(2014) 11 NCDRC CK 0095

In the National Consumer Disputes Redressal Commission

Sagar Samrat Pvt Ltd APPELLANT

Vs

ORIENTAL INSURANCE CO LTD RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Citation : 2015 3 CPJ 271

Hon'ble Judges : V.K.JAIN , B.C.Gupta J.

Final Decision : Complaint disposed

Judgement

1. THE complainant company had obtained a standard Hull and Machinery policy from the opposite party, Oriental Insurance Co. Ltd., in respect of its vessel named MSV Rajlaxmi for the period from 15.05.2001 to 14.05.2002, for a sum of Rs. 2,88,00,000/ - lakhs. The said policy prohibited the insured from plying vessel from 01.6.2001 to 15.08.2001 with leave to ply it from 1.06.2001 to 07.06.2001 between ports in Saurashtra/Kutch and Bombay Port, Saurashtra/ Kutch and ports in Suez, Persian Gulf and Pakistan and between Bombay Port and Ports in Suez, Persian Gulf and Pakistan.

2. VIDE letter dated 31.05.2001, the complainant informed the opposite party inter alia that Rajlaxmi was likely to come from Dubai to India somewhere in the middle of June, 2001. Vide letter dated 01.06.2001, the complainant sent a cheque of Rs. 98,055/ - to the Insurance Company towards insurance premium of policy monsoon during the laid up period, from 08.06.2001 onwards, in respect of MSV Rajlaxmi. Thus the complainant sought permission for the aforesaid vessel to sail during the monsoon period from 08.06.2001 to 15.08.2001 and the additional premium of Rs. 98,055/ - was sought to be deposited in order to obtain the requisite permission in this regard. The Insurance Company received the aforesaid cheque vide receipt dated 04.6.2001. The receipt clearly indicates that the aforesaid payment was received in respect of the journey of MSV Rajlaxmi on 08.06.2001 onwards.

3. ON 07.06.2001, the Insurance Company issued a certificate to the complainant certifying inter -alia that MSV Rajlaxmi was covered for plying from

Dubai to Porbandar between 08.06.2001 to 25.06.2001. The vessel sailed from Dubai on 20.06.2001, with cargo of 1749 drums belonging to M/s. Adani Exports Ltd. The vessel unfortunately sank on 22.06.2001 near Orumaura Port, Off Pakistan Shore due to a fire in its engine which engulfed the entire vessel. 14 crew members were able to save their lives in a life boat but the engine driver went missing and has not been heard of till date. On receipt of intimation in this regard from its Dubai agent, the complainant conveyed the same to the Insurance Company and according to the complainant the said intimation was given orally as well as in writing on or about 02.07.2001. Surveyors, namely J. Basheer and Associates Surveyors Pvt. Ltd. were appointed by the Insurance Company to conduct survey of the investigation into sinking of the vessel. The surveyor vide its report dated 15.09.2003 inter -alia reported that the cause of the loss was the fire in the engine room. It was reported that the fire might have occurred due to accidental spillage of diesel oil on hot surface from one of the fuel intake pipe lines or from a Diesel Service Tank connection by some crack or loosening of fuel pipe connection, caused by vibration whilst Vessel subject to rolling, pitching and pounding on the high seas. It was also reported by the surveyors that in their opinion the incident had not happened due to mala fide intention of the crew members.

4. THE claim however was repudiated by the Insurance Company vide its letter dated 04.02.2005 on the ground that: (1) the vessel had not reached Porbandar on or before 20.06.2001 in terms of the endorsement dated 04.06.2001 made on the policy and (2) it was carrying an inflammable cargo at the time it got sunk. Being aggrieved from repudiation of its claim, the insured company is before us, seeking the following reliefs: - a. The Opp. Party be directed to pay compensation of Rs. 5,00,50,000/ - to the Complainant as per Particulars of Claim (Exhibit "S" hereto). b. The Opp. Party be directed to pay interest on Rs. 5,00,50,000/ - @ 18% per annum from 15.11.2003 i.e. the date when the claim became payable till realization. c. Punitive damages of Rs. 10,00,00,000/ - (Rupees Ten Crores) or such other amount as this Hon''ble Commission may deem fit may be awarded. d. The Opp. Party be directed to bear the costs of the Complaint."

5. THE complaint has been resisted by the Insurance Company primarily on the ground that in terms of the endorsement dated 04.06.2001, the vessel should have reached its destination on or before 20.06.2001 and it could not have carried any cargo during the voyage which the Insurance Company had permitted vide said endorsement. Thus in nutshell, the case of the Insurance Company is that the voyage in question was undertaken in contravention of the conditions imposed by it while granting permission vide its letter/endorsement dated 04.06.2001. It is also stated in the reply that the cargo carried by the vessel was inflammable cargo with 749 drums of bitumen due to which the fire had occurred.

