

(2011) 07 NCDRC CK 0064

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd.

APPELLANT

Vs

Sarin Industrial Corporation

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Citation : 2011 0 NCDRC 371

Hon'ble Judges : V.R.Kingaonkar , Vinay Kumar J.

Advocate : S.M.Tripathi , Dinesh Kumar Malhotra , Bharat Swaroop Sharma

Judgement

1. THE United India Insurance Co. Ltd. has filed this appeal against the order of the Consumer Disputes Redressal Commission of UT of Chandigarh in Original Complaint No. 81/2002. THE appellant/Insurance Co. had repudiated the claim of the complainant. THE impugned order has allowed the complaint and directed the appellant/OP to pay the amount of loss, as assessed by the Surveyor, with 10% interest from the date of the survey report. THE appeal was filed with a delay of 24 days. THE grounds for condoning this delay were considered and this Commission has condoned the delay.

2. THE facts in brief, as seen from the records, are that the complainant, M/s. Sarin Industrial Corporation, is a partnership firm in the business of manufacturing and exporting bicycle parts. THE dispute related to export of a consignment worth \$ 41874 (Rs.19,47,141) to Lagos, Nigeria. This shipment was covered under an open export insurance policy of 7.9.2000. THE appellant/OP had also issued a separate certificate on 26.12.2000 to cover this transaction of export of 2007 packages of bicycle parts to Lagos, Nigeria. THE Bill of Lading is dated 29.12.2000. Payment for the consignment was to be made on D/A basis i.e. 90 days after arrival of the goods at destination. On arrival, the consignment was found to be in partly burnt condition. THE report of the surveyor confirmed this. THE buyer deducted the amount assessed, by the surveyor as the value of burnt goods, from the payment to the seller i.e. the complainant. The above deducted amount was claimed by the complainant, together with compensation for mental agony and harassment, from the insurance. The claim was repudiated

by the appellant/OP on 11.3.2002 on the ground that "the consignment was sent on C&F basis, wherein it became the duty of the buyer to arrange insurance for overseas transit and the seller has to arrange the insurance up to the port of loading."

Per contra, the case of the complainant before the State Commission, was that the policy covered "all risk from warehouse to warehouse, at final destination". The reasons why transit insurance cover was necessary are" a. Although it was a C&F contract, payment to the buyer was to come 90 days after receipt of the goods by the buyer. b. Countries like Nigeria and Ghana passed legislations/decrees to prevent their businessmen from taking insurance in a foreign country. c. The insurance was necessary to protect the buyer's interest.

3. ONE of the grounds raised by the United India Insurance Co./OP in appeal is that the case involves disputed questions of fact, which cannot be decided in summary jurisdiction of consumer fora. But the appellant has not detailed what are these questions of fact. Even in the pleadings before the State Commission and the arguments of the appellant counsel, no mention is made of these questions of fact. Therefore, this argument finds no legs to stand on. The ground agitated strongly on behalf of the appellant/OP is that in a C&F contract, once the goods are loaded on to the ship, the title as well as the risk get transferred to the buyer, leaving the seller/consignor with no insurable interest. Shri S.M. Tripathi, learned counsel for the appellant, referred to the stipulation in Clause A-5 of Incoterms 2000, under which the seller must bear all risks of loss of or damage to the goods until such time they have passed the ship's rail at the port of shipment. The reciprocal provision is contained in Clause B-5 under which buyer must bear all risk of loss or damage to the goods from the time they have passed the ship's rails. We would however like to note that the risk of the seller under Clause A-5 is categorically made "subject to the provisions of B-5". It directly applies to a situation like the present one, where the risk of the seller, in so far as payment for the goods is concerned, extended even beyond the period of actual shipments and continued till 90 days after arrival at destination. The risk of damage/loss during transit, requirement of 5-B notwithstanding, did not pass to the buyer at the port of departure. It was precisely to cover this risk that the transit insurance from warehouse to warehouse was taken by the insured. We are therefore, unable to accept the contention of the learned counsel for the appellant that the risk in terms of Clauses A-5 and B-5 of the Incoterms, must necessarily pass to the buyer, as the contract shows it as C & F Shipment.

