(2006) 03 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

Sehgal Knitwears APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Citation : 2006 2 CLT 431 : 2006 2 CPC 189 : 2006 2 CPJ 314

Hon'ble Judges : S.N.Kapoor , B.K.Taimni J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is directed against the order of the State Consumer Disputes Redressal Commission, Chandigarh, Punjab in Original Complainant No. 13 of 1997 dated 30.9.1997 dismissing the complaint claiming compensation for non-payment of the value of the consignment to consignee.

2. BRIEFLY stated the facts are that the appellant/complainant in the course of its business sent a consignment of hosiery knitwears containing 168 cartons of the value of US $ 50316 and 25 Cent to the foreign buyer M/s. ''Ozt Velves'' Moscow, Russia, Usachova - 62. It was insured for a sum of Rs. 18,66,000 by marine cargo cover under DR/84-134786 in respect of which the premium was duly paid by the appellant to the respondent Nos. 1-3-Insurance Company. It sent through UCO Bank, It was sent through M/s. Turkmenistan Airlines. New Delhi, respondent No. 4 on 27.10.1995. The necessary documents were sent through UCO Bank. The claim was preferred by the appellant. However, it was repudiated by the respondent/United India Insurance Co. on the ground that the Insurance Company informed the complainant that a tracer was appointed to trace out the consignment and the tracer has intimated its delivery to the named consignee at the destination. The information was sought if the tracer had collected any documentary proof of the delivery of the consignment to the buyer.

During the course of argument, we directed the appellant to produce the invoice and the airway bill. The invoice did not indicate that the goods were to be delivered on the order of the UCO Bank or any other Bank to the respondent. The airway bill produced by the appellant also did not indicate that the documents were to be delivered only after receipt of money for it was not payable at site or any endorsement with regard to the delivery of the documents.

3. ACCORDING to the letter received from UCO Bank and shown by the learned Counsel during the course of argument, it is apparent that: "To whom it may concern This is to certify that we have sent export document under Ref. No. 230197 dated 18.10.1995 for US D 50316.25 to M/s. ADZT VE/ES MOSCOW, RUSSIA LISACHOVA - 62 under Invoice No. SK/272/95 dated 4.10.1995, Airway Bill No. 542-0002 5966 dated 12.10.1995 of Turkmenistan Airlines. These documents were sent on behalf of M/s. Export Client M/s. Sehgal Knitwear, 421, Industrial Area, Ludhiana. The payment of these documents has not been received by us till date. Sd/- Manager UCO Bank, Civil Lines, Ludhiana"

These documents dated 6.6.1996 do indicate that the documents were delivered to the consignee and the goods were also delivered. In terms of the documents, the complainant had not filed any affidavit or any proof that the goods were not delivered to the consignee. It was contended by the learned Counsel for the appellant that the respondent has not examined the tracer about delivery of the goods. Supposing for the sake of argument, the respondent could have filed an affidavit of the tracer, at the most adverse inference could be drawn in case best affidavit is withheld by either of the parties. In this case the best affidavit could have been filed. It was submitted by the learned Counsel that the consignee had not replied despite repeated letters.

4. IN the aforesaid circumstances, the appellant/complainant shall fail unless appropriate evidence to discharge primary onus is not brought on record to infer the deficiency in service on the part of INsurance Company by proving it was damaged, or lost in transit. The appellant himself should have seen to ensure the payment by the consignee by routing it through a Bank and by ensuring that documents were delivered by the Bank only after receipt of the amount from the consignee in case of any loss, etc., occurred before delivery of the shipment to the foreign consignee, the amount could have been required to be paid by the INsurance Company and not otherwise. Besides, like many matters, this appeal is bound to fail on the ground that the foreign consignee who was supposed to receive the consignment and who has received it according to the report and who has wrongfully gained, has not been made a party, probably for the sake of a very costly convenience leading to no recovery about the payment. In view of the aforesaid circumstances, we feel that virtually there is no substance in the present appeal and it is dismissed accordingly. However, the parties are left to bear their own costs.

5. THE original documents had been seen during the course of argument. THEir photo copies may be retained on record and in case they are needed by the appellant/complainant, they may be returned. Appeal dismissed.