6. THOUGH the opposite party had also pointed out that the complaint was

barred by limitation prescribed in Section 24 -A of the Consumer Protection Act, the said delay was condoned by this Commission vide its order dated 28.01.2008.

7. IT is an admitted position before us that without permission from the Insurance Company, the vessel in question could not have undertaken the voyage from Dubai to Porbandar on 20.06.2001. It is also an admitted position before us that vide its letter dated 31.05.2001, the complainant had informed the Insurance Company about the proposed voyage of the said vessel in the middle of June, 2001 from Dubai to India. It is also not in dispute that vide forwarding letter dated 01.06.2001, the complainant transmitted a cheque of Rs. 98,055/ - to the Insurance Company towards additional premium for the laid up period of 04.06.2001 onwards in respect of the vessel of MSV Rajlaxmi. Undisputedly, the receipt no. 2635798 dated 04.06.2001 was issued by the Insurance Company acknowledging the receipt of the additional premium. It is also not in dispute that the certificate dated 07.06.2001, certifying the coverage of the vessel of MSV Rajlaxmi between 08.06.2001 to 25.06.2001, was also issued by the Insurance Company. The only dispute between the parties is as to whether the letter and the endorsement dated 04.06.2001 were issued by the Insurance Company and served upon the complainant company prior to the ship sinking on 22.06.2001 or not.

8. WE have perused the letter dated 04.06.2001, which is available on page no. 39 of our paper book. As per this letter the vessel mentioned therein including MSV Rajlaxmi were to approach Porbandar on or before 20.06.2001 and beyond that date, the Insurance Company was not to be responsible for any liability connected to the said vessel. We have also perused the endorsement dated 04.06.2001, which the opposite party has filed before us. The said endorsement pertains only to MSV Rajlaxmi and purports to extend single voyage between Dubai to Porbandar by shortest route, subject to the vessel reaching Porbandar on or before 20.06.2001. It also stipulates that the vessel shall not carry any cargo. The condition requiring vessel not to carry any cargo is also incorporated in the letter dated 04.06.2001. The case of the complainant is that neither the letter nor the endorsement dated 04.06.2001 were ever received by them from the Insurance Company. In fact, the contention of the learned counsel for the complainant is that the aforesaid documents were prepared by the Insurance company and back dated after information with respect to sinking of the ship was received by it from the complainant on 29.06.2001.

9. THERE is no acknowledgment obtained by the Insurance Company either with respect to service of the letter or with respect to the service of the endorsement on the complainant company. It is claimed by the Insurance Company that since the office of the Insurance Company and the complainant company were situated in the same building and on the same floor, the aforesaid documents were delivered to them in good faith. We, however, find ourselves unable to accept the plea taken by the Insurance Company in this regard. The opposite party is a public sector undertaking. It was not expected to deliver important documents of

this nature without taking acknowledgment, in case the said documents were delivered by that. We also find that no postal receipt has been filed by the Insurance Company to prove the dispatch of the aforesaid letter and endorsement, in case the said documents are claimed to have been sent by post. The learned counsel for the Insurance Company states that in fact the letter as well as the endorsement were delivered by hand and were not sent by post. However, the Insurance Company has not disclosed to us the name of the official who allegedly delivered the endorsement and the letter dated 04.06.2001 to the complainant company. Even if a document is sought to be delivered by hand, an entry will be made in the dispatch register of the Insurance Company and thereafter the particulars of the document would be noted in a peon book and the official delivering the document to the addressee would obtain signature of the recipient while delivering the document. Neither any dispatch register nor any peon book has been produced by the Insurance Company to prove that the aforesaid letter and endorsement were entered in its dispatch register and peon book on or around 04.06.2001. When this matter came up for hearing on 19.11.2001, we asked the learned counsel for the Insurance Company to take instructions and inform us whether he was in a position to produce the relevant dispatch register and/or the peon book to prove the entry of the letter and endorsement in question in the said dispatch register/peon book. However, despite the said opportunity the learned counsel has not come out with an offer to produce either the dispatch register or the peon book of the relevant period. Therefore, an adverse inference needs to be drawn against the Insurance Company that had the dispatch register and peon book of the relevant period been produced, the same would not have supported the case set up by it as regards the dispatch of the letter and endorsement dated 04.06.2001. In our opinion, once the complainant had denied the receipt of letter and endorsement in question, the least the Insurance Company was expected to do was to produce the aforesaid record. Of course, had the Insurance Company filed an affidavit of the official who allegedly served the said notice and endorsement, its case would have become stronger, when evaluated in the light of the dispatch register and the peon book.

