(2004) 01 NCDRC CK 0118

In the National Consumer Disputes Redressal Commission

SAVIKAR PLYBOARDS LTD. — APPELLANT

Vs

United India Insurance Company Ltd. — RESPONDENT

Date of Decision : 14-01-2004

Acts Referred:

Citation : 2004 2 CPJ 172 : 2004 3 CLT 28

Hon'ble Judges : K.K.Srivastava , Devinderjit Dhatt , MajGenS.P.Kapoor J.

Final Decision : Appeal dismissed

Judgement

1. FEELING aggrieved against order dated 1.8.2003 passed by the District Consumer Disputes Redressal Forum-II, U.T., Chandigarh [for short hereinafter referred to as the District Forum] in Complaint Case No. 7 of 2001, the complainant has filed this appeal. The appellant got his goods (hand-made Terracotta, designer pots with Melamine finish insured from the respondents-United India Insurance Company Limited (for short hereinafter referred to as the Insurance Company) against Cover Note No. 134021 dated 14.12.1999. Subsequently Marine Cargo Policy No. 110200/21/1/03/99 dated 24.12.1999 was issued insuring the goods valued at US $ 24541. The amount insured under the policy was of a sum of Rs. 12 lacs. The premium of a sum of Rs. 5,310/- was duly paid by the appellant. The policy contained additional clauses namely ICC "a" All Risk + SRRC/War and with special condition and warranties of excess clause of 5% of claim amount, CIF + 10% warehouse to warehouse. These goods were to be sent from Chandigarh to Sharjah (UAE) via Bombay. From Bombay, the goods were to be transported by ship to Sharjah. The complainant had furnished the necessary documents to the Insurance Company and had informed vide letter dated 3.1.2000 that goods had been despatched from ICD, New Delhi to the destination port of Rashid Dubai. The complainant had got a pre-shipment inspection on 6.1.2000 conducted by the Surveyor Lekhi Associates who had given a detailed report of no damage to the goods. It was alleged that the goods had been packed as per trade practice and tallied with the packing list. However, when the goods reached the destination, it was found to be in damaged condition. The consignee wrote to Lloyd''s on 17.1.2000 about the goods being

received in damaged condition. Lloyd''s were the service agent and they conducted survey on 18.1.2000 at CFS 7, Port Rashid, Dubai in the presence of custom officials and keeping into the terms and conditions of the policy. They submitted the survey report dated 4.2.2000 and annexed therewith memo of calculation and formal claim of item damaged in the consignment. The appellant filed insurance claim under the policy aforesaid on 9.2.2000 claiming a sum of Rs. 3,83,559/- and submitted all necessary documents required for settlement of the claim. The appellant received a letter from the Insurance Company demanding original documents and in response they sent letter dated 6.3.2000 informing the respondent - Insurance Company that the document sought in the aforesaid letter had already been submitted by the appellant to the respondent - Insurance Company. The claim was settled by the respondent - Insurance Company for a sum of Rs. 2,77,582/- and a cheque No. 008026 dated 22.3.2000 was sent with letter dated 22.3.2000 by the respondent - Insurance Company to the appellant/complainant. The report of the Lloyd''s agent at Dubai was taken into consideration by the respondent - Insurance Company.

2. THE appellant/complainant accepted the cheque for a sum of Rs. 2,77,582/- under protest and claimed vide letter dated 23.3.2000 the balance sum of Rs. 1,05,977/-. THE respondent - Insurance Company sent a letter dated 29.3.2000 to the complainant and informed the complainant that 25% amount of their claim had been deducted in order to protect the recovery rights and the claim had been settled on non-standard basis as the complainant had not been able to provide damage certificate and thus their rights to recover from the carrier had been jeopardized. THE appellant/complainant sent letter dated 31.3.2000 informing the respondent - Insurance Company that the damage certificate could not be produced for which they had valid reasons. However, the contention of the appellant was rejected by the respondent - Insurance Company vide letter dated 11.4.2000. THE claim was thus filed claiming the payment of the withheld amount being the difference between the amount of insurance claim of a sum of Rs. 3,83,559/- and the amount of the cheque i.e., Rs. 2,77,582/- issued by the respondent - Insurance Company, which is of a sum of Rs. 1,05,977/- representing 25% of the claim amount with interest @ 24% per annum was claimed from the date when the amount became due to be paid. THE compensation for mental and physical harassment was also claimed at a sum of Rs. 50,000/-. Litigation expenses were claimed of a sum of Rs. 10,000/-. The respondent - Insurance Company filed their written statement wherein they challenged the locus standi of the company and pleaded that no cause of action against the respondent has ever accrued as they have already settled the claim of the respondent on non-standard basis and in case, the complainant had a grouse then the complainant could file a civil suit. The allegation of deficiency in service on their part is denied and it was alleged that if at all there is any deficiency, it was on the part of the complainant itself inasmuch as the complainant has not supplied the damage certificate to the respondent - Insurance Company.

