(2014) 09 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

Shield Tradelink Pvt. Ltd. APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD. RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Citation : 2014 0 NCDRC 557 : 2014 4 CPJ 562

Hon'ble Judges : D.K.JAIN , VINAY KUMAR J.

Advocate : DEEPA CHACKO , RAVI BAKSHI

Judgement

1. M /s. Shield Trade Link Pvt. Ltd. (hereinafter referred to as the Complainant Company), has filed this revision petition against concurrent orders of M.P. State Consumer Disputes Redressal Commission and District Consumer Forum, Indore. Both have held that no liability can be fastened on the respondent/United India Insurance Co. Ltd. (hereinafter referred to as respondent/OP), under the concerned insurance policy, for the alleged loss suffered by the Complainant/ Company.

2. THE matter arose out of bulk import of kerosene oil from Bahrain, UAE, by certain importers in India, including the Complainant Company. When the stock belonging to the Complainant Company was unloaded, it was allegedly found to have a shortage of about 121.518 MT, against the purchased quantity of 2906.71 MT. Unloading of the consignment had been supervised by M/s. J.B. Boda Superyors Pvt. Ltd. Kolkatta, who confirmed the shortage of the above mentioned quantity. The Surveyor appointed by the respondent/ OP separately ascertained that at Bahrain, as against the total quantity of 23888.71 MTs, the shippers had short -loaded by 119.904 MTs. In this background, the consumer complaint was filed before the District Forum on 29.4.2003. The case of the Complainant was that the above shortage was against the total import belonging to several consignees. Therefore, they should all be treated as ''tenants in common '' and the shortage should be proportionately distributed. Accordingly, the quantity of shortage allocable to the consignment of the Complainant Company would be only 14.590 MT and not the entire shortage 119.904 MT.

Complainant ''s prayer therefore was to direct the respondents/OP to pay Rs.11.28 lakhs, being the cost of the shortage less cost of proportionate shortage allocable to it. The claim was repudiated by the respondent/OP on 2.7.2002 stating: - ''''With reference to above claim we have received survey report of M/s. S K Mitra and Company Kolkata with the conclusion that shortage had been caused from supplier ''s end and the loss is below the excess hence no liability attaches. In view of above reasons we are unable to entertain the claim and file the papers as NO CLAIM which may please note. ''''

3. THE District Forum dismissed the complaint on the grounds that as per Report of both surveyors, it was a case of short loading at Bahrain and not of loss during transit to Budge Budge, the port where Complainant ''s consignment was unloaded. Hence, the insurance was not liable. It also held that apportionment of loss between importers was not a function of the insurance. The State Commission agreed with the District Forum observing that - ''''Even if, for the sake of argument, we accept that all the consignees were ''Tenants in common '', and that the loss should be equally distributed among them, the fact remains that this shortfall did not occur due to any loss or damage to the goods either during loading, transit or during discharge. As evidenced by the documents on record, it was a case of short supply and it is not the case of the appellant that short supply was also a risk covered by the policy. The appellants can approach the overseas supplier and recover the cost of the goods short supplied, but in our considered view, the insurance company cannot be held liable for short supply of goods. ''''

4. WE have heard Advocates, Ms. Deepa Chacko for the revision petitioner/complainant and Mr. Ravi Bakshi for the respondent/insurance Co. We have also considered the records submitted by the two sides. Learned counsel for the complainant Co., primarily relied upon the 12 bills of lading containing details of the quantity loaded for the complainant. She emphasised that this entire quantity is certified by Shipping Agent as ''Clean Shipped on Board ''. It is also contended that under the law relating to Bills of Lading, the Bill is conclusive evidence of such shipment against the Master of the Ship. Additionally, the complaint petition also relied upon report of a certification agency (Inspectorate Worldwide Quality Services) and claimed that full quantity had been loaded. On this plea, the District Forum has very rightly held that this presumption under the law is rebutted by the certificate of the Directorate of Oil, State of Bahrain that, on verification, the actual loading was found to be only 23768.806 MT. This is official confirmation of the loading shortage of 119.104 MT. Therefore, the contention of ''clean loading '' of the entire contracted quantity, fails to carry any conviction.

5. THE above contention of ''clean loading '' notwithstanding, the main prayer in the consumer complaint itself is for proportionate apportionment of the loading shortage. In effect, it would carry a tacit acceptance of the shortage, including in the stocks loaded for the complainant Co. More so, as the entire stock of

23888.710 MT (which would include the stock meant for the complainant) was co-mingled and had no separate identity.

6. LEARNED counsel for the revision petitioner/complainant Co, argued that the respondent/insurance Co. should have apportioned the total shortage proportionately among all the importers. This plea has been rejected in the impugned order and for the right reason. Apportionment of loss among individual consignees is not a function of the insurer. Learned counsel for the respondent/OP, pointed out that it falls outside the purview of the policy. We therefore find ourselves in full agreement with the view taken by the fora below. The revision petition is held to be devoid of any merit and is dismissed for the same reason. No costs.