**(2001) 01 NCDRC CK 0042**

**In the National Consumer Disputes Redressal Commission**

SRI KRISHNA OIL COMPLEX LIMITED — APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LIMITED — RESPONDENT

**Date of Decision :** 30-01-2001

**Acts Referred:**

**Citation :** 2001 2 CPJ 433 : 2001 3 CPR 289

**Hon'ble Judges :** P.Ramakrishnam Raju , Mamata Lakshmanna J.

**Final Decision :** Complaint dismissed

## Judgement

1. WE heard the learned Counsel on both sides. The complainant is a producer and exporter of castor oil. The complainant shipped 450 metric tonnes of castor oil from Bombay Port to be delivered at Rotterdam Port by steamer M.V. Stolt Sydness on 4.2.1991. The consignee was "SELF C/o UNION MERCHANTS OVERSEAS, LONDON". The invoice for that consignment was raised on 1.2.1991 and the complainant insured the said consignment of 450 metric tonnes of castor oil with the opposite party i.e., The New India Assurance Company Limited Insurance Company'' for short) under Marine Policy (Cargo) No. 2161040300111 issued in lieu of Cover Note No. 243151 dated 1.2.1991. The subject-matter insured was described as "on consignment said to contain 450 MT of Castor Oil of first class grade despatched from Bombay Port to Rotterdam by ship" and the amount insured was shown as Rs. 74,92,500/-, though the actual quantity shown in invoice dated 1.2.1991 was "440 M. Tonnes of Indian Castor Oil Commercial Grade I in Bulk at price of US $ 820/ - per M. Tonne, CIF, Rotterdam". It is the admitted case of the complainant that the actual quantity exported was 437.260 M.T. as per bill of loading issued by M/s. J.M. Baxi & Company dated 4.2.1991. The goods reached the destination Port at Rotterdam on 14.3.1991. The complainant stated in the complaint as follows : "On reaching the destination the above shipped goods were weighed and analysed by the Surveyor M/s. SGC India Limited at Rotterdam on 14.3.1991 and survey report was sent to the Company for information. The said report clearly indicates that valves of the steamer Stolt Sydness''. were not sealed. The free fatty acid contest (FFA) and moisture had increased from 1.20% to 1.24 per cent

respective''y. This clearly indicates that the product was contaminated thus causing loss to the complainant. Due to contamination our representative in Rotterdam had to store the oil and ask for confirmation of sale at lower rates and we had also to incur expenditure on storage and other incidental expenses, originally the price agreed was at the rate of US $ 820 MT but it had to be sold at the rates of US $ 700 MT thus causing loss."

On that basis, the complainant contends that due to contamination of the consignment of the castor oil in transit it incurred a loss equivalent to Rs. 12,07,938.19 ps. The complainant states that through letter dated 17.5.1991 addressed to the opposite party Insurance Company it "furnished the First Information Report relating to contamination of castor oil exported" and later on furnished the necessary details and particulars and claim forms through letter dated 27.11.1991 to the opposite party Insurance Company claiming a total loss at Rs. 12,07,938.19 and that in spite of several reminders its claim was not settled and that after long delay by letter dated 18.6.1993 the opposite party repudiated the claim stating that there was no liability. The repudiation is bad inasmuch as the opposite party admitted the increase in moisture content from 0.18% to 0.22% and increase in F.F.A. (Free Fatty Acid) content from 1.20% to 1.24% and that the loss suffered is due to that increase only as pointed by the complainant''s purchaser and as such the complainant is entitled to recover the loss from the opposite party. Hence the complaint.

