(1994) 08 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

S.JAISONS JEWEL EXPORTS APPELLANT

Vs

NATIONAL INSURANCE COMPANY LTD. RESPONDENT

Date of Decision : 01-08-1994

Acts Referred:

Citation : 1994 0 NCDRC 173

Hon'ble Judges : V.BALAKRISHNA ERADI , Y.KRISHAN , B.S.YADAV J.

Advocate : C.S.VAIDYANATHAN , K.MADHAVAN , H.L.TIKU , J.V.RAGHAVAN

Judgement

1. THE complainant M/s. Jaisons Jewel Exports, New Delhi is a firm engaged in the business of manufacture and export of gold and diamond jewellery. In January, 1992, the complainant sent an export consignment of gold jewellery to Chicago by airfreight through the KLM Royal Dutch Airlines (Opposite Party No. 3) as per Airway Bill No. 074-2817/5844, dated January 10, 1992. A copy of the said airway bill has been produced as Annexure-H to the complaint petition. The said export was effected through the Minerals and Metals Trading Corporation as per invoice dated January 9, 1992-Annexure-I. The complaint petition states that in accordance with the usual procedure and practice, the customs authorities at the Foreign Post Office, New Delhi conducted a 100% inspection of the consignment and it was only thereafter that the jewellery was finally packed securely in a tin box. The Custom Officer who inspected the consignment had signed in the invoice in token of his having inspected and satisfied himself about the correctness of the description of the contents of the box set out in the invoice. The conginee was M/s. Avani Trading Company, Chicago.

2. THE complainant took put a Marine Insurance Policy and insured the said consignment against all risks including war risk etc., with the Opposite Parties 1 and 2 who represented the National Insurance Co. Ltd. by taking out a policy of Marvine Insurance for a total sum of Rs. 18,07,500/-. The cover note dated 9.1.1992 has been produced by the complainant as Annexure-J. It is seen from the cover note that the policy issued to the complainant covered "all risks from warehouse to warehouse". A copy of the certificate of insurance has been

produced along with the complaint as Annexure-K. Under the terms of the policy its period of validity was to last until the expiry of 30 days from the date of the discharge of the goods from the aircraft at the airport of destination. It is averred in the complainant that since the export in question was effected through the M.M.T.C. the complainant handed over the export documents to the M.M.T.C., New Delhi and they, in turn, sent the documents to the State Bank of India, New Delhi for being transmitted to the State Bank of India, Chicago Branch for collection. A copy of the letter dated 14.1.1992 of M.M.T.C. to State Bank of India, New Delhi has been produced as Annexure-L and a copy of the Bill of Exchange dated 14.1.1992 drawn by the M.M.T.C. has been appended as Annexure-M. The consignment carried by the third respondent Airlines and it admittedly arrived in Chicago airport on 14.1.1992 and after discharge from the aircraft the consignment was kept in the carrier''s security enclosure in Chicago airport awaiting its clearance by the consignee on production of the concerned documents.

3. ACCORDING to the complainant, when the consignee M/s. Avani Trading Company, Chicago checked with the Chicago office of the KLM Royal Dutch Airlines, respondent No. 3, as to whether the consignment had arrived, they were informed by the airline that though the consignment had been received in Chicago on 14.1.1992, it was subsequently found missing. A letter dated 6.2.1992 sent by the third respondent to the consignee confirming that the consignment could not be located as on 28.1.1992, has been produced and marked as Annexure-N. The same position was later reiterated by the third respondent in its letters to the complainant dated 12th February, 1992 and 16th March, 1992 wherein they said that the consignment in question could not be located and should be considered missing (Annexure-P).

