(2015) 05 NCDRC CK 0074

In the National Consumer Disputes Redressal Commission

Sterling Generator Pvt Ltd — APPELLANT

Vs

TATA AIG GENERAL INSURANCE CO LTD — RESPONDENT

Date of Decision : 01-05-2015

Acts Referred:

Citation : (2015) 05 NCDRC CK 0074

Hon'ble Judges : V.K.JAIN , B.C.Gupta J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant company imported two sets of diesel engines with radiators and guards from M/s Perkins Engine Company Limited, Great Britain. The shipment left Stafford in United Kingdom on 14.02.2011 and the consignment arrived at Jawaharlal Nehru Port Trust where it was shifted to the warehouse of the JNPT on 16.03.2011. The consignment was kept stored for 314 days, from 16.03.2011 to 23.01.2012 in the aforesaid warehouse. On 23.01.2012, the consignment was transported by M/s Ravi Raj Freight Movers from the warehouse to Silvasaa. The case of the complainant is that before the consignment was taken out of bonded warehouse at JNPT to their place in Silvassa, they had appointed M/s K.L. Assar Surveyors (P) Ltd. for the inspection of the said consignment. Vide their report dated 24.01.2012, the aforesaid surveyor had certified that all the six packages comprising two engines were apparently in good condition. This is also the case of the complainant that after the consignment had reached Silvassa on 24.01.2012, they removed the polythene wrapping on it and observed that the engines had been damaged by severe rusting on their portion of the exhaust pipes in both the engines. The intimation having been given to the Insurance Company, M/s Absolute Insurance Surveyors and Loss Assessors Pvt. Ltd. were appointed by the Insurance Company to carry out the survey and assess the loss. The surveyors, in their report dated 09.02.2013, interalia observed as under: Cause of Damage a. As informed by the consignee/insured: The cause of damage to engine is rusting of various components due to water ingress through exhaust line of the engines, which further managed to seep inside other engine components.

b. Our opinion: * Both the engines were stuffed in container at the time of delivery at Nhava Sheva. Hence, the possibilities of water ingress during transit can be ruled out. * Subsequently, the consignment was de -stuffed and the packages were stored at bonded warehouse for 314 days (almost about a year) during which the consignment had experienced monsoon season. However, the details of storage conditions at bonded warehouse are not available. * At the time of taking out the consignment from the bonded warehouse on 19/01/2012, the pre -despatch inspection was carried out by M/s K.L. Assar Surveyors Pvt. Ltd. on 23/01/2012. As per their inspections report, the consignment was in packed condition and was in apparently sound condition. However, the same do not contain any comments on inner condition of both the engines since these packages were not unpacked.

* During inland transportation of the consignment from Nyava Sheva to Silvassa, the carrying vehicle did not experience any rains during transit. Hence, the seepage of water inside the carrying vehicle during transit can be ruled out.

However, keeping in view the above observations, we are of the opinion that the damages to various components of engines would have been caused due to ingress of waters, which entered inside the engine assembly through exhaust pipes either during rainy season or due to the water near the packages or due to atmospheric moisture during its storage period of about one year after its arrival at the bonded warehouse.

2. THE claim, however, came to be repudiated by the Insurance Company vide its letter dated 15.04.2013, observing interalia as under: This engine was imported from Great Britain and stored at bonded warehouse at JNPT for a period of more than 90 days. Later it was dispatched to Silvassa wherein rusting to the engines were noticed. The policy covers intermediary storage at bonded warehouse, JNPT for 90 days on Fire and Allied Peril + burglary. In this case the engine was stored for a period of 314 days and none of the covered peril had operated. The policy also excludes rusting unless caused by ITC ''B'' peril. No ITC ''B'' peril had operated during the Inland journey.

3. BEING aggrieved from the rejection of the claim by the Insurance Company, complainant is before us by way of this complaint. A careful perusal of the complaint would show that it does not disclose as to during which period the water which caused rusting, had entered the consignments. If the consignments were already not rusted when shipped from Great Britain, the water could have entered the same either during the sea voyage from Great Britain to JNPT from 14.02.2011 to 16.03.2011 or between 16.03.2011 to 23.01.2012 when the consignment was stored at JNPT Warehouse, Mumbai. Had the water entered the consignments during the inland voyage on 23.01.2012 and 24.01.2012, no rusting could have taken place by the time it was noticed in the premises of the complainant. The complaint is silent as to whether the water entered the consignments during the sea voyage or during the period it was stored at JNPT Warehouse at Mumbai.

