

(2012) 07 SC CK 0105

In the Supreme Court Of India

Case No : Special Leave to Appeal (Civil) No. 31675 of 2011

United India Insurance Co. Ltd.

APPELLANT

Vs

J.V.S. Food Pvt. Ltd.

RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Citation : (2012) 11 SCALE 312

Hon'ble Judges : Mr. G.S. Singhvi and Mr. Sudhansu Jyoti Mukhopadhaya, JJ.

Bench : Division Bench

Advocate : Mr. A.K. De, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

1. This petition is directed against the order of the National Consumer Disputes Redressal Commission (for short, "the National Commission") whereby the revision filed by the petitioner against the order of the Rajasthan State Consumer Disputes Redressal Commission (for short, "the State Commission") was dismissed and the direction given for payment of Rs. 6,14,883/- to the respondent along with interest at the rate of 9% per annum was upheld.
2. Notice of the special leave petition has been duly served upon respondent but no one has appeared on its behalf.
3. The respondent exported 900 MT of fortified corn soya blend flour from Jaipur to Cambodia in July, 2005. The shipment was delayed at Mumbai because of the rains and the goods eventually reached Cambodia in mid September, 2005. When the same were unloaded in the warehouse in Cambodia, the contents thereof were found infested by worms. The respondent spent Rs.6,14,883/- for making the consignment fit for consumption, but the claim lodged by it was repudiated by the petitioner by relying upon the report prepared by M/s. Eurogal Surveys, Cambodia.
4. The complaint filed by the respondent under Section 12 of the Consumer

Protection Act, 1986 was dismissed by the District Forum with an observation that the petitioner had rightly repudiated the respondent's claim. The State Commission considered the test reports prepared by the independent agencies, which revealed that the consignment was duly fumigated and disinfested before being exported and held that the repudiation of the respondent's claim was legally untenable. The State Commission discarded the surveyor's report by observing that the same was based on conjectures and granted relief to the respondent.

5. The National Commission also referred to the surveyor's report and observed :

"9. It will be seen from the above observations that M/s. Eurogal Surveys have accepted that certification by Delhi Test House did not indicate any bacteria or insect. However, this acceptance has been qualified by a comment that only a small quantity was tested by SDS. By the same logic, the conclusion of pre-dispatch infestation, drawn by the Surveyor Eurogal, becomes questionable due to small size of the sample studied viz. 15 bags out of total 36,000 in the consignment. During the course of the arguments, learned counsel for the Revision Petitioner merely relied on the report of M/s. Eurogal without any explanation for the above.

10. In addition two phytosanitary certificates dated 3.8.2005 and 11.8.2005 issued by Dy. Director Govt. of India, Ministry of Agriculture, which are at pages 23 and 24 of Vol. 1 of record of Revision Petition reads as under :-

"This is to certify that the plants or plant products described above have been inspected according to appropriate procedures and are considered to be free from quarantine pests and practically free from the injurious pests and that they are considered to conform to the current phytosanitary regulations at the importing country."

11. The Revision Petitioner has also objected to the acceptance of the report of Deputy Director Agriculture by the State Commission, on the ground that this report is of 26.5.2009 when the shipment had taken place nearly four years earlier, in July, 2005. This objection has no substance as the report of the Deputy Director Agriculture Jodhpur, is in the nature of an Expert-report on the process involved and not on the quality of this specific consignment. It is significant in the following comment which explains the process of production :-

"Blending process Corn Soya involves high temperature of 160 degree Celsius for 45 seconds stored grain pest *Tribolium Castaneum* and its all developing stages like eggs, larvae and pupae cannot sustain or survive in such high temperature."

12. This shows that the conclusion of M/s. Eurogal that : "if there had been unhatched eggs in the un-inspected part of the cargo there would have been enough time for them to hatch, develop into adult bugs and to begin a new reproductive cycle producing subsequent generations of eggs and worms during the period of transit." Is a mere surmise, not scientifically supported by the

process involved in production of Corn Soya Flour. Nor has the Revision Petitioner produced any specific or direct evidence in support of the above inference drawn by M/s. Eurogal.

13. In view of the above, we agree with the conclusion of the State Commission that the presence of Tribolium Castaneum in the consignment cannot be taken as prior to shipment of the consignment. We, therefore, agree with the conclusion that the Insurance Company was not justified in repudiation of the claim."

6. Shri A.K. De, learned counsel for the petitioner argued that the State Commission committed grave error by entertaining the claim of the respondent ignoring that in terms of Clause 4.4 of the insurance policy the petitioner was not liable to pay damages for the goods which were susceptible to infestation by vermin, that is, Tribolium Castaneum.

7. Learned counsel further argued that the surveyor had assigned cogent reasons for recording a conclusion that there was a possibility of unhatched eggs getting hatched during the transit and the State Commission and the National Commission were not justified in disregarding the Surveyor's report.

8. We have considered the submissions of the learned counsel but have not felt impressed.

9. In our view, the State Commission and the National Commission did not commit any error by refusing to rely upon the Surveyor's report, which constituted the foundation of the decision taken by the petitioner to repudiate the respondent's claim because the same was based on surmises and both the Consumer Foras rightly held that the presence of Tribolium Castaneum in the consignment dispatched by the respondent was not prior to the shipment.

10. With the above observations, the special leave petition is dismissed. Interim order dated 14.11.2011 stands automatically vacated. The respondent shall be free to withdraw the amount deposited by the petitioner with the District Forum.