
(2014) 01 NCDRC CK 0080

In the National Consumer Disputes Redressal Commission

Shree Hiralal Tel Udyog

APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD.

RESPONDENT

Date of Decision : 30-01-2014

Acts Referred:

Citation : 2014 0 NCDRC 42

Hon'ble Judges : B.C.Gupta J.

Advocate : K.R.PAMEI , V.S.Chopra , V.K.ANAND

Judgement

1. THIS revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 19.07.2012, passed by the Rajasthan State Consumer Disputes Redressal Commission (for short "the State Commission ") in FA No. 1838/2010, ""United India Insurance Co. Ltd. & Ors. versus Shree Hiralal Tel Udyog & Ors. "" vide which, while allowing the appeal, the order dated 05.08.2010 passed by the District Consumer Disputes Redressal Forum, Bharatpur, allowing the consumer complaint in question, was set aside.

2. BRIEF facts of the case are that the complainant/petitioner had taken a marine insurance policy for the period from 15.03.2008 to 14.03.2009 for a sum of Rs.2 crore for transportation of their goods. The complainant used to send their goods to various parts of the country and take transit risk cover for the same. On 06.04.2008, the complainant sent 152 quintals Mustard oil through tanker no. WB41B6393 to M/s. Kanak Enterprises Kolkata, the value of the goods being Rs.9.29 lakh. However, the goods in question, never reached Kolkata and after a few days, the empty tanker was found lying in a gorge at a place in District Hooghly in unclaimed condition. It was alleged by the complainant that the said goods had been sold by the driver of the tanker Munna Singh who fled away after abandoning the tanker. On the other hand, it was contended by the OP Insurance Company that incident itself was suspicious that information about the incident had been given to the Insurance Company after a long delay, the complainant had not cooperated with the surveyor and also not produced the

necessary documents. The OP has also maintained that if any such incident had taken place, the transport carrier only was responsible for the same. The complainant filed the consumer complaint no. 289/2008 before the District Forum Bharatpur and the said forum allowed the same and directed the insurance company to pay an amount of Rs.9.29 lakh alongwith interest @9% p.a. from the date of the filing of the complaint, i.e., 28.08.2008 till realisation and Rs.2000/- as cost of litigation. An appeal filed before the State Commission against the order of the District Forum was, however, allowed vide impugned order. The State Commission, concluding that the factum of theft had not been proved, set aside the order of the District Forum. It is against this order that the present revision petition has been made.

3. AT the time of hearing before us, the learned counsel for the petitioner/complainant stated that the State Commission had erroneously observed that the necessary documents in support of the version of the complainant had not been brought on record. In fact, the Complainant had filed his own affidavit in support of the complaint, copy of the legal notice dated 2.08.2008, invoice dated 06.04.2008, VAT form, bilty, Trade Tax Form and letter dated 28.08.2008 from the Insurance Company, regarding the contract between supplier of goods and the receiver. The said contract could be oral or in writing. The learned counsel for the petitioner/complainant further stated that intimation about the incident had been given to the Insurance Company on the same date. The facts have been elaborated in the affidavit filed by the complainant and it has been made clear that the item was not delivered at its destination. The report of the Police, a copy of which has been placed on record also makes it clear that the theft had been committed and a case had been registered vide FIR No. 72/2008 under section 379/406 IPC and the investigation was being carried out. The name of the driver Munna Singh has also been mentioned in another FIR lodged with the Police in West Bengal at Police Station District Hooghly vide FIR No. 29 dated 15.04.2008.

4. IN the report of the surveyor also, it has been mentioned that the consignment never reached M/s. Kanak Enterprises Kolkata. Further, the transporter had given a damage certificate on 07.05.2008, saying that 152 quintal of mustard oil had been loaded in tanker WB41B/6393 for M/s. Kanak Enterprises, Kolkata through bilty no. GR847. The said tanker had been stolen on the way but later on, the empty tanker was found in unclaimed condition under Police Station Dadpur for which an FIR had been registered with Police Station Dadpur by the owner of the truck. The Transport Company also sent letter dated 28.11.2008 to the surveyor, confirming the issuance of the damage certificate dated 07.05.2008 and also confirming the facts once again. The learned counsel has further drawn attention to copy of bilty GR847, produced on record in which the registration number of the truck has also been given. Further, a copy of VAT form containing declaration for carrying goods outside the State by registered dealer and the copy of waybill for transport of consignment of goods under the West Bengal VAT Rules 2005 has also been produced. The learned counsel pointed out that the surveyor appointed by the Insurance Company had not

visited Bharatpur to hold proper inquiry in the matter and this fact had been admitted by the surveyor in the report submitted by him dated 24.09.2008. The surveyor has mentioned that they had not visited Bharatpur to minimise the expenses and suggested that the relevant records may be got verified from a local surveyor. It was clear from all these facts that the complainant/petitioner had proved their case with all supporting documents and hence, there was no ground for the State Commission to set aside the order of the District Forum.