4. THE appellant also relied upon the provision in Section 8 of the Marine Insurance Act, 1963. This provision reads as follows:- "8. When interest must attach. "(1) THE assured must be interested in the subject-matter insured at the time of the loss, though he need not be interested when the insurance is effected: Provided that, where the subject-matter is insured "lost or not lost" the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was

aware of the loss, and the insurer was not. (2) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss."

The contention of the appellant is that the State Commission should have held that the property in the goods had already passed to the buyer when it crossed the ship's rail at the port of loading and therefore, should have held that the seller had no insurable interest in the goods. The term "insurable interest" has not been defined in the Marine Insurance Act, 1963. It can be explained as an interest, which the person insuring will be deemed to have, in the subject matter of insurance, if in the event of its loss or destruction, that person will be exposed to the risk of losing some pecuniary benefit or advantage. It is an interest or right, which the law will recognize in the preservation of the thing insured. A person will have an insurable interest in a thing if he will be prejudice by its loss. The foundation of the concept of insurable interest is that a contract of insurance is essentially a contract of indemnity and therefore, unless the insured is exposed to a real loss by perils insured against, the contract will not be one of the indemnity. It will be merely a wagering contract. In this understanding of the concept of insurable interest, it does not stand to reason how the complainant can be deemed to have lost the insurable interest at the port of departure, when payment to him for the goods, is directly dependent upon the delivery of the goods at the destination.

5. LEARNED counsel for the respondent/appellant argued that the appellant, knowing it to be a C&F contract of shipment, had consciously provided a specific certificate on 26.12.2000 to cover it under the Open Export Policy of 7.9.2000. Having so given a coverage of "All risks warehouse to warehouse at final destination", the appellant was estopped from pleading absence of insurable interest. We would like to observe here that the complaint petition before State Commission does state in so many words that "The complainant has purchased the insurance policy for the said invoice for transit of the said consignment from the port of loading Mumbai to the port of discharge LAGOS. This declaration was duly accepted by the branch office of the opposite party at Cheema Chowk., Ldhiana and a Marine Insurance Certificate was issued by the branch office of the opposite party to this effect that the port of discharge of the said consignment is LAGOS (NIGERIA)."

6. THIS is not challenged or denied by the appellant. Without it, the averment in the appeal petition that "the observation of the Honourable State Commission that countries like Nigeria, Ghana did not permit their importers to take insurance cover in a foreign country and they cannot import goods on CIF or C&F basis is without evidence", becomes meaningless. It was for the insurance company to examine such evidence to its satisfaction, before it issued the certificate on 26.12.2000. Our attention was also drawn to an internal Circular of 25.11.1998, issued by the appellant/United India Insurance Co, to its Regional Offices. This circular explains responsibility of the exporter and insurance

coverage appropriate to it, in different contracts. Para 2 and 3 in this circular clearly state" "2. It is essential that operating offices should check up with Exporters the requirement of cover based on the terms of sale contract and grant appropriate coverage attaching the correct clauses with the policy. One common Open Policy should not be issued covering exports under all types of sale contracts. Correct practice is to issue separate policy for CIF Exports and different policy with FoB Extension Clause for FoB and C&F exports."

It is not the case of the appellant that at the time of issue of the Certificate on 26.12.2000, the complainant had not spelt out the requirement to cover the risk till arrival of the consignment at the destination. We therefore, do not find any merit in this ground of appeal.

7. ANOTHER ground of challenge to the impugned order is that award of interest at 10% is exorbitant in view of the present economic environment, RBI directives and orders of Honourable Supreme Court of India. In the facts and circumstances of this case, we do not consider 10% to be high. For the reasons detailed in the body of this order, we do not find any merit in this appeal. It is therefore dismissed and the impugned order of the State Commission is confirmed. On 16.10.2006, while admitting the appeal, this Commission had ordered the appellant to deposit the entire decretal amount in this Commission. The same, if deposited, shall be released to the respondent/complainant, with accrued interest. To the extent of non deposit or under deposit, the appellant shall directly pay the same to the respondent/complainant with 10% interest till the date of actual payment. There are no orders as to costs.