(1992) 06 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

SHAKUN OVERSEAS LTD — APPELLANT

Vs

National Insurance Co.Ltd — RESPONDENT

Date of Decision : 22-06-1992

Acts Referred:

Citation : 1992 2 CPJ 959

Hon'ble Judges : R.N.Mittal , B.L.Anand , Avtar Pennathur J.

Final Decision : Complaint allowed with costs -Dissented by members

Judgement

1. BRIEFLY the facts are that the complainant imported 36 cartons of Raw Silk Yarn weighing 1011.5 kg. at a price of US Dollars 28,322 from M/s. Dollyexpo Ltd. The said goods were dispatched from Kobe to Madras as per bill of lading dated 14.3.89. The invoice is dated 7.4.89. The goods were insured by the complainant with the respondent for Rs. 11 lacs by paying a premium of Rs. 4,337/- against "all risks" i.e. war, strike, riot, civil commotion etc. from Japan to anywhere in India via Madras Port as per cover note dated 5.4.89. According to the policy the risk was covered for a period of 60 days after completion of discharge over side of the goods insured from the overseas vessel at the final port of discharge or delivery to the consignee or arrival of the goods at the final warehouse, whichever was earlier. "

2. IT is alleged that due to delay in shipping documents from the foreign supplier the complainant apprehended that the delay might occurin arrival of the goods at the final warehouse within the prescribed period and, therefore, as a matter of abundant caution they requested the respondent vide letter dated 9.6.89 to extend the period by another 30 days. The request was accepted by the respondent and the period was extended for 30 days vide cover note dated 19.6.89. It is further pleaded that the goods arrived at Madras in sound condition and were despatched from Madras to Delhi in sound condition vide G.R. dated 29.6.89 through M/s. Surat Transport Service, Madras. They arrived at Delhi on 15.7.89 and were found in damaged condition. The claimant took delivery under protest and recorded the condition of the goods at the back of the G.R.

They submitted the claim to the respondent on the same day and a request was made for appointment of the surveyor. The respondent appointed M/s. Shrishti Surveyor as surveyor to assess the loss and they submitted their report dated 30.7.89 assessing the loss at 247.27 kg. It is alleged that the value of 247.27 kg. is Rs. 2,68,903.65. The survey fee paid by the complainant was Rs. 3,009.60. Thus the total claim came to Rs. 2,71,913.25.

3. THE complainant wrote a letter dated 15.3.90 to M/s. Surat Transport Service enquiring form them as to howand when the goods were damaged. THE transport company informed the complainant vide their letter dated 22.3.90 informing them that the goods left Madras on 30.6.89 and it met with light rain due to which the cartons became wet and during the subsequent unloading/ loading operation some cartons got opened. It is alleged that the respondent has repudiated the claim. Consequently they have prayed that the respondent be directed to pay an amount of Rs. 2,71,913.25 on account of loss suffered and an amount of Rs. 85,652.67 as interest @ 18% p.a. by way of compensation. The claim has been contested by the respondent. They have submitted that the complainant played a fraud upon the Insurance Company by supressing the actual date of arrival of the ship and thus manipulated the extension of the cover after the expiry of the policy. They further pleaded that the loss was discovered after the expiry of the policy and therefore the complainant was not entitled to any amount.

4. THE first question that arises for determination is as to whether the complainant played a fraud upon the respondent by mis-informing the date when the goods were unloaded. THE complainant brought to our notice the letter of Madras Port Trust dated 4.6.90 in which it is stated that the date of arrival furnished by them earlier as 14.4.89 was erroneous. Infact the landing was completed on 13.4.89. On the basis of the earlier letter the complainant mentioned that the goods were unloaded on 14.4.89 whereas those were, infact, unloaded on 13.4.89. In the above circumstances it cannot be said that the complainant gave the date of unloading as 14.4.89 for the purpose of playing fraud on the respondent. In any case, that dated is immaterial as the goods were despatched from Madras on 29.6.89. The second question that arises for determination is, as to what is the effect of informing the insurer about the damage to the goods after expiry of the policy. In the present case the insurance policy expired on 12.7.89 and the goods arrived at Delhi on 15.7.89. The report about damage to the goods was made on the same date. Thus the report about the damage was made to the respondent three days after the expiry of the period of policy. No provision of law has been brought to our notice that the damage to the goods must be brought to the notice of the respondent during the continuance of the policy. However, it is essential that the damage should have been caused to the goods during the continuance of the insurance policy. Consequently, we reject this contention. The third question that arises for determination is, as to when the goods were damaged. The agent for the complainant has brought to our notice the letter dated 2.3.90 written on behalf

