Revision Petition dismissed.