2. IN the counter filed by the opposite party it is admitted that it is a fact that Marine Policy (Cargo) was obtained by the complainant from the opposite party in connection with transportation of consignment containing 450 M.Ts. of castor oil from Bombay to Rotterdam by ship. The policy was subject to the conditions incorporated in the policy itself as well as institute cargo Clause (A). It is also not denied that oil was transported to the discharge port. But what is denied is that the oil was found contaminated at the discharge port due to failure to seal the valves. It is further stated that the alleged increase in the moisture content as well as Free Fatty Acid (FFA) contents are within permissible limits and the laboratory tests and opinions clearly rule out any possibility of contamination. The consignment continues to be of the same grade at the point of wading and discharge. If the oil was graded as second grade due to its intrinsic high FFA/ moisture content it cannot be attributed to any increase in the percentage due to contamination during transit. Therefore, the opposite party is not responsible if the oil was sold at a lesser rate than what is agreed upon. In support of the complainant''s case the Managing Director of the complainant filed his affidavit besides marking Exs. A-1 to A-31 which are marked by consent. While the Administrative Officer in the Regional Office of the New India Assurance Company Ltd., Hyderabad has filed his affidavit for the opposite party besides marking Exs. B-I to B-4 by consent. The points that arise for consideration, therefore, are : (1) whether the castor oil consignment loaded in Stolt Sydness ship bound for Rotterdam before leaving Bombay Port was first special grade oil, (2) whether the same was contaminated during transit, and (3) whether the

 

complainant suffered any loss on that account and if so, whether the opposite party is liable for the said loss ?

The facts of this case lie in a very narrow compass. The complainant obtained a Marine Policy (Cargo) bearing No. 216040300111 dated 2.2.1991 from the opposite party after paying a premium of Rs. 43,846/- covering the risk in transportation by ship of 450 M.Ts. of castor oil first special grade being exported to Rotterdam from Bombay valued at Rs. 74,92,500/- as per bill of loading issued by M/s. J.M. Baxi & Company dated 4.2.1991, it is 437.260 M.Ts. which were actually loaded in the ship Stolt Sydness which reached the destination on 14.3.1991. On reaching the destination the goods were weighed and analysed by the Surveyor M/s. SGS India Limited at Rotterdam and the survey report was sent to the complainant which shows that valves of the steamer/ship Stolt Sydness were not sealed and the moisture and FFA content had increased from 0.18% to 0.22% and 1.20% to 1.24% respectively. This shows that the product was contaminated which ultimately resulted in loss to the complainant.

3. EXS. A-l to A-10 are notices requesting the opposite parties to settle the claim. Ex. A-ll shows the claim with full details. Ex. A-12 is the printed marine claim form containing the claim. Ex. A-13 is invoice. It is relevant to note here that this invoice dated 1.2.1991 at the time of loading the consignment is described as 440 M.Ts. of Indian Castor Oil Commercial Grade I. It is not mentioned here that it is first special grade oil. Ex. A-14 is the report of discharge of oil at Rotterdam. Ex. A-15 is the analysis report. It is seen that FFA content is 1.24% while moisture and impurities are 0.22%. The complainant relies upon these documents in support of its case. EXS. A-16 and A-17 are relied upon in juxtaposition by the complainant to show that at the time of ladding and loading the FFC content was 1.20% while moisture and impurities are 0.18%. By this this complainant concludes the increase of FFA by 0.04% and moisture also by 0.04% contributed for contaminating the quality of the oil and, therefore, he could not sell the same at the agreed price but sustained loss. For this he relied upon Ex. A-18 which is a telex issued by his agent at the port of discharge to show that the material may not fetch the agreed price but it may have to be disposed of at a reduced price by 50 to 100 US $ per M.T. Ex. A-21 is a letter dated 4.6.1991 calling upon the agents for Stolt Sydness to reimburse the difference in price offered to the product. The opposite party also called upon the complainant to inform them why the valves of the vessel was not closed under Ex. A-22. Under Ex. A-23 the opposite party asked the complainant to preserve the samples both at the time of despatch and destination for their verification. Ex. A-24 is the Marine Policy (Cargo). Ex. A-25 is the Invoice at the time of loading the product on 4.2.1991. Ex. A-26 is triplicate certificate of origin dated 15.2.1991. Ex. A-27 is the certificate of loading and survey dated 8.2.1991. As seen earlier Ex. A- 28 is the analysis certificate showing the FFA and moisture at the time of loading at Bombay Port. Ex. A-29 is a Memorandum of Enforcement Directorate dated 19.8.1991, Ex. A-30 is the certificate of export and Ex. A-31 telex message which shows that the oil will not fetch the same