5. LEARNED counsel for the respondent, however, stated that the goods in question, are reported to have been dispatched on 06.04.2008, but the whereabouts of the said truck and the goods were not known till 15.04.2008. It was not clear how the petitioners suddenly realised on 15.04.2008 that the said consignment had been lost. The learned counsel further stated that this case was a fraudulent one and even earlier, there had been a case involving the same parties which was enquired into by the Central Bureau of Investigation (CBI). Learned counsel further submitted that the vehicle in question did not belong to the transporter M/s. Radhey Radhey Roadlines, who have been made a respondent in the complaint. Further, no cause of action has arisen in Bharatpur and hence, the consumer complaint could not have been filed in that District. Regarding the production of VAT form etc., the learned Counsel stated that merely producing copies of VAT form, does not confirm that the goods had been dispatched physically. In so far as the earlier case being investigated by the CBI is concerned, it has been brought out that an officer of the Insurance Company was also involved in that case, but because of his death the case had been closed. Learned counsel further stated that if the vehicle carrying the goods in question had gone from Bharatpur to West Bengal, there should have been receipts issued by the check -posts on the way, which could have established the movement of the vehicle, but not even a single such receipt had been produced. The complainant has also given an evasive reply before the surveyor. They have not impleaded the owner of the truck as a party and hence, the complaint had been rightly dismissed by the State Commission saying that the case was shrouded in suspicious circumstances.

6. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me. The petitioners have tried to explain that all necessary documents concerning the dispatch of the said consignment of mustard oil to M/s. Kanak Enterprises Kolkata and the non - receipt of the same by the consignee had been produced on record. The District Forum reached the conclusion that the consignment had been stolen on the way and hence, the Insurance Company was liable to compensate the petitioner for the loss. However, the State Commission set aside the order of the District Forum, saying that there was complete absence of evidence or affidavits to support the fact of theft of goods. This observation of the State Commission is, however, not substantiated from the record because the necessary affidavit and evidence has been filed by the petitioner before the District Forum. The State Commission have also observed that the petitioner had not fully cooperated with

the investigator of the Insurance Company. There was no record or document about the investigation made by the Kolkata Police. The State Commission have also observed that the owner of the said truck belonged to West Bengal and hence, affidavit from the owner of the truck or from M/s. Radhey Radhey Roadlines should have been filed. The State Commission have also observed that the proof of movement of the truck could be known from the receipts issued by check -posts on way from Bharatpur to West Bengal. Based on the averments made by both the parties, it becomes clear that the core issue in the present case involves the movement of a consignment of mustared oil from Bharatpur to West Bengal and its non -receipt by the consignee in question, i.e., M/s. Kanak Enterprises. The petitioner has tried to prove his case by producing copies of various documents and also affidavits of the petitioner/complainant. The report made by the Bharatpur Police is on record. A copy of the FIR lodged with the West Bengal Police is also on record which mentions the name of the driver as Munna Singh. It is, therefore, absolutely necessary that the matter should be thrashed out in entirety by carrying out an analysis in depth of the facts and circumstances on record. I agree with the observations of the State Commission that if the truck has moved from Bharatpur to West Bengal, there could have been receipts issued by the check -posts which came on the way. The State Commission should have asked the parties to produce the required documents and further evidence, if any. In the interest of justice, it is absolutely necessary that the matter should be examined in detail. The parties should be asked to produce documents and then a firm conclusion should be arrived at bringing out clearly whether the theft of the material in question is proved on record.

7. WITH these observations, I deem it necessary to set aside the order of the State Commission and to remand the case to the State Commission with the direction that parties should be asked to lead further evidence which should be analysed in depth by State Commission and a conclusion should be reached, looking at the circumstances of the case in totality. The revision petition is, therefore, accepted, the impugned order is set aside and the case is remanded to the State Commission for further proceedings.

8. PARTIES are directed to appear before the State Commission on 15th April 2014.