

(1997) 08 NCDRC CK 0078

In the National Consumer Disputes Redressal Commission

SUB FIBRE OPTICS PVT. LTD.

APPELLANT

Vs

United India Insurance Co.

RESPONDENT

Date of Decision : 04-08-1997

Acts Referred:

Citation : 1998 1 CPJ 494 : 1998 1 CPR 391

Hon'ble Judges : P.K.Shamsuddin , K.Balakrishnan Nair , K.M.Latha J.

Final Decision : O.P. disposed of

Judgement

1. THIS complaint is filed under Section 12 of the Consumer Protection Act attributing deficiency in service on the part of the opposite party in settling the insurance claim.

2. THE complainant is a Company engaged in the business of manufacture and sale of Electronic Components and is a 100% Export Oriented Unit situated in Cochin Export Processing Zone. THEy had taken an Open Policy of Insurance from the opposite party on 13.4.1992 for a period of one year covering any loss or damage to electronic raw materials and components imported by the complainant from various countries. As per the terms and conditions of the Open Policy, the complainant was maintaining necessary premium deposit. As per the usual practice the complainant while placing order for importing materials from foreign sellers makes a condition in the letter of credit, that a copy of the consignment advice shall be sent to the opposite party. On receiving such a consignment advice or on getting advice from the complainant regarding arrival of import cargo, the opposite party issues a separate policy of insurance for each consignment. In most of the instances the policy will be issued only after the consignment had reached destination. On 20.8.1992 the complainant imported electronic components valuing Rs. 15,90,047/- from M/s. Sunrise Exports Inc., 4434, East Hubbel Suite 21, Phoenix, Arizona, USA 85008, under House Airway Bill, Master Airway Bill and Sector Airway Bill. THE consignment consisted of five packages having a gross weight of 69.90 Kgs. THE shipper had been clearly instructed (vide the L.C. condition) to intimate the opposite party on handing

over the consignment to the freight forwarder, in order to effect coverage for the voyage from Phoenix to Cochin. After receiving the documents of despatch from the consignor the complainant also sent a despatch made to the opposite party. Accordingly, a policy of insurance was issued on 8.12.1992. THE consignment on reaching Bombay was booked on Indian Airlines to Cochin via Thiruvananthapuram. On reaching Air Cargo Complex, Thiruvananthapuram, the cargo was transhipped to Cochin by road after completion of necessary formalities at Air Cargo Complex, Thiruvananthapuram. Out of the 5 packages shipped, the complainant received only 4 packages at Cochin and Indian Airlines issued a short landing certificate dated 2.4.1993 confirming the loss of 1 piece weighing 7.90 kgs. THE complainant made several attempts to locate the lost package, but in vain and they made a claim on Indian Airlines and as a result Indian Airlines paid rupee equivalent of US \$ 20 per kg. for 7.90 kgs. In view of the insurance policy issued by the opposite party, the complainant by a letter dated 27.4.1993 called upon the opposite party to settle the claim of the goods lost in transit as per the terms and conditions in the policy of insurance and all necessary documents were sent to the opposite party. Clarification required by the opposite party were also given. Complainant claimed a total amount of Rs. 8,85,222/- which represented the actual value of goods lost in transit. Several letters were sent by the complainant to the opposite party requesting the opposite party to settle the claim. On 31.11.1995 the opposite party sent a letter saying that a sum of Rs. 4,054/- was adjusted by them in a different account. On 4.1.1996 the opposite party sent a letter to the complainant stating that there was no due payment of premium as on the date of commencement of the cover in respect of the particular consignment and that as against substantial number of consignments only a portion of the same has been declared for invoices under the open cover. The complainant was also requested to meet the officer concerned of the opposite party. By a letter dated 5.1.1996 complainant clarified the points raised by the opposite party. It was clearly stated in the letter that the complainant was maintaining adequate deposit for the coverage of import consignments and the complainant had taken insurance coverage for all import consignments. It was also stated that there were certain consignments sent by the complainant's collaborators with a 100% buy back arrangement and in such cases the insurance coverage was done at the point of origin. Thereafter there was no response from the opposite party and thereupon the complainant sent a notice through lawyer to which no reply was sent by the opposite party. However, by letter dated 23.8.1996, the opposite party informed the complainant that they were settling the claim as a special case on a non-standard basis at 75% of the assessed loss of Rs. 8,85,220/-. It was further stated that the non-standard settlement was due to the non-declaration of all despatches as required under the Open Policy condition. They have also sent a voucher to the complainant for Rs. 6,60,260/- towards full and final settlement. Complainant received the said amount after signing the voucher being the assessed part payment made by the opposite party. Complainant on the same day itself sent a letter to the opposite party stating that there is no justification in settling the claim on a non-standard

basis and there was no instance of non-declaration as alleged.