10. AS noted earlier, the certificate dated 07.06.2001 is an admitted document. As per the said certificate, the vessels were covered for plying between 08.06.2001 to 25.06.2001. However, as per the endorsement and the letter dated 04.06.2001, the vessels were required to reach Porbandar on or before 20.06.2001. Had the endorsement and the letter dated 04.06.2001 been written and dispatched on or around that date, there would have been no contradiction in the letter and endorsement on one hand and the certificate on the other hand as regards the period for which the journey of the vessels were covered. The date by which the vessels were to complete the journey, in that case it would have been recorded as 20.06.2001 and not as 25.06.2001 in the certificate dated 07.06.2001.

11. VIDE communication dated 01.06.2001, the Branch Office of the Insurance

Company at Porbandar informed the Regional Office at Ahmedabad that as per the telephonic instructions received by the Branch Manager from the Regional Office they had accepted premium in respect of five vessels mentioned therein including MSV Rajlaxmi. Vide letter dated 14.06.2001, the Branch Office informed the Regional Office at Ahmedabad that there had been established practice of seeking permission for plying the sailing vessel during the laid up period w.e.f. 01.06.2001 to 15.08.2001 from Dubai or any other port in Gulf to Porbandar or any other port in Saurashtra and they had accepted the additional premium for the laid up period after obtaining telephonic approval by the Regional Manager. This letter indicates that additional premium was accepted by the Branch Office from the complainant considering the past practice of permitting sailing of the vessels during the laid up period. The case of the complainant is that the established practice in this regard did not prohibit carrying of cargo on the vessel during the laid up period and therefore, since the Branch Office was acting as per the past practice, there could be no occasion for it to prohibit the carrying of cargo on the vessel during the laid up period. The Insurance Company has not been able to place before us any permission for sailing the vessel during the laid up period with a condition that the vessel would not carry cargo. If that is so, it would cast serious doubt on the authenticity of the letter and endorsement dated 04.06.2001 since they carried stipulation requiring the vessel not to carry cargo while returning to Porbandar. In other words, if the Branch Office was acting as per the established practice of the past, there could be no occasion for it to impose such a restriction on 04.06.2001 when it had not received the letter of the Branch Office dated 15.06.2001, advising it that warranty which allows plying of vessels should be subject to there being cargo on board the vessel.

12. WE asked the learned counsel for the Insurance Company to tell us as to why the Insurance Company purportedly restricted the journey of the vessel upto 20.06.2001. The learned counsel, however, is not able to tell us as to why such a stipulation was made in the endorsement and the letter dated 04.06.2001. We also find that there was no such instruction sent by the Regional Office to the Branch Office. This is also not the case of the Insurance Company that the past practice was to restrict the voyage upto 20.06.2001 only. This is apart from the fact that the date of 20.06.2001 mentioned in the letter and endorsement dated 04.06.2001 is contrary to the date of 25.06.2001 mentioned in the certificate dated 07.06.2001. This is yet another suspicious circumstance, surrounding the preparation and dispatch of the letter and endorsement dated 04.06.2001.

13. IT was pointed out by the learned counsel for the Insurance Company that though in the letter dated 28.06.2001, they had referred to the letter of 04.06.2001, the complainant company did not controvert the statement with respect to the letter dated 04.06.2001 by sending an appropriate communication to the Insurance Company immediately on receipt of the letter dated 28.06.2001. We, however, find that when the representative of the complainant company was confronted by the surveyor with the letter dated 28.06.2001, he

