(2010) 07 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

Uttam Steel Limited APPELLANT

Vs

National Insurance Co Ltd RESPONDENT

Date of Decision : 27-07-2010

Acts Referred:

Citation : 2010 4 CPJ 213

Hon'ble Judges : K.S.Gupta , R.K.Batta J.

Advocate : S.M.Tripathi , Kishore Rawat

Judgement

1. THE complainant had taken Marine Cargo Policy in respect of consignment of 5000 metric tons of Prime Hot Rolled Steel Sheets shipped from Novorossiysk, Black Sea Port to Khapoli, Maharashtra for a sum of Rs. 5,10,12,500 (US$ 13,25,000). Policy covered risks as per Institute Cargo Clause-C [ICC (C)] plus Theft, Pilferage and Non-delivery (TPND) apart from War/SRCC risk w.e.f. 30.8.1996 to 29.8.1997. The consignment was shipped on or about 2.11.1996 in vessel M.V. "Grand Coral" under Bill of Lading dated 14.10.1996. The aforesaid consignment arrived at Port of Hazira in State of Gujarat on or about 20.12.1996 and was expected to arrive at Bombay Port on or about 25/27.1.1997. By fax dated 20.12.1996 from M/s. Mulla and Mulla (Solicitors and Advocates), Bombay complainant was informed that the said vessel had been arrested by them on behalf of their clients, the Mortgagee Bank and enquired whether the complainant would take delivery of consignment at Hazira. On 21.12.1996 the complainant informed Damani Shipping Pvt. Ltd., Agents of the Charters that they would take delivery of their consignment at Bombay. M/s. Mullla and Mulla informed the complainant to apply to the Court to bring the vessel to Bombay. After negotiations it was agreed that the complainant shall take delivery of the cargo at Hazira and the said fact was informed to M/s. Mulla and Mulla. In the meantime Mortgagee Bank had moved the Court to bring the vessel to Bombay. On or about 26/27.1.1997 the vessel ran away by breaking the orders of arrest of the Bombay High Court. Thereafter, the whereabouts of the vessel were not known and the complainant approached International Maritime Lawyer, M/s. Narichania and Narichania for tracing the vessel through their overseas associate

lawyers in Karachi, Beijing (China), London, Singapore and Piraeus (Greece). The matter was also taken up with opposite party''s Overseas Claim Settling Agents, M/s. W.K. Webster and Company and the said Company vide letter dated 17.2.1997 addressed to the opposite party had confirmed that the vessel had changed its name to "Irish" and that they believe it unlikely that the vessel would deliver the cargo under the Bill of Lading to the complainant. In the meantime complainant''s Advocate received information that the vessel had not reached Singapore until 18.2.1997. Since there was no news of the whereabouts of the vessel, M.V. Grand Coral, complainant requested opposite party by letter dated 3.3.1997 to settle their claim for non-delivery of the consignment under the policy of insurance. Later on it was confirmed that the vessel was indeed anchored at Singapore and this fact was confirmed by M/s. Khattar Wong and Partners to Advocates M/s. Narichania and Narichania. Complainant instructed Advocates, M/s. Narichania and Narichania to take steps for arrest of the vessel at Singapore and secure delivery of the cargo for dispatch to Bombay. The Overseas Advocates in Singapore took steps including arrest of the vessel, unloaded and got delivery and fixed onward vessel to Bombay. The consignment ultimately arrived at Bombay in vessel M/s. Ravidas arranged through Shipping Corporation of India.