The opposite party filed a version stating that there is violation of policy condition by the complainant and after settling the claim on nonstandard basis and having issued signed discharge voucher, it would not be open to the complainant to sue claiming further amount. Ext. R1 is the voucher receipt. It states that the amount was received in full and final settlement discharging the claim. Ext. R2 is a letter sent by the opposite party where it is stated that they are enclosing a voucher for Rs. 6,60,260/- for full and final settlement of the claim and the voucher may be returned duly discharged alongwith a letter of subrogation and special power of attorney. Complainant admittedly sent subrogation letter and power of attorney alongwith his letter Ext. P25 dated 23.8.1996 stating that the request of the opposite party to settle the claim at 75% of the original claim amount is rather shocking and unjustifiable and they may recollect that there has been absolutely no breach of conditions of the contract from the side of the complainant in respect of the claim and the Surveyors deputed from their office were completely convinced of the genuineness of the claim and also of the fact that there has been no selective coverage of consignments and therefore, the reason stated by the opposite party for reducing the compensation due to non-declaration of all despatches is incorrect and requested the opposite party to pay the balance.

3. THE loss occurred on 20.8.1992 and the claim was filed on 27.4.1993 and the discharge voucher was sent on 23.8.1996 and the amount/ cheque was not paid till 23.8.1996. We find there is considerable delay in settling the claim. Learned Counsel for the complainant invited our attention to a decision of the National Commission in Col. Bhim Singh v. Regional Manager, National Insurance Company Ltd. and Another (National Commission & S.C. on Consumer Cases) 1986-96, Page 1670 (NS). Learned Counsel particularly referred to the following observations of the National Commission in Paragraphs 6 to 11 : "6. A number of cases have come to the notice of his Commission where there have been inordinate delays in the finalisation/ payment of the claims of the insured. We have reason to suspect that the payment of insured amounts, which are not in dispute, are often delayed with a view to coerce the insured into giving a receipt in full and final discharge of the claims of the insured. In fact in the case Manjula Ben v. L.I.C. of India, 1991 CPR 589 (Guj.), it is in evidence that until she gave receipt for the full and final settlement the Corporation would not be prepared to make ex-gratia payment.

4. WE are, therefore, inclined to accept the statement of the petitioner that he did not give the discharge, at the time of receiving of cheque for Rs. 2 lacs, willingly and voluntarily and that he had no choice but to give discharge as desired by the Insurance Company. This is particularly so because there had already been 30 months" delay in settling his claim and he had justified apprehension that unless he gave the discharge "in full and final settlement" he would have to wait for the insured amount also indefinitely. It is, however,

necessary to examine the legal scope and significance of such a discharge "in full and final settlement" as this question has been cropping up repeatedly in the cases before this Commission. "Full and final settlement" means termination of liability under a contract and under the contract of insurance policy in this case. In fact, the expression "in full and final settlement" is equivalent to "discharge". Discharge is termination of liability under a contract by executing an instrument of receipt for payment. In other words discharge in respect of a policy of insurance would be discharge of the liability under that policy. This would not discharge the insurer from any other liability and that might have insured outside the terms of the contract of insurance.

5. LIABILITY for discharge or compensation or loss suffered by a consumer due to the negligence of the vendor, supplier, etc. is liability arising not under the contract of insurance but under the Consumer Protection Act. Again the liability for compensation under Section 14(1)(d) of the Consumer Protection Act is in the nature of a liability in torts and not under a contract.

6. THE discharge furnished by the compliment is obviously a discharge for the contractual payment under the policy of the insurance and therefore, this discharge does not extinguish his right to claim compensation for any damage, loss or injury suffered by him due to the negligence of the opposite party as provided in Section 14(1)(d) of the Act." 7. THE complainant has proper explanation for the alleged violation of the policy and the opposite party has chosen to settle the claim at 75% of the policy unilaterally after a long period. However, since the complainant has issued a discharge voucher we will hold that the contractual obligation of the opposite party is satisfied towards full and final settlement of the amount by acknowledging the discharge voucher. However, as pointed out by the National Commission, the liability for damage or compensation for loss suffered does not disappear. Normally we would have allowed compensation at the rate of 12%, but considering the circumstances of this case in the light of the observations made by the National Commission in the above decision, we feel that in this particular case it would be just and reasonable to allow interest at the rate of 18% from 27.4.1993 on Rs. 6,60,260/- till payment. Complainant will also be entitled to get Rs. 2,000/- towards cost of this proceeding. THE O.P. is disposed of as above. O.P. disposed of.