4. ON learning from M/s. Avani Trading Company, Chicago over telephone that the consignment was missing, the complainant wrote a letter dated 4.2.1992 to the Opposite Party No. 2 (insurer) conveying the particulars of the loss and lodging a claim for the full insured amount on the ground of the loss of packet Annexure-Q is a copy of the said letter. The Opposite Parties Nos. 1 and 2 thereupon sent a reply as per their letter dated 8.5.1992 advising the complainant to lodge the monetary claim against the carrier and stating also that the Opposite Party No. 2 would like to have the negotiable documents. Accordingly the complainant by its letter dated 21st May, 1992 lodged a monetary claim for Rs. 18,07,500/-against Opposite Party No. 3 At the instance of the complainant, copies of the negotiable documents were forwarded to the Opposite Party No. 2 by the M.M.T.C. as per their letter dated 25th May, 1992. Thereafter on 26th May, 1992 the complainant again wrote to the Opposite Party No. 2 reiterating its claim and requesting for its settlement at an early date. By a communication dated 1.9.1992, Opposite Party No. 2 called for some particulars from the complainant and those particulars were furnished to the Opposite Party No. 2 by the M.M.T.C., New Delhi on behalf of the complainant as per their letter Annexure-Y.

5. SINCE there was no further response from the Opposite Party, the complainant sent a letter dated 15.10.1992 to Opposite Party No. 2 protesting against the delay in the matter of settlement of the claim and requesting for payment being made to it within 15 days. It was pointed out by the complainant in the said letter that its bankers were charging the firm penal interest at the rate of 26% per annum and that the Opposite Parties Nos. 1 and 2 should pay interest at the said rate on the amount due under the claim. Since there was no response from the Opposite Parties even after the receipt by them of the said letter, the complainant sent another registered communication to Opposite Party No. 2 on 9.1.1993 pressing for the immediate settlement of the claim. A copy of the said letter has been produced as Annexure-BB. On 17.2.1993 the complainant received the letter Annexure-CC from O.P. No. 2 stating that there had been serious delay on the part of the complainant at various stages and unless those delays were explained, the claim could not be admitted by the Opposite Parties Nos. 1 and 2. Since the loss of the consignment during the period of validity of the insurance cover was not in dispute, the complainant felt that the reference to alleged delay was only by way of diversive tactics on the part of the second respondent. Inasmuch as the airway bill in question dated 10.1.1992 had been promptly handed over by the Complainant to the M.M.T.C on 13.1.1992 itself (11th and 12th January, 1992 being Saturday and Sunday when the office of the M.M.T.C was closed), the Opposite Parties Nos. 1 and 2 were not justified in calling upon the complainant to explain the alleged delay etc. on the part of the other parties such as M.M.T.C, State Bank of India and the consigne M/s. Avani Trading Company over whose actions the complainant had no control. Since it was clear that no useful purpose would be served by carrying on further prolonged correspondence with the Opposite Parties Nos. 1 and 2 and the attitude adopted by them was to put forward some excuse or the other to deny the liability in respect of the complainant''s claim, the complainant had to approach this Commission with this complaint seeking to recover the amount due to the firm under the policy of insurance.

6. A detailed written submission has been filed on behalf of respondent Nos. 1 and 2 by Opposite Party No. 2. After raising certain preliminary grounds of objections questioning the jurisdiction of this Commission on the ground that the present case involves complicated issues of fact and law necessitating the leading of voluminous oral and documentary evidence, it has been submitted in the written statement that it was only due to the laches and delay on the complainant''s part ii failing to produce necessary information that was sought by respondent No. 2 in its letter dated 11.2.1993 (Annexure CC) that the Opposite Party has been unable to take any final decision on the claim of the complainant It is next contended in the written statement of Respondents 1 and 2 that by virtue of Clause 2.6 contained in the insurance policy under the head "exclusions" the liability of the Insurance Company stands excluded in the present case on the ground of delay. Elaborating this plea it is pointed out in the written statement that it took 10 days after the actual despatch of the goods to