A rejoinder was filed by the appellant/complainant wherein averments made in the written statement of the respondent - Insurance Company were denied and the contentions made in the complaint case were reiterated.

3. THE complainant led evidence in the shape of affidavit of Shri Ajay Gupta, Managing Director of the complainant and placed on record documents, which have been detailed in Para 5 of the impugned order of the District Forum. THE respondent - Insurance Company relied on the affidavit of their Assistant Additional Manager. The District Forum repelled the contention of the appellant/ complainant that there was no stipulation in the insurance policy about the claim being settled on non-standard basis and hence, the Insurance Company must pay the amount assessed by the Surveyor. It was next urged by the learned Counsel for the complainant before the District Forum that there was no obligation for the complainant to supply the damage certificate to the respondent - Insurance Company and the survey report prepared by the Surveyor by itself a damage certificate. This contention was also repelled by the District Forum, which held that the reason given by the complainant for non-supply of damage certificate to the effect that they had no access to the office of the shipping company, which was situated in the foreign country, was not a satisfactory explanation. The appellant, it was held, was exporter of luxury goods and they have been availing of the service of the shipping company almost on regular basis and it could not be upheld that they were not in a position to secure the damage certificate from the shipping company.

4. THE next contention of the learned Counsel for the appellant before the District Forum about the treating of survey report as damager certificate was also repelled. It was held that the respondent - Insurance Company considered and settled the claim after applying their mind, on non-standard basis. It could not be held that the settlement of the claim was not a bona fide act on the part of the respondent - Insurance Company. It was held that there was no justification for recording a finding that the O.P. - Insurance Company has been guilty of deficiency in service or unfair trade practice and relied on the judgments of the Hon''ble National Consumer Disputes Redressal Commission, New Delhi (for short hereinafter referred to as the National Commission) in the case of Jagdish Parsad Dagar v. Sr. Divisional Manager, LIC, II (1992) CPJ 493 (NC), and Zenith Computers Ltd. v. THE New India Assurance Co. Ltd., I (1995) CPJ 144 (NC)=1995 (2) CON.LT 94 (NC). Resultantly, the District Forum dismissed the complaint and left the parties to bear their own costs of the complaint case. The notice of appeal was issued to the respondents - Insurance Company who put in appearance through Mr. Vinod Chaudhri, Advocate. Mr. Vikas Sagar, Advocate appeared for the appellant/complainant. The record of the complaint case was summoned. We have heard the learned Counsel for the appellant and the learned Counsel for the respondents and have perused the impugned order and the record of the case carefully.

5. MR. Vinod Chaudhri, Advocate representing the respondents - Insurance

Company submitted that the burden of proving deficiency in service is upon the person who alleges it and in support of his submission, he placed reliance on the law laid down by the Hon''ble Supreme Court in the case of Ravneet Singh Bagga v. M/s. KLM Royal Dutch Airlines and Another, IX (1999) SLT 311=2000 (3) J.R.C. 3. The Hon''ble Apex Court examined the definition of ''service'' as given in Section 2(1)(o) of Consumer Protection Act, 1986 [for short hereinafter referred to as the C.P. Act] and also considered the definition of ''deficiency'' under Section 2(1)(g) of the C.P. Act and held in Para 6 as under : "6. The deficiency in service cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service. The burden of proving the deficiency in service is upon the person who alleges it. The complainant has, on facts, been found to have not established any wilful fault, imperfection, shortcoming or inadequacy in the service of the respondent. The deficiency in service has to be distinguished from the tortuous acts of the respondent. In the absence of deficiency in service the aggrieved person may have a remedy under the common law to file a suit for damages but cannot insist for grant of relief under the Act for the alleged acts of commission and omission attributable to the respondent which otherwise do not amount to deficiency in service. In case of bona fide disputes no wilful fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in the service can be informed. If on facts it is found that the person or authority rendering service had taken all precautions and considered all relevant facts and circumstances in the course of the transaction and that their action or the final decision was in good faith, it cannot be said that there had been any deficiency in service. If the action of the respondent is found to be in good faith, there is no deficiency of service entitling the aggrieved person to claim relief under the Act. The rendering of deficiency service has to be considered and decided in each case according to the facts of that case for which no hard and fast rule can be laid down. Inefficiency, lack of due care, absence of bona fide, rashness, haste or omission and the like may be the factors to ascertain the deficiency in rendering the service."