4. IT is an admitted case that the insurance policy taken by the complainant covered the consignments only for a period of 90th day of its storage at the bonded warehouse at JNPT at Mumbai. The consignment, however, was not covered under the insurance policy w.e.f. 91st day of its storage till the 314th day on which it was despatched from the warehouse to Silvassa. Therefore, if the water which led to the rusting, entered the consignments between 91st day of the storage to 314th day of storage, the complainant is not entitled to be reimbursed by the Insurance Company. On the other hand, if the water entered the consignments either during the sea voyage or during the 1st to 90 days of the storage at JNPT Warehouse, Mumbai, the Insurance Company is liable to reimburse the complainant. This, of course, is subject to the condition that the claim is not covered by any exclusion clause incorporated in the insurance policy. It was therefore, necessary for the complainant to find out and specify as to when the water actually entered the consignments leading to its getting rusted. Unfortunately, there is no averment in this regard in the complaint. The learned counsel for the complainant submits that since the complainant itself is unable to know when the water actually entered the consignments, it was not in a position to state so in the complaint. He also submits that the surveyor appointed by the Insurance Company being an expert, it was his duty to find out when the water actually entered into the consignments. This, according to him, could have been possible by finding out as to whether the water which entered the consignments was sea water, municipal water or rain water. He also submits that failure of the surveyor to do so was deficiency on the part of the Insurance Company and therefore, the complainant would be entitled to reimbursement of the losses suffered by it.

5. WE do not know whether it was possible for the surveyor appointed by the Insurance Company or not to find out, when the water actually entered the consignments. This is so considering that there is a time lag of almost one year between the consignments leaving the United Kingdom and its being inspected by the surveyor at Silvassa. In fact, we cannot say whether the water which caused rusting, was sea water, municipal water or rain water. We are also of the opinion that even if the surveyor was unable to find out the date when the water entered the consignments or he did not try to find it out, that by itself cannot lead to straightway allowing the complaint and reimbursing the complainant for the losses alleged to have been sustained by it. It would be necessary for any Forum, adjudicating on such a matter to find out (i) Whether the consignment was already rusted or not when it was shipped from Great Britain and (ii) in case the consignment was not already rusted when it left Great Britain, during which period whether during sea voyage or during its storage at JNPT Warehouse, Mumbai, the water was likely to have entered the consignments. The adjudication on this vital issue would require recording of voluminous evidence in the form of the reports and depositions (i) of the persons who inspected the consignments in Great Britain before it was loaded on the ship and (ii) of the workers/employees deployed at the ship which carried the consignments from

Great Britain to JNPT Warehouse, (iii) the employees of JNPT Warehouse. Only undertaking the aforesaid extensive exercise, it will be possible to find out where the water was likely to have entered the consignments leading to their rusting, in case it was already not rusted when shipped from Great Britain to India. Since a Consumer Forum follows a summary procedure, it is not possible for this Commission to record extensive evidence which would be required for an appropriate adjudication of the aforesaid issue involved in this case. Considering the overall facts and circumstances of the case including that the complainant itself does not know when the water likely entered the consignments leading to their getting rusted. It is only a Civil Court which would be appropriate Forum to go into the facts and circumstances surrounding this case and then render an appropriate finding with respect to validity of the claim lodged by the complainant company.

6. THE learned counsel for the complainant refers to the decisions of this Commission in Rashmi Handa and Ors. Vs. Otis Elevator Company (India) Ltd. and Ors., 2014 1 CPJ 344 and Aerolux India Pvt. Ltd. Vs. New India Assurance Co. Ltd., 2012 2 CPJ 385. We have considered the aforesaid decisions referred above. Neither of them applies to the situation prevailing before us, where even the complainant does not know when the loss actually occurred to them on account of water having entered the consignments.

7. IN view of the above discussions, the complaint is hereby dismissed with liberty to the complainant to approach the concerned Civil Court for redressal of its grievances. If the complainant decides to approach the concerned Civil Court for the redressal of its grievances, it shall also be entitled to seek benefit of the provisions contained in Section 14 of the Limitation Act, if such a benefit is otherwise admissible to it in law.

