(1992) 12 NCDRC CK 0057

In the National Consumer Disputes Redressal Commission

SHAKUM OVERSEAS LTD. — APPELLANT

Vs

National Insurance Co. Ltd. — RESPONDENT

Date of Decision : 17-12-1992

Acts Referred:

Citation : 1992 1 CPR 511 : 1993 1 CLT 526 : 1993 1 CPJ 86

Hon'ble Judges : V.Balakrishna Eradi , A.S.Vijayakar , Y.Krishan , B.S.Yadav J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the majority order of the State Commission, Delhi whereby it was held that the repudiation of the claim of the insured by the Insurance Company was right and in consequence the complaint was rejected. The majority order was passed in Case No. C-92/91.

2. THE relevant facts are that the appellant- complainant imported raw silk yarn of the value of US Dollars 28,322 from Japan through a firm of Hong Kong in March, 1989. THE appellant-complainant had insured the imported goods with the respondent-Insurance Company for Rs. 11.00 lacs against ''all risks''. According to the policy the risk was covered for a period of sixty days after completion of discharge over side of the goods insured from the ship at the port of discharge. The ship reached Madras on 13th April, 1989 when the consignment in question was unloaded on the same date i.e. 13th April, 1989. In consequence the risk under the policy of insurance was covered for a further period of 60 days viz. 12th of June,1989.

The appellant-complainant has stated in his memo of appeal that as he apprehended that delay might occur in the arrival of the goods at the final warehouse within the prescribed period, as a matter of abundant caution only on 9th June, 1989 he asked for extension of the period of insurance cover after discharge to be extended by another 30 days i.e. by a total period of 90 days. This request for extension was accepted, after charging premium, by the Insurance Company on 19th of June, 1989. By virtue of the extended period for coverage of risk, the policy of insurance covered risk up to the 12th July, 1989.

3. THE goods were transported from Madras to Delhi on the 29th of June, 1989 through a road carrier and the goods reached Delhi on 15th July, 1989 and were founded by the appellant-complainant in damaged condition. He took delivery under protest and recorded the condition of goods at the back of the G.R. THE cause of the damage to the goods was not investigated immediately after their arrival on 15th July, 1989, though the appellant-complainant states that he had sent a claim letter to the transporter on the 19th of July, 1989. This is cited Annexure No. 5 to the surveyor''s report of 30th July, 1989; the surveyor was appointed by respondent-Insurance Company. It was only in their letter of 15th March, 1990 that the carrier was asked to state as to how and when the loss, as recorded in the reverse of the G.R., occurred. In addition the carrier was also asked to explain as to why the goods reached Delhi only on 15th July, 1990 when they were booked from Madras on 29th June, 1990.

4. THE carrier is reported to have replied vide his letter of 22nd March, 1990 that soon after the truck carrying the above goods left Madras on 30th June, 1990, it met with light rain due to which the cartons became wet. Further during unloading/ loading operations some cartons got opened up. It also explained the delay in the arrival of the truck at Delhi due to operational reason in its journey after reaching Hyderabad. This letter of 22nd March, 1990 was submitted through M/s. Jeena & Co., the Clearing Agents of the appellant-complainant, who said that the same was misplaced by them by oversight and was actually sent to the appellant on 27.8.1990. The parties were heard at length. The | following points could not be satisfactorily explained by the Counsel for appellant-complainant: (i) The goods were unloaded and Found damaged on the 15th of July, 1989 whereas the policy of insurance had expired on the 12th July, 1989. How can the possibility of damage after 12th of July, 1989 be ruled out?

(ii) It was on the 9th June, 1989 that the appellant-complainant asked for extension of the insurance cover by another 30 days after discharge of the goods at Madras Port on 13th of April, 1989. The Clearing Agents, to our knowledge, immediately inform the consignees of the arrival of the ship sand unloadings of their consignments and it is rather unbelievable that consignee in this case was not aware of the fact that the goods had already arrived and been unloaded on 13th of April, 1989.

(iii) As pointed out by the Surveyor in his report, excise duty was paid on 19th June, 1989 i.e. 61 days after the off-loading of the goods. These goods thus remained stored at the docks for 60 days or more which could give scope for damage to the goods. By the time the extension was given the policy had expired.

(iv) Though it has been stated that the goods left Madras in good condition and had not suffered any damage before despatch through the road carrier, the explanation that of the delay in carriage by carrier - it took more than 15 days to reach Delhi as due to operational reason, is quite vague and the consignee made no efforts to find out the reasons for the same immediately after delivery on 15th

July, 1989.

(v) It was the duty of the consignee to have ascertained the precise reason for the damage to the consignment which he noticed at the time of unloading on 15th July, 1989. Apart from claiming that he had lodged a claim on the carrier on 19th July, 1989, he never pursued the matter and only on 15th March, 1990 he woke up and wrote to the carrier again but asked for the reply to be sent to their Clearing Agent M/s. Jeena & Co. at Madras. It is also in this letter that for the first time the consignee enquired the reasons for delayed transportation of goods from Madras to Delhi.

It is also relevant to mention that the copy of the claim letter on the carrier of 19th July, 1989 (annexure-5 to the surveyor''s report) has not been filed by the appellant-complainant nor it could be produced at the hearing on the plea that no copy thereof had been retained by the consignee and the same had been given to the surveyor.

5. ALL these facts make us share the opinion of the majority order of the State Commission that the appellant-Complainant does not appear to have come forward with clean hands and that the complaint was rightly rejected. In the result, the appeal is dismissed and the orders of the majority members are confirmed. The appellant-complainant shall pay costs Rs. 10,000/-. Appeal dismissed.