despatch the documents of title to the corresponding bank in Chicago which was done through the DHL courier service only on 21.1.1992 and those documents actually reached the corresponding/destination bank on 21.1.1992 i.e. eight days after the goods had already arrived there and were lying in the carrier''s security enclosure. It is further averred that the destination bank''s advice letter regarding arrival of the documents was made to the consignee M/s. Avani Trading Company, Chicago on 23.1.1992. The goods were detected to have been missing only on 28.1.1992 and the probability is that the theft had possibly occurred on 27.1.1992. In these circumstances, it is contended in the written statement that it is important to find out how and why the bank in India (S.B.I., New Delhi) took 10 days'' time after the date of despatch of goods to send the documents to their corresponding bank in Chicago and also why the consignee M/s. Avani Trading Company did not take delivery after retiring the documents immediately after receipt of intimation from the corresponding bank in Chicago about the arrival of the documents. On this basis the Insurance Company has contended that the complainant had not met all the requirements of the Opposite Party by furnishing a detailed reply to the letter Annexure-CC dated 11th February, 1993 wherein specific clarifications had been sought from the complainant on the points enumerated in Clauses 8(a) to 8(d-vi). Finally, it has also been strongly urged on behalf of the insurer that the liability case of the Insurance Company is excluded in the present case by virtue of the operation of exclusion Clause 2.6 contained in the policy. It is submitted in the written statement by the Insurance Company that there has been no deficiency at all on the part of the Insurance Company in relation to the honouring of their obligations under the contract of insurance that was entered into with respect to the consignment in question and hence the complaint should be dismissed.

7. WE have heard at length the learned Advocate who appeared on behalf of the complainant and also the Counsel who appeared on the side of the Opposite party National Insurance Company Ltd. Though the KLM Royal Dutch Airlines has been impleaded as Opposite Party No. 3 and it has appeared through Counsel, no relief has been claimed in the complaint petition as against the said respondent and hence it is unnecessary to set out the submissions made by the said respondent in its written statement.

8. FROM the documents produced in the case, the genuineness of which is not in dispute before us, the following facts clearly emerge. The complainant had insured with Opposite party No. 1 the National Insurance Company Ltd., a consignment of Gold jewellery which was despatched by it on 10.1.1992 from New Delhi to M/s. Avani Trading Company, Chicago by taking "all risks" marine insurance policy which covered the risk from "warehouse to warehouse". A copy of the airway bill issued by the carrier namely, the KLM Royal Dutch Airlines, Opposite Party No. 3 in respect of the said consignment has been produced as Annexure-H. The export of the consignment was effected by the complainant through the Minerals and Metals Trading Corporation hence the complainant handed over the export documents to M.M.T.C., New Delhi who, in turn, sent the

documents through the State Bank of India Branch, New Delhi to S.B.I., Chicago Branch for collection. Annexure-L is a copy of the letter dated 14.1.1992 issued by the M.M.T.C to State Bank of India, New Delhi and Annexure-M is a copy of the Bill of Exchange dated 14.1.1992 drawn by M.M.T.C. in relation to the consignment in question. The consignment was admittedly received in Chicago on 14.1.1992 and it was kept in the security cage of the respondent No. 3 at the Chicago Airport pending its clearance by the consignee. Prior to the despatch of the consignment from Delhi it had been thoroughly inspected by the Custom Authorities who satisfied themselves that the tin box in which the jeweliery was packed did, in fact, contain all the items as described in the invoice. The Customs Officer who inspected the consignment had affixed his signature on the invoice in certification of his having personally inspected and ensured that the consignment did conform to the invoice. The consginee, M/s. Avani Trading Company checked with the Chicago Office of Opposite Party No. 3 about the arrival of the consignment and thereupon they were informed by the KLM Royal Dutch Airlines authorities in Chicago that though the consignment had been received in Chicago on 14.1.1992, it was subsequently found missing. Annexure N is a letter dated 6.2.1992 addressed by KLM Royal Dutch Airlines Cargo, Chicago to the consignee, M/s Avani Trading Company confirming that the shipment in question consisting of one parcel with a gross weight of 9.450 kilograms could not be located as on 28.1.1992. The complainant was also informed by the representatives of the third respondent in Delhi as per his letter Annexure-O dated 12.2.1992 that the "subject shipment has indeed been lost at Chicago. Furthermore, the consignee has filed claim with our office in Chicago and has already obtained "Loss Certificate" for filing claim with the Insurance Company". Annexure-P is a letter dated 16.3.1992 sent by the third respondent to the complainant confirming again that the shipment covered by the airway bill dated 10.1.1992 could not be located and thus could be considered missing.