of Surat Goods Transport Service to the complainant in reply to their letter dated 15.3.90. It is stated in the letter that soon after the truck carrying the goods left Madras on 30.6.89, it met with light rain due to which the cartons became wet. Further due to subsequent un-loading/loading operations some cartons got opened up. From the above letter it is evident that the goods were damaged on 30.6.89. The learned Counsel for the respondent has argued that it is possible that the goods might have been damaged between 12th and 15th July'' 89. We have duly considered this argument. The complainant has given evidence that the goods were damaged on 30.6.89. In case the respondent felt that the goods were not damaged on that date they could lead evidence in that regard. However, they did not lead any evidence. There are no grounds to disbelieve the letter of the transporter merely because the complaint transporter. In the circumstances we are of the opinion that the goods were damaged before 12.7.89. The respondent, therefore, is liable to re-imburse complainant regarding the damage suffered by them.

5. THE last question that arises for determination is, how much is the damage suffered by the complainant. THE report of the surveyor which is on the record, shows that the value of the damaged goods is Rs. 2,68,903.65. After adding the survey fee of Rs. 3,009.60 he has worked out the total loss suffered by the complainant as Rs. 2,71,913/- or say Rs. 2,71,900/-. Consequently the respondent is liable to re-imburse the complainant for the said amount.

6. THE complainant has also claimed interest @18% p.a. from the respondent. After taking into consideration the facts and circumstances of the present case we grant interest to the complainant @16% p.a. THE Insurance Company takes sometime to settle the claim. In this case we grant interest to the complainant from 1.11.89 till 26.4.91, the date of filing the complaint, which comes to Rs. 61,095/- or say Rs. 61,100/-. Thus the complainant in all is entitled to Rs. 3,33,000/-. THE complainant is further entitled to interest @16% p.a. from the date of filing the complaint till the amount is paid. For the aforesaid reasons we accept the complaint with costs and direct the respondent to pay an amount of Rs. 3,33,000/- with interest @16% p.a. from the date of filing the complaint (26.4.91) till the date of payment within a period of three months. Costs Rs. 1,500/-. Mr. B.L. Anand, Member - The broad facts of the case have been discussed above by Hon''ble President. The undersigned has carefully gone through the records and weighed the contentions and arguments of both the sides. One basic fact which has a direct and important bearing in this case that the goods involved in the insurance were not insured between 12.7.89 to 15.7.89 is not contradicted by any of the party. It is also an admitted fact that the original insurance cover was got extended for a period of 30 days at the request of the complainant. This very factum of getting the insurance period extended from 60 days to 90 days by the complainant amply explains that the complainant was well conversant with the implications and consequences for getting the goods insured for a particular period. The complainants have no where lead any evidence regarding the goods as to how the same were placed between 12.7.89