2. ACCORDING to the complainant, they had taken all steps in order to minimise the loss for the eventual non-delivery of the consignment at Hazira/Bombay and in this process considerable expense was incurred in respect of which a claim was preferred for Rs. 99,19,560 with the opposite party vide letter dated 30.4.1997. The details of the claim made by the complainant are as under: Amount (in Rupees) 1. Local Counsel''s expenses paid to M/s. Harichania and Harichania as per their bill attached (being 10% of the value of Cargo + Expenses). 36,22,735.00 2. Legal fee paid at Singapore to M/s. Khattar Wong and Partners US$ 4210 as per bill attached. 1,05,250.00 3. Unloading/Loading/Stevedoring charges. Port Charges etc. paid to M/s. BARWIL AGENCIES PTE LTD US$ 7258 as per Bill/receipts attached. 13,48,875.00 4. Freight Charges for Transhipment from Singapore to Mumbai, by SCI vessel MV RAVIDAS @ US$ 36 PHT for 3425.900 as per SCI''s Bill attached. 44,41,200.00 5. Insurance of Hull and Mech of M.V. "GRAND CORAL" as per directions of High Court of Singapore @ US$ 4000 as per SIMCO INS Broker Bill attached. 1,44,000.00 6. Local Lawyer''s fee (George Rebello) Survey fee, Travelling to Singapore Supervision by Mr. A.K. Mahendru (President) of Loading/Unloading and Transhipment follow up actions, incurred to minimize loss (between 21.1.1997 to 2.4.1997). 2,50,000.00 7. Expenses towards Fax and Inter- national calls incurred. 7,500.00

3. THE opposite party vide letter dated 6.5.1998 repudiated the claim of the complainant on the ground that the expenses incurred were not due to the operation of any peril covered under the policy. According to the complainant, by virtue of non-delivery clause of T.P.N.D. the opposite party is liable to pay the expenses incurred for steps taken to minimise the loss. Besides this, reliance was placed by the complainant on Clauses 12, 16, 18 of the Institute of Cargo

Clauses attached to the Marine Policy Insurance Cover in support of the claim.

4. THE opposite party in their reply raised preliminary objections including that the claim of the complainant, if any, would lie against vessel owner who had breached the contract of carriage by failing to perform the voyage and deliver the cargo at the agreed destination. It was submitted that the vessel owner was necessary party and the complaint was bad for non-joinder of necessary party. The opposite party also submitted that the complaint involves complicated facts and questions of law, which cannot be decided in a summary manner. According to opposite party, there was no deficiency in service on their part and the complaint was not maintainable. The opposite parties have specifically pleaded that the policy covered risk as per Institute Cargo Clause-C [ICC (C)] plus Theft, Pilferage and Non-delivery (TPND) apart from War/SRCC risks. The opposite parties have relied upon Exclusion Clause 4.6 as also Clauses 12 and 16 of the Institute Cargo Clauses (C). It was submitted that the vessel in question had discharged all cargo except that of complainant which was supposed to be delivered at Bombay. The opposite parties had not basically disputed the facts as detailed by the complainant in the complaint. According to opposite parties, in view of the large amount of the claim and its somewhat complicated nature as also impact of financial default on the part of the vessel owner on the termination of voyage which warranted close examination, the matter was referred to W.K. Webster and Company through their overseas counterpart. W.K. Webster and Company was advised to obtain legal opinion from I.N.C.E. and Co., London Solicitors. According to the legal opinion tendered by I.N.C.E. and Company, London Solicitors, expenses claimed by the complainant were not recoverable under the policy issued by the opposite party Company on the ground that in order to recover under either Clause 12 and/or 16 the assured must be able to identify a peril covered by the policy which operated and, non-delivery is not itself a separate peril, under T.P.N.D. Clause as the claim by the assured that non-delivery was by reason of theft will fail if the owners did not intend dishonestly permanently to deprive the assured of the cargo and that even if the assured is able to establish an Insured Peril either under ICC (C) or the TPND Clause, underwriters will be entitled to rely on the exception for loss or damage arising from the financial default of the Owners, Managers, Charterers or Operators under Clause 4.6 of the Institute Cargo Clause (C). On receipt of the legal opinion, the opposite parties sent letter dated 14.8.1997 to complainant in order to know under which of the clauses the complainant had preferred the claim. The complainant informed vide letter dated 29.8.1997 that the reimbursement of the expenses incurred was claimed under Clauses 9, 12, 16, 18 of the policy. According to opposite parties in order to sustain claim under Clauses 9, 12, 16, 18 under Clause ICC (C) the complainant has to prove and establish that the insured transit has been terminated short of destination as a result of operation of an insured peril. In the instant case, the transit was not terminated on account of any of the insured perils referred to in Clause-I of ICC (C) but on the contrary it was on account of the arrest of the vessel on the