9. THE complainant wrote to the Insurance Company on 4.2.1992 informing them that the consignment had been lost and furnishing the particulars of the loss. By the said letter the complainant lodged a claim with the insurer for the full amount of loss suffered by the firm by reason of the loss and non-delivery to the consignee of the consignment in question. The Opposite Party No. 2 wrote a letter dated 85.1992 to the complainant advising the complainant to lodge a monetary claim against the carrier and also requesting the complainant to forward the insurer the negotiable documents. A copy of the said letter is Annexures. Accordingly by a letter dated 21.5.1992, the complainant lodged a monetary claim for Rs. 18,07,500/- against the carrier " Opposite Part No. 3. Annexure-T is a copy of the said letter. At the instance of the complainant, the M.M.T.C forwarded to the insurer copies of the negotiable documents under cover of its letter Annexure ''U'' dated 25.5.1992.

10. THE complainant kept on reminding the insurer about the non-settlement of the claim and requesting for early payment of the amount due under the policy. By letter dated 1.9.1992 marked as Annexure-X, addressed by the National

Insurance Company Ltd., to the M.M.T.C., the insurer called for some particulars and those particulars were furnished by the M.M.T.C. as per its reply Annexure-Y dated 24.9.1992. Since there was no positive response from the insurer uptil the middle of October, 1992, the complainant sent a registered letter to the Divisional Manager of the Insurance Company as Annexure ''A'' dated 15.10.1992 pointing out that the claim had been pending for more than eight months from the date on which intimation of the loss had been given to the Insurance Company (4.2.1992) and since the complainants were paying penal interest to the bankers at the rate of 26 per cent per annum they would be left with no option but to seek relief from the Forum constituted under the Consumer Protection Act, if the claim was not settled by the Insurance Company within 15 days of the receipt of the said letter. Thereafter a further reminder was sent by the complainant to the Insurance Company by registered post on 9.1.1993 as per Annexure-BB. More than a month thereafter the insurer addressed the letter Annexure-CC dated 11.2.1993 stating that the head office of the Insurance Company had observed "that the chronological facts of the case as enumerated below indicate the serious delay at various stages which have been seriously detrimental to the insurance of such a highly valuable and pilferable items, " and in view thereof the complainant should give a specific clarification on the points (a) to [(d-(i) to (vi)] enumerated in the said letter. The letter closed with the following statement "while we await your detailed and pointwise reply to the above, we would stress that the policy does not cover loss or damage caused by delay, even if the delay is caused by an insured peril. The documents and information available in the file do not answer the above questions to show that the insured/assignee had acted with reasonable despatch and had avoided delay. Unless documentary evidence and satisfactory clarifications on the questions raised can be furnished, it does not seem that the liability under the insurance is admissible".

11. IN other words, this concluding paragraph of the letter was clearly indicative of an intention on the part of the Insurance Company to disown any liability under the policy on the ground that the loss of the consignment was caused by ''delay''.

12. IN the course of the arguments before us there was no contention advanced on behalf of the Insurance Company that the consignment in question had not been covered against all risks from warehouse to warehouse''. That the consignment containing all the items of jewellery as mentioned in the invoice had been duly despatched from Delhi to Chicago and it had safely arrived at Chicago on 14.1.1992 was also not denied. It was also not disputed that under the terms of the policy the insurance cover became effective from the time the goods were tendered to the airlines authorities at the Delhi Airport and terminated only either on delivery of the goods to the consignee at the destination airport mentioned in the policy or at midnight of the 30th day from the moment the goods have been discharged from carrying aircraft whichever shall first occur. The loss of the consignment had taken place from the security cage of the KLM

