(1998) 12 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

SHANAAZ TANNING CO — APPELLANT

Vs

New India Assurance Co. Ltd — RESPONDENT

Date of Decision : 30-12-1998

Acts Referred:

Citation : 1999 1 CPJ 622

Hon'ble Judges : E.J.Bellie , Angel Arulraj J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant is an established export/import company doing business in finished leathers and it manufactures its goods in tanneries in Ambur, Trichy and Madras. THEy had taken a marine policy dated 26.2.1997 for a sum of Rs. 18,41,400/- which covered all marine risk and allied risks for materials imported from the Port of Sudan to various destinations including Trichy. THE complainant received two consignments in two containers - 3000 dozens of pickled Sudan Goat Skin wrapped in polythene sheets and kept in gunny bags from M/s. Derma International, Sudan. THE consignments reached Madras on 4.5.1997 and they were landed on 7.5.1997 at Madras on their way to Trichy. THE consignments were taken to the complainant''s godown at Madras and destuffed on 7.5.1997. One container was found to be in order, but as regards the other container, when it was opened, a bad stinking odour was issuing from the skins and it was found that the skins suffered damage of deterioration during ocean voyage and were unfit for tanning. At that time, the tanner from Trichy was present. THE container was in good and perfect condition and there was no trace of water or water damage over the container''s outer portion. But however it was found water logging in the container. THE water and the damp condition it produced inside the container was because of the deterioration of the skins. THE complainant believed that water oozed out of the skins during or after the deterioration by bacterial action which should have resulted in insufficient pickling and so the complainant considered the damage as "quality loss". THE complainant, therefore, took up the matter with the suppliers for the purpose of making monetary claim for quality loss. In the meantime, the complainant securely

stored the cargo in their godown from 7.5.1997 to 3.7.1997. THE representative of the foreign buyer took samples of the damaged skins for testing with their equipments and after analysis with their sophisticated equipments, found "fresh international water contacted the bales". THE pickled leathers had got damaged as fresh water contacted the bales. To that effect they issued a report dated 1.7.1997. THEy thus rejected that the damage was due to "quality loss".

2. IMMEDIATELY the complainant made a claim with the opposite party on 4.7.1997 as the loss was as a result of international water entering into the container and not due to "quality loss". The Insurance Company advised the complainant to remove the cargo to Trichy Tanner where they agreed to appoint a Surveyor. Accordingly the cargo was removed to Trichy tannery and the Insurance Company appointed an independent Surveyor. The loss had occurred during the currency of the insurance policy. The Surveyor of the Insurance Company had given his report. The complainant also obtained samples from the damaged and undamaged bag and sent them to M/s. Italab Pvt. Ltd. and they had issued a report dated 14.8.1997 confirming that the loss was due to water during the voyage. The complainant is claiming 80% of the damage i.e., for 14400 pieces the value of which comes to $ 22800 for which the proportionate insured amount comes to Rs. 10,36,654/- and including with it Rs. 6,650/- survey fees, the complainant claims an amount of Rs. 10,43,304/-. The complainant made a claim with the opposite party by their letter dated 15.9.1997. A reminder was also sent on 18.10.1997, but their claim has not been settled. Thus, the opposite party is guilty of deficiency in service. On these allegations, the complainant has filed the complaint for a direction to the opposite party to pay a sum of Rs. 10,43,304/- with interest thereon at 18% per annum from the date of complaint till payment. In the written version, the opposite party contend that the complainant had removed the containers from the Port premises to the warehouse of the complainant at Madras instead of having it transported to its ultimate destination i.e., Trichy or elsewhere. Even according to the complainant as early as 7.5.1997 the container was destuffed and therefore on that day itself they had the knowledge of the loss on account of the damage and the complainant had also noticed water inside the container. Even according to the complainant they thought that it was a case of "quality loss". The complainant had stored the consignment in a godown or warehouse other than the one in the usual course of transit on 7.5.1997. Therefore the policy of insurance ceased to be in operation. Hence it is incumbent on the complainant to establish that the damage occurred prior to 7.5.1997. The complainant did not give immediate notice to the opposite party. Only after a lapse of two months the complainant had unilaterally removed the destuffed cargo from Madras to Trichy and only thereafter the complainant had thought of informing the opposite party. The appointment of a Surveyor by the opposite party does not amount to admission of liability. The amount claimed as pecuniary loss is not correct. The contention that water had entered into the container is only an after-thought. The complainants have committed breach of the

conditions in the policy and therefore they are not entitled to any amount as compensation from the opposite party.