6. THE short question which arises for adjudication in this appeal is as to whether the appellant/complainant was under obligation to file and produce damage certificate regarding the goods insured under the policy of insurance issued by the respondents-Insurance Company for which a demand had been made in the letters of the Insurance Compnay referred to above and whether the report of the Surveyor Lloyd''s should be considered as a damage certificate itself. The District Forum has referred in detail the material placed on record by the appellant and considered the averments made in the complaint. The averments made in Para 10 of the complaint go to show that the complainant had applied for damage certificate regarding the goods in question but he could not procure the same as the shipping line office was situated abroad and the complainant had no access to them. This averment made in Para 10 of the complaint clearly

shows that the complainant knew about the liability and obligation to produce the damage certificate from the shipping company and for which he had made efforts but he could not obtain the same. The explanation for not getting the damage certificate from the shipping office being its situation abroad that no access to the complainant there, cannot be believed and the District Forum has rightly held that the complainant being well known exporter of luxury goods and availing the service of the shipping company on regular basis, could not validly furnish an explanation that they had no access to the office of the shipping line situated abroad.

Yet another explanation was furnished by the complainant for non-supply of damage certificate in letter dated 31.3.2000 which is addressed to the respondents-Insurance Company and which has been quoted in Para 9 of the impugned order, which reads as under : "That in case for want of damage certificate from the port authorities/shipping agents, we were supposed to keep the material under the custody of the customs for which we had to pay huge amount to custom authorities for storing the cargo as godown charges and the custom authorities under no circumstances accepted for any further loss to the cargo as well as the Surveyors that is Lloyd''s were not agreeable to assess any further loss to the cargo whilst in the custody of custom authorities and also your company was not going to pay for any further loss to the cargo whilst in the customs custody, the cargo lying in open."

7. THE District Forum held in Para 10 in regard to the contents of letter dated 31.3.2000 and held that the goods at the time of the delivery had been surveyed in presence of the agent of the carrier and so it would not have been difficult for the complainant to procure the damage certificate from the carrier there and then without any loss of time. THE complainant has itself mentioned in the said letter dated 31.3.2000, inter alia, as under : "That, however, in spite of the custom authorities no giving the damage certificate, we had lodged the monetary claim on them protecting the recovery rights fully." The District Forum notices that the complainant-company did not lead any independent evidence to prove that the complainant had lodged the monetary claim on the carrier and thus protecting the rights of the complainant fully. The learned Counsel for the appellant was unable to refer any such material to show that the finding of the District Forum in this regard was erroneous. The District Forum also repelled the contention of the complainant that the damage report prepared by the Surveyor be treated as damage certificate prepared by the carrier and has rightly held that this contention was devoid of any merit and deserved to be repelled because the report of the Surveyor could not be placed on the same footing as the damage certificate issued by the carrier.

8. THE respondents - Insurance Company, in our considered opinion, has rightly settled the claim on non-standard basis and assessed the compensation to the tune of 75% of the claim amount. It cannot thus be said that the respondents - Insurance Company was, in any way, deficient in rendering the service and the

decision taken by them is a bona fide decision. THEreafter, the District Forum has rightly held that there is no deficiency in service on the part of the respondents. It may be pointed out that as per the law settled by the Hon''ble Supreme Court in the case of Ravneet Singh Bagga (supra), the appellant/complainant in the absence of deficiency in service may seek a remedy under the common law by filing a suit for damages but he cannot successfully bring a complaint on the basis of deficiency in service before a Fora established under the provisions of the C.P. Act. Mr. Vinod Chaudhri, Advocate, learned Counsel for the respondents - Insurance Company relied on the judgment of the Hon''ble National Commission in the case of M/s. National Insurance Company Limited v. Shri Prem Chand, II (2001) CPJ 60 (NC)=2001 (2) CPC 260, wherein the Hon''ble National Commission upheld the award of 75% of the admissible claim allowed by the State Commission for resettlement of non-standard claim.

9. THE authorities cited in Para 15 of the impugned order were also referred to before us by the learned Counsel for the appellant/complainant. We find from perusal of these authorities that the insurance claim had not been settled on non-standard basis and as such these authorities are of no help to the appellant.

10. RESULTANTLY, we find no merit in this appeal, which is dismissed with costs, which are quantified at Rs. 1,000/-. Copies of this order be sent to the parties free of charge. Appeal dismissed with costs.