Royal Dutch Airlines in Chicago airport some time prior to January 28,1992 on which date it was noticed as missing. The consignment was lost during, the period when it was in the custody of the KLM Royal Dutch Airlines authorities in Chicago. The loss had taken place during the period when the insurance cover was fully operative inasmuch as the period of 30 days from the date of discharge of the cargo from the aircraft (14.1.1992) had not expired by the date on which the consignment was noticed to be missing (28.1.1992). The main contention urged in defence by Counsel appearing on behalf of the Insurance Company was that exclusion Clause 2.6 contained in the policy was attracted to the present case and because of that the insurer was not liable to indemnify the complainant against the loss suffered by him. Annexure-G is a copy of the Marine Group Insurance Policy issued to the complainant in respect of the consignment in question. Clause 2.6 under the head exclusion reads as follows:" "loss, damage or expense proximately caused by delay, even though the delay be caused by a risk insured against". We are unable to see how the said clause is attracted to the present case. The loss in question has been caused by theft or pilferage from the security cage of the KLM Royal Dutch Airlines in Chicago. Counsel for the Insurance Company said loss can be said to have been proximately caused by ''delay''. The goods were in a security cage of the third respondent airline at the Chicago airport where valuables were expected to be safely kept and the loss by theft or pilferage from such enclosure cannot be attributed to ''delay'' of any sort on the part of the complainant. The word ''proximately'' occurring in Clause 2.6 is, in our opinion, to be given its due significance and, if so done, it is clear that the operation of the said clause would be attracted only if there is a proximate nexus or relationship between ''delay'' and the cause of loss. Nothing has been made out on the side of the insurer to make out any such proximate connection. In such circumstances, the only reason given by the insurer for disclaiming liability to make payment of the amount due under the policy to the complainant cannot be accepted as valid or tenable. We may also mention that as a matter of fact, there had been no delay of any kind on the part of the complainant. The consignment was desptached from Delhi as per airway bill dated 10.1.1992. As already noticed the export of the consignment had been effected through the M.M.T.C., New Delhi. The export documents were, therefore, handed over by the complainant to the M.M.T.C on 13.1.1992 (11th and 12th January being Saturday and Sunday and hence holidays for M.M.T.C). on 14.1.1992, M.M.T.C forwarded the documents to State Bank of India, New Delhi as per their letter marked as Annexure-L together with a Bill of Exchange of the same date (Annexure-M). From the letter Annexure-Z addressed by the State Bank of India to Minerals and Metals Trading Corporation on 19.9.1992, it is seen that the documents of title had been sent by the S.B.I., New Delhi to its Chicago Branch by DHL Courier service on 21.1.1992 and that the Chicago Branch which had received the documents on 21.1.1992 had sent an advice letter to the consignee on 23.1.1992. Quite apart from the fact that the complainant had no control over the activities of the M.M.T.C. and S.B.I., we do not find that there was any inordinate delay either on the part of the M.M.T.C or even on the part of the

S.B.I, in processing and despatching the documents to Chicago.

13. THE policy issued to the complainant by the insurer had insured the consignment against "all risks" and when, admittedly, the goods had been lost and no fault or delay of any kind could be attributed to the insured (complainant) it was totally unfair and unethical on the part of the Insurance Company to protract and delay the payment of the amount due to the complainant under the policy by relying on the exclusion Clause 2.6 which is not at all attracted in this case. We hold that the Insurance Company represented by respondents 1 and 2 has been guilty of negligence and serious deficiency in service and is liable to reimburse to the complainant the full amount of loss caused to it by reason of the consignment having been lost.

14. ACCORDINGLY we hold that the complainant is entitled to recover from respondents Nos. 1 and 2 Rs. 18,07,500/- being the insured value of the consignment with interest at 18% from 4.6.1992 (after allowing a period of four months as the reasonable time within which the insurer should have settled the claim after receiving intimation from the complainant about the loss on 4.2.1992) till date of actual payment. The complainant shall also be entitled to recover from respondent Nos. 1 and 2 a sum or Rs. 10,000/- by way of costs of this Original Petition. The aforesaid amounts shall be payable to the complainant by respondents No. 1 and 2 within one month from the date of the receipt of a copy of this order. Since no relief has been claimed by the complainant against respondent No. 3, the complaint petition will stand dismissed as against respondent No. 3 without any order as to costs.