to 15.7.89, which was otherwise the main rainy season around Delhi. It is again an admitted fact on record that the complainant for the first time informed the Insurance Company regarding the loss etc. on 15.7.89, which was obviously beyond the crucial date of 12.7.89 when the insurance policy had expired. In support of their claim the complainant has taken refuge under a letter dated 22.3.90 from the transport company. In this letter it has been mentioned that the goods left Madras on 30.6.89 and that the same met with light rain due to which the cartons became wet and that during subsequent un-loading/loading operation some cartons got opened. 2. It is also on record that M/s. Shrishti Service (Regd.) the surveyor appointed by the Insurance Company visited the warehouse of the complainant on 17th, 19th & 26th July'' 89 for inspection and assessment regarding the quantum of the loss etc. They submitted their report bearing No. SSR/NI/NRO/Mar/Out-891550 dated 30.7.89 to the Insurance Company and forwarded the same through the complainant M/s. Shakun Overseas Ltd. This report dated 30.7.89 by M/s. Shrishti Services the surveyor, was thus well within the knowledge of the complainant as the same has been shown to have been forwarded through them. This fact clearly indicates that the complainant was fully aware about the findings of the Shrishti Services. The complainant wrote a letter No. SOC/ STS/90-91 to M/s. Surat Transport Services on 15.3.90 and the same was replied by the transporter on 22.3.90. It is pertinent to note that the complainant chose to write their transporter only on 15.3.90 which was almost eight months after the crucial date of 15.7.90 when the loss was purportedly detected by them. It is not explained as to why this factum of goods having been damaged by the light rain and opening of cartons during loading/un-loading has not been placed before the surveyor M/s. Shrishti Services in the first instance when they visited the warehouse of the complainant during mid July'' 89. The complainant while writing the letter dated 15.3.89 which appears to be their first letter to the transporter have not cared to endorse a copy of the same either to the respondent Insurance Company or atleast to the M/s. Shrishti Services the surveyor. This part of the conduct of the complainant appears to be doubtful and it can be safely concluded that the complainants were collecting, creating some sort of evidence in support of their version on the back of the Insurance Company. It would have appeared normal in case they had written a letter simultaneously on the very day on 15.7.89, to their transporters, when they had reported the loss for the first time to the respondent Insurance Company which they have filed to do. 3. It may also be pertinent to note that the weight of the consignment as mentioned in the bill of lading is 1011.50 Kgs. whereas the actual weight shown in the G.R. of the transporter is 1092 Kgs. There is thus a difference of 80.50 Kgs. in the weight of the goods according to the documentary evidence relied and produced by the complainants there under. The material involved in this dispute is a costly item and the difference in weight calculated at purchase price involves an amount of Rs. 80,000/- or so. This material discrepancy in the very weight of the consignment also makes the claim of the plaintiff doubtful. 4. By virtue of their overall conduct and particularly the gap of eight months between 15th July, 1989 the date of reporting the loss to

Insurance Company and 15th March, 1990 when they first wrote to their transporter and that too without endorsing a copy of this letter dated 15.3.90 to the Insurance Company - the claimants do not appear to have come forward with clean hands. 5. In the light of the above discussed facts and documentary evidence on record it can be safely concluded that the respondent Insurance Company has rightly repudiated their claim. 6. The complaint, therefore, stands rejected. No order as to costs. Dr. (Mrs.) Avtar Pennathur, Member - I have gone through the orders of the Hon''ble President, Justice R.N. Mittal and the Hon''ble Member Sh. B.L. Anand. As the detailed facts of the case have already been dealt with in these two orders, these need not be reproduced. 2. The crucial point to determine in this case is as to when the consignment was damaged by water. The complainant reported the loss to the respondent, National Insurance Company on 15.7.89 which is three days after the expiry of the insurance policy which had, infact, already been got extended by the complainant for another period of 30 days upto 12.7.89. During the course of arguments it was established that the occurrence of the loss while the policy was in vogue is vital and the detection of the loss even after the expiry of the policy is of little consequence. 3. The loss has obviously occurred due to the consignment coming in contact with water. However, it has not been conclusively proved as to when this happened. The complainant has stated at para 18 of his complaint that as a matter of curiosity he wrote a letter SOL/STS/90-91 dated 15.3.90 to the transporter M/s. Surat Transport Services enquiring from them as to how and when the goods were damaged. It is indeed interesting that this letter was written almost eight months after the detection of the loss on 15.7.89, further a copy of the letter to the transporter was not endorsed to the respondent Insurance Company. The transporter was asked to send a reply to the letter care their clearing agents Jeena & Co. in Madras. The transporter vide their letter SGTS/MDS/2766/89-90 dated 22.3.90 replied that soon after the truck carrying the goods left Madras on 30.6.89 it met with light rain due to which the cartons became wet. Further, during subsequent un-loading/loading operations some cartons got opened-up. 4. It is to be noted that the reply of transporter dated 22.3.90 was received by the complainant through their clearing agents M/s. Jeena & Co. vide their letter dated 27.8.90 (para 19, page 4 of the complaint). It is not appreciated as to why the clearing agents took more than five months to forward the reply of the transporter to the complainant. The claim was repudiated by the respondent, National Insurance Company Ltd. vide their letter dated 10.9.90. 5. Distortion in memory is known to take place after a lapse of time. In my view this lapse of eight months is crucial. Further, reply of the transport company to a letter (a copy of which was not even endorsed either to the surveyor or to the Insurance Company) is of questionable value. I find it difficult to put reliance on it. In the absence of sound documentary evidence about the exact date on which the consignment came in contact with water, resulting in loss, the respondent Insurance Company has rightly repudiated the claim. The complaint stands rejected. No order as to costs. Complaint allowed with costs -Dissented by members.