 

price as agreed upon. This is the material placed by the complainant. The opposite party filed Certificate of Loading dated 8.2.1991 which corresponds to Exs. A-16 and A-17. Ex. B-2 corresponds to Exs. A-14 and A-15. Ex. B-3 is the letter addressed by SGS India Private Limited to the opposite party in response to their query why tank valves are not sealed. It is stated that it is the normal practice that they do not seal the vessel''s tanks valves unless requested by exporter or by the ship. Ex, B-4 is a letter addressed by the opposite party to the complainant stating that they received a letter from SGS India Private Limited, Bombay dated 19.7.1991 a copy of which is enclosed for their reference wherein they have informed that the increase in moisture and FFA contents of 4% cannot be treated as contamination.

4. IN view of the rival contentions the first question that falls for consideration is whether the complainant has exported the castor oil first special grade. As already seen in Ex. A-13 INvoice it is mentioned by the complainant that it is INdian castor oil commercial grade I. So also in the Bank Certificate of Export Ex. A-30 it is mentioned as INdian castor oil first special grade commercial grade I. Therefore, the oil is described as first commercial grade-I as well as commercial grade-I. IN such a case in view of this doubt it is incumbent upon the complainant to establish the requirements of first special grade or commercial grade I. No evidence is produced by the complainant in this regard. Therefore, we are constrained to hold that the complainant has failed to establish that he has exported first special grade castor oil. The next question is whether the complainant has suffered any loss on account of increase of FFA or moisture of 0.04% as seen above. According to the complainant the increase of FFA and moisture by about 0.04% would certainly indicate that the product was contaminated in transit and this happened as the valves of the vessel tanks were not sealed. However the contention of the opposite party is that there was no difference or any change in the quality of oil from that was loaded at Bombay which reached the despatch Port. We have to see how far this contention is tenable. The opposite party relied upon a letter Ex. B-4 dated 7.11.1991 addressed by it to the complainant wherein they referred to the letter of M/s. SGS India Private Ltd., Bombay dated 19.7.1991 wherein they have informed that increase in moisture and FFA contents of 0.04% cannot be treated as contamination. Letter dated 19.7.1991 is marked as Ex. B-3. This show that the increase of 0.04% is well within the permissible limits in respect of FFA and moisture. In case of contamination the moisture and FFA would have been higher than what is reported. Hence they opined that there is no possibility of contamination. This opinion clinches the issue. There may not be any doubt about the authenticity of this report or about its authority or binding nature as it was issued by the Chief Chemist. As such we have to place reliance on the same and hold that there is no contamination on account of increase of 0.04% which is well within the permissible limits. It is also stated that it is normal practice that they do not seal the vessel tank valves unless specifically requested by the exporter or by the ship. It is further stated that they have attended many vessels

 

carried castor oil to various destinations and none of the tanks/ vessels were sealed by them. As such we have to conclude that there is no deficiency of service on the part of the opposite party on both the counts namely, increase in 0.04% content of FFA or moisture as well as on account of non-sealing the tanks valves of the vessels. More so when the valves are tightly secured and closed, no evidence of tampering is noticed.

5. IT is relevant to mention that under Ex. A-31 the importer of the complainant has sent a telex message stating that the oil is not in accordance with the specifications for first special grade I, i.e., that the oil must contain FFA maximum 1%. Unfortunately this oil can only be considered as commercial grade. This message clearly shows that even at the time of loading the FFA content in the oil has exceeded 1%. Therefore, this message also lends support to our view that the oil when loaded was not of first special grade. IT is also not out of place to mention that this Commission has already observed as early as on 14.12.1999 in the docket that even at the stage when the oil was loaded into the ship it was not first grade oil as per the specifications laid down by the foreign buyer.

6. FOR the foregoing reasons we are of the opinion that there are no grounds to interfere with the repudiation of the claim made by the complainant under Proceedings No. 620106/ Marine Cl/92-93 dated 18.6.1993 inasmuch as we are unable to notice any deficiency of service on the part of the opposite party in these proceedings. The complaint, therefore, fails and is accordingly dismissed. No costs. Complaint dismissed.