The points that arise for consideration are: (1) Whether there was any deficiency in service on the part of the opposite party Insurance Company?; and (2) If so, what relief can be granted to the complainant?

3. THE cargo in two containers were sent from Sudan in the ship which arrived at Chennai on 4.5.1997 and the containers were landed on 7.5.1997 to be taken to Trichy. THEy were taken to the complainant''s Madras godown. According to the complainant it was destuffed on 7.5.1997. While so, the cargo in one container was found to be alright but the cargo in the other container was found to be damaged. THE further case of the complainant is that they thought that the damage was due to inherent vice and therefore they had to contact the shipper and the representative of the shippers at Madras took samples of the damaged skin for testing with their sophisticated equipments and found that fresh international water had contacted the bales and that was the cause for the damage and they issued a report dated 1.7.1997 therefor. Now, according to the complainant the damage was due to fresh international water contacting the cargo and such a risk has been covered by the insurance and therefore the Insurance Company is liable to make good the loss. But one surprising thing that has to be noted is that in the complaint itself it is unequivocally stated that the concerned container which had been taken to the godown of the complainant at Madras was in "good and perfect condition and there was no trace of water or water damage over the container''s outer portion". Having said so, the complainant has not stated as to how then water had entered into the container; not even a remote cause for the water entering into the container has been given. This being so, we wonder how the case of the complainant that fresh international water had entered or for that matter rain water had entered into the container, can be believed as true. As seen above, according to the complainant the shipper''s representative had tested the sample of the damaged cargo and found that fresh international water had contacted the bales, but no such report has been filed. THE further case of the complainant is that the report of the Surveyor of the Insurance Company also admits the loss as due to the deterioration caused by water, but it states that the insured did not prove the loss through documents. This statement of the complainant gives an impression that the Surveyor''s report is not specific but ambiguous. Only because the Surveyor has stated that the deterioration has been caused by water, it cannot be said that water from outside entered into the container. THEn the complainant would say that they took samples from the damaged and undamaged bags and sent them to M/s. Italab Pvt. Ltd. and they had issued a report dated 14.8.1997 but no report of that date has been filed; however there is one report of the said company Ex. A-6 dated 26.7.1997 which states that the damaged sample might have come in contact with fresh/rain water only but not sea water. This report also is not of definite character since it is only mentioned that the damaged sample might have come in contact with fresh/ rain water. Further the said

company is complainant''s own choice and therefore their report cannot be made to bind the opposite party. Apart from these, there is nothing else to show that water, whether sea water, rain water or any other water, had entered into the container. In this context the belief the complainant had first that the damage was due to inherent vice has to be considered. Quite possibly, what they believed could be correct; that means the damage should have been only due to the inherent defect of the cargo. As seen above, it is the case of the complainant themselves that the container was in "good and perfect condition .and there was no trace of water or water damage over the containers'' outer portion". This circumstance, coupled with the absence of any explanation as to how water could have entered into at all would render the possibility of no water having entered into the container highly probable. Again, as seen supra, the damage had been found on 7.5.1997 but the opposite party had been informed about it 58 days after that, that was 14.7.1997. This also renders the case of the complainant highly suspicious and incredible. For these reasons, it has to be taken that the complainants have failed to prove that the damage had occurred due to any risk covered by the insurance.

4. CONSIDERING thus, we are of the view that the complainant cannot have any relief prayed for against the opposite party. Hence the complaint is dismissed. However, there will be no order as to costs. Complaint dismissed.

