(1996) 07 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

SRI RAM OIL UDYOG, SHAMSABAD APPELLANT

Vs

RAJEEV ROADLINES RESPONDENT

Date of Decision : 30-07-1996

Acts Referred:

Citation : 1996 3 CPJ 23 : 1997 1 CPR 75

Hon'ble Judges : V.K.Mehrotra , Banarsi Das J.

Final Decision : Complaint allowed with costs

Judgement

1. IN this complaint by Messrs Sri Ram Oil Udyog Shamsabad through proprietor Sri Badri Prasad Gupta, there are two opposite parties. The

first is Messrs Rajeev Roadlines, Kanpur and the second is the National INsurance Company Ltd. The complaint was presented in the Registry of

the Commission on 30 October, 1992.

2. THE complainant obtained an insurance policy from the National Insurance Company on 7.6.1991. THE same day a consignment of mustard

oil was despatched by the complainant from Kanpur in a oil tanker. THE driver belonged to opposite party No. 1. THE complainant says that an

accident took place due to the negligence of driver of the first opposite party and a huge quantity of mustard oil went a waste. According to the

complainant, its value was Rs. 1,91,360.00.

The First Information Report about the accident was lodged on 8.6.1991 and information about the accident was given to the first opposite party

on the night of 7.6.1991 and to the second opposite party on 9.6.1991 at its Kanpur office. A Surveyor was appointed by the Insurance

Company who inspected the spot and made weighment of the consignment in which it was found that 73 quintals and 6 Kgs. of mustard oil were lost. The complainant also paid fee of the Surveyor being Rs. 4,300/-.

According to the complainant the Insurance Company did not settle the claim and eventually sent a letter dated 1.10.1991 asking the complainant

to furnish certain documents and information which had already been furnished to the Insurance Company by the complainant. Later, by letter

dated 1.11.1991 the complainant was informed that his file had been closed as a case of ''No Claim'' and saying further that no correspondence

will be entertained in the matter. The complaint was filed thereafter.

3. ON receipt of notice of the complaint both the opposite parties placed their version in the form of their written statements. The first opposite

party disclaimed all liability primarily on the ground that one of the representatives of the complainant was also there in the tanker and that there

was no negligence on the part of the driver of the tanker. The Insurance Company has said that the insurance policy was fraudulently obtained from

it after the accident had actually took place. Further, that the claim made by the complainant was not processed on merits for the reason that the

complainant had not supplied to the Insurance Company information and documents mentioned in the letter dated 1 October 1991 and that

intimation about it was duly sent to the complainant. There was, according to the Insurance Company, no deficiency in service on their part.

The time of the accident, as mentioned by the complainant, in the First Information Report made to the police is about 7/8 p.m. of 7.6.1991. The

time at which the insurance policy was obtained, according to the Insurance Company, was around 9.30 p.m. On this ground, says the Insurance

Company in its written statement, it was not liable to consider the claim of the complainant on its merits.

4. MR. Prabhakar Jauhari, appearing for the complainant, has brought to our notice a decision of the Supreme Court in New India Assurance Co.

Ltd. v. Ram Dayal and Others, (1990) All. Civil Journal 602, in which the Supreme Court has laid down authoritatively that an insurance policy

obtained on the date of the accident becomes operative from the commencement of the date of insurance, that is, from the previous midnight and

that the accident which takes place on the date of the policy makes the insurer liable under the policy. In this decision the Supreme Court has

approved an earlier decision of the Allahabad High Court in Jaddoo Singh v.

Malthi Devi, AIR 1983 All. 87.

A photostat copy of the cover note issued by the Insurance Company, filed as an Annexure with the affidavit of the complainant in support of the

complaint, shows that time at which the insurance policy was taken or the cover note issued is not mentioned in it. In the circumstances of the

present case we will assume, as laid down by the Supreme Court, that the liability of the Insurance Company commenced from the midnight,

between June 6 and June 7,1991. The failure of the Insurance Company to examine the claim of the complainant on merits on its mistaken view of

law, would amount to deficiency in service on its part. We may add, that the Insurance Company did not choose to inform the complainant at any

time before filing the written statement, that the complainant''s claim was being repudiated on this ground.

The question about the relief may no w be considered. Since the Insurance Company has not considered the claim of the complainant on its merits,

which, according to us, is a deficiency in service on its part, we direct it to the Inurance Company to remove this deficiency as contemplated by

Section 14 (1) of the Consumer Protection Act, 1986 by considering the claim of the complainant on its merits within three months from today and

pay to the complainant the amount due to it within the same period.

5. WE also hold that the complainant is entitled to compensation for harassment undergone by it by the failure of Insurance Company to consider

the claim on its merits. For this harassment we direct the Insurance Company to pay to the complainant a sum of Rs. 5,000/- by way of

compensation within the same period. In case the Insurance Company fails to consider the claim and make the payments due to the complainant

within this period and also fails to pay the amount of compensation as directed by us, it will be liable to pay to the complainant interest @ 18%

from the due date till the date of actual payment.

6. THE complainant will also be entitled to costs of these proceedings which we assess at Rs. 1,000/-.

The complaint succeeds as aforesaid.

Let copies of this order be made available to the learned Counsel for the parties within two weeks as per rules. Complaint allowed with costs.