clearly stated that the said letter dated 04.06.2001 was not received by them and the letter dated 28.06.2001 sent by registered post was received by them only on 02.07.2001. Since the learned counsel for the complainant claimed that letter dated 04.06.2001 was prepared by the Insurance company after receipt of information with respect to sinking of the vessel, we asked the learned counsel for the insurer as to whether he was in a position to produce the record relating to dispatch of the said letter dated 28.06.2001. No such attempt however was made by the learned counsel. The Insurance Company could easily have countered the above referred submission made by the learned counsel for the complainant by producing a postal receipt evidencing dispatch of the said letter on 28.06.2001 itself. That having not been done, we would be justified in drawing the adverse inference against the Insurance Company on account of non -production of the postal receipt and would be justified in inferring that in fact the letter dated 28.06.2001 was dispatched after the Insurance Company had already received information with respect to sinking of the ship and the officers of the Insurance Company prepared and back dated the letter and endorsement dated 04.06.2001 only with a view to save their neck in a possible departmental inquiry on account of their granting permission to the complainant without obtaining written approval of the competent authority of the Insurance Company. The learned counsel for the complainant states that in fact he has in his office the original envelope in which the letter dated 28.06.2001 was received by the complainant and the said letter bears post office stamp of 30.06.2001, which would clearly show that the letter was dispatched on 30.06.2001, after the Insurance Company had been intimated about the loss of the vessel due to sinking on 22.06.2001. This is yet another circumstance which indicates that the letter and endorsement dated 04.06.2001 were prepared by the officials at the Branch Office of the Insurance Company, after they were informed of the sinking of the vessel. Yet another relevant circumstance in this regard is that though it is an admitted case of the parties that they used to deliver correspondence by hand on account of their offices being situated in the same building, the letter dated 28.06.2001 was not sent by hand, but was sent by post, on a Saturday when the office of the Insurance Company was closed. We fail to appreciate why the said letter was not delivered by hand either on 28.06.2001 itself or on 29.06.2001 in case it had been prepared before the insurance Company came to know about the loss of the vessel.

14. FOR the reasons stated hereinabove, we are of the view that the Insurance Company had permitted the sailing of the vessel between 08.06.2001 to 25.06.2001 without any restrictions such as requiring the vessel to reach Porbandar by 20.06.2001 or requiring it not to carry any cargo on its journey to Porbandar.

15. SINCE the repudiation of the claim was based solely on the aforesaid two grounds, the same cannot be sustained. As far as the cause of fire is concerned, it has been clearly stated by the surveyors that the fire had broken out in the engine room of the vessel and then it engulfed the entire vessel. There is no

evidence of the vessel having caught fire from the bitumen which it was carrying in drums. Moreover, the bitumen was carrying in cargo hold, whereas the fire had broken out in the engine room. The learned counsel for the Insurance Company has drawn our attention to clause 25 of the Insurance Policy, which absolves the Insurance Company from its obligation in case of loss due to malicious acts from weapon of war and detonation of explosive. However in the case before us, there is no evidence of vessel having caught fire due to detonation of explosives or from any weapon of war or its having been caused by any person acting maliciously or from political motives. In fact the surveyor has expressly ruled out the possibility of any crew members being behind this loss. Therefore, the contention advanced by the learned counsel for the Insurance Company is wholly misplaced.

16. ADMITTEDLY , the vessel in question was insured for a sum of Rs. 2,88,00,000/ -. As per Section 29 (3) of the Marine Insurance Act, subject to the provisions of this Act and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss be total or partial. This issue came up for consideration before Hon''ble Supreme Court in Oriental Insurance Co. Ltd. Vs. Ozma Shipping Company and Anr., 2009 9 SCC 159. In the aforesaid case, vessel in question was insured for a sum of Rs. 21,50,000/ -. The Insurance Company, however, settled the claim at Rs. 15 lakhs on the ground that value of the vessel was not more than the said amount. Being aggrieved from the stand taken by the Insurance Company, the insured approached this Commission by way of a complaint. This Commission directed the Insurance Company to pay the aforesaid amount of Rs. 21,50,000/ - to the complainant. Being aggrieved from the order passed by this Commission, the complainant approached the Hon''ble Supreme Court by way of an appeal. Upholding the order of this Commission, Hon''ble Supreme Court noted that this Commission had not recorded any finding of concealment of facts against the complainant and therefore this Commission was justified in directing the Insurance Company to pay the amount of Rs. 21,50,000/ - alongwith interest on that amount at the rate of 12% per annum. In the case before us, there is no allegation of any fraud against the complainant company. We have asked the learned counsel for the Insurance Company as to whether he has anything to say on the quantum of amount which the payable to the complainant in terms of the Insurance policy, which it had taken in terms of MSV Rajlaxmi. The learned counsel for the Insurance Company, however, has nothing to say as far as the quantum of the claim is concerned. We, therefore, hold that the complainant is entitled to payment of the entire insured sum of Rs. 2,88,00,000/ -.

17. FOR the reasons stated hereinabove, we direct the opposite party, Oriental Insurance Co. Ltd. to pay Rs. 2,88,00,000/ - to the complainant alongwith on that amount at the rate of 9% per annum from the date the claim was repudiated till the date of payment. We also direct the Insurance Company to pay a sum of Rs. 50,000/ -, as compensation to the complainant. The aforesaid

amount shall be recovered by the Insurance company from the salary of the officers/officials responsible for preparing the letter and endorsement dated 04.06.2001. The payment in terms of this order shall be made by the Insurance Company within six weeks from today. The complaint stands disposed of.

