(2009) 08 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD. — APPELLANT

Vs

Bharat Zinc Limited — RESPONDENT

Date of Decision : 05-08-2009

Acts Referred:

Citation : 2009 4 CPJ 90

Hon'ble Judges : R.C.JAIN , ANUPAM DASGUPTA J.

Advocate : A.K.DE , S.K.SHARMA

Judgement

1. MR . Justice R.C. Jain, Presiding Member -United India Insurance Company Limited has filed this appeal against the Order dated 23.9.2002 passed by M.P. State Consumer Disputes Redressal Commission, Bhopal (in short, the State Commission'') in Original Complaint No. 41/97. By the impugned order, the State Commission has partly allowed the complaint filed by M/s. Bharat Zinc Limited (complainant) and has directed the appellant -Insurance Company to pay a sum of Rs. 5,92,562 with interest @ 6% per annum w.e.f. date of filing of complaint, i.e. 31.7.1997, only on the amount of Rs. 4,66,028 along with cost of Rs. 5,000.

2. IN this case M/s. Bharat Zinc Limited (BZL) filed the complaint on the allegations that the Insurance Company had failed to settle their claim amounting to Rs. 7,31,704 on account of loss suffered by them due to shortage of 17.749 metric tons of zinc ash which was imported by them from M/s. El Nasr Steel Pipes and Fittings Company, Cairo, Egypt at the rate of 800 U.S. Dollars FOB Cairo vide invoice No. 6/95 -95 dated 20.10.1994, excluding freight and insurance charges to be borne by BZL. BZL obtained an open marine insurance policy No. 190103/21/06/11/066/94 for covering the transit risk from the place of loading viz., Egypt port to Nhava Sheva Port and from there to Mandideep, M.P., where the works of BZL were located. The Insurance Company wanted to settle the claim of BZL for a sum of Rs. 1,26,534 only in terms of the loss assessed by the second Surveyor who found the shortage of zinc ash only to the extent of 4.330 metric tons. The Insurance Company offered the said amount to BZL but the latter refused to accept the same and filed the complaint which was

resisted on the very same ground that the shortage was not to the extent as claimed by BZL and, therefore, the Insurance Company was justified in offering a sum of Rs. 1,265.34 towards the actual loss suffered by BZL. It would appear that BZL reported the shortage in the zinc ash to the Insurance Company which initially appointed M/s. Bhadkamkar and Company as the Assessors, Surveyors and Valuers, who in turn deputed Mr. Sanjay Shrivastava, in whose presence, after weighment, the consignment was unloaded. The said Mr. Shrivastava, after physical verification gave a detailed report to the effect that the material despatched (by road) from Navi Mumbai (Nhava Sheva) in 99 trucks as 1357.185 metric tons as against the quantity of the material discharged at Mumbai being 1386.739 metric tons whereas the quantity received from Nhava Sheva at Mandideep was 1368.990 metric tons, reflecting shortage of 1386.739 1357.185)=29.554 metric tons. However, the material received at Mandideep was found to be 1368.990 metric tons which was more than the quantity discharged from Mumbai Port by 11.505 metric tons (1368.990 1357.185). It appears that not satisfied with the said report, the Insurance Company appointed another Surveyor, Mr. Amit Rupal who after discussions with the Carrier, Clearing and Forwarding Agents M/s. C.N. Sanghvi and Co. and examining the report of M/s. Bhadkamkar and Co. and on scrutiny of the lorry receipts and packages, did not agree that there was shortage of 17.749 metric tons but came to the conclusion that the shortage in the zinc ash was only of 4.339 metric tons. Accepting the second report, the Insurance Company offered a sum of Rs. 1,26,534 which was declined by BZL, as according to them it did not represent the loss suffered by them. The State Commission, going by the shortage as reflected in the report of the first Surveyor M/s. Bhadkamkar and Company and making deduction of 258 kgs. of zinc ash which was taken out as sample by the custom authorities for the purpose of inspection, held that shortage was to the extent of 17.30 metric tons and accordingly allowed the complaint.

3. WE have heard Mr. A.K. De, learned Counsel for the appellant and Mr. S.K. Sharma, learned Counsel representing the complainant -respondent and have given our thoughtful consideration to their respective submissions. Mr. De, learned Counsel for the Insurance Company has tried to assail the impugned order primarily on the ground that the State Commission has erred in relying and acting upon the report of the first Surveyor in preference to that the second Surveyor Mr. Amit Rupal, who had based his report on verifications made with the Carrier, Clearing and Forwarding Agents and from the lorry receipts and given cogent reasons as to why the assessment of shortage made by previous surveyor was not correct. The report of both the above -named Surveyors have been placed on record and we have perused them. Before we advert to the observations, findings and conclusions recorded in the said reports, the important question that arises is as to whether the Insurance Company was justified in appointing a second Surveyor when the first Surveyor had already submitted its report based on actual verification of the quantities which were received at the Mandideep works of the complainant. The said report is

contemporaneous and, based on the physical verification, recorded the shortage at 17.749 metric tons. The gross weight of the consignment discharged from Egypt was 1386.739 metric tons and the gross weight of the consignment received at Mandideep was 1368.990 metric tons. The Insurance Company has not given any cogent reason why it doubted the correctness of the said report and thought it advisable to appoint another Surveyor, namely, Amit Rupal. It is a settled position that unless it can be challenged on some palpably valid grounds, the Surveyor''s report forms a firm and independent basis for determining the loss occasioned to the insured. The report of the second Surveyor has been rendered after about 20 months of the first survey. The said report does not give out any firm basis for arriving at the net shortage at 4.330 metric tons. Admittedly, in this case the gross weight of the consignment received at Mandideep works of the complainant was 1368.990 metric tons as against the gross weight of 1386.730 metric tons despatched by the consignor and, therefore, the report of the Surveyor M/s. Bhadkamkar and Company which is based on verification appears to be more sound than the second report. In the circumstances, the State Commission was fully justified in relying and acting upon the said report and awarding compensation in consonance with that, of course after making a deduction of 258 kilos of quantity which was stated to have been consumed/detained at the time of inspection by the custom authorities. The interest rate also does not appear to be excessive and in any case has been restricted only to the disputed amount.

4. IN the result, we see no merits in this appeal and appeal is accordingly dismissed. Appeal dismissed.