orders of the Court due to financial default of the ship owner. According to opposite party, at the time of termination of the voyage none of the insured perils had operated. The opposite parties have also placed reliance on Section 78 (3 and 4) of the Marine Insurance Act, 1963 which deals with Sue and Labour Clauses. It has been pointed out that the risk under TPND has been interpreted in the case of Middows Ltd. v. Robertson W.W. Howard Bros. and Co. Ltd., reported in 67 Lloyd''s LR 484, where their Lordships held that non-delivery was not in itself an additional risk, rather the assured needs to prove non-delivery in the circumstances consistent with theft or pilferage. Therefore, it has to be proved that non-delivery arose due to theft or pilferage. It is also pointed out that the owners of the ship had no dishonest intention to permanently deprive the assured of the cargo in question. Heavy reliance has been placed by the opposite party on the Exclusion Clause-4.6 of the Policy. In nutshell, the opposite parties have stated that non-delivery cannot be read in isolation and is not itself an additional risk, but it is a risk coupled with theft and pilferage. It is also specifically stated that loss arising from non -delivery of the consignment was not a risk covered by the insurance policy as the transit had terminated due to financial default of the owners for which the mortgagee bank had arrested the ship on the orders of the Bombay High Court.

5. IN rejoinder it is stated that the complainant had taken all steps in terms of the policy and had also moved the Court at Singapore to arrest the vessel and obtain order of discharge and reshipment of the consignment to the insured destination. In respect of preliminary objection, it was stated that the expenses incurred could be claimed from the owner of the vessel, but the liability of the opposite party under the policy of insurance is independent of the liability of the ship owners. It is further submitted that the ship owner did not have any assets in India and the ship owner had no assets in foreign country except the vessel which was mortgaged with the bank and as such complainants were advised not to file proceeding in the foreign country against the ship owner as no recovery was possible and it would involve heavy expenditure with no certainty of recovery. It has been emphasised by the complainant that TPND Clause covered theft or pilferage or non-delivery of the consignment and all three causes of loss are independent of each other being separated by word "OR". It is further submitted that but for the efforts made by the complainant, the consignment would have been lost causing non-delivery which peril is separately and independently covered under the Institute TPND Clause attached to the policy. It is also pointed out that the financial default did not prevent the vessel from discharging the Insured''s Consignment at Hazira or cause the vessel to break the arrest order. In respect of exclusion Clause 4 of the ICC (C), it is stated that it provides for circumstances under which insurance does not cover the subject matter of insurance, but the insurance covers non-delivery arising from any and all causes except causes enumerated under exclusion Clause No. 4 in ICC (C). It is further pointed out that the vessel sailed away without discharging insured''s consignment which constitutes non-delivery and the non-delivery was not caused

due to insolvency or financial default of the owner as the vessel had discharged all its cargo on board at port Hazira excepting suit consignment which also the complainant had agreed to take delivery at Hazira. It is further submitted that the act of the owner failing to discharge the cargo at Hazira and sailing away by breaking the order of arrest to undisclosed destination clearly establishes dishonest intention of permanently depriving the complainant of the cargo. It is further submitted that the vessel had completed its voyage and therefore exclusion Clause No. 4.6 would not apply as it applies only in cases where the vessel fails to complete its voyage so as to reach port of discharge.

6. REGARDING the policy, it has been stated that all risks as per Clauses 3, 5, 10, 11, 17, 24 including non-delivery as separate peril/risk are covered and the contention of the opposite party that it is not "All Risk Policy" is not correct. According to complainant the opposite parties failed to consider various judgments and particularly judgment in the case of Integrated Container Service Inc. v. British Traders Insurance Co. Ltd. reported in (1984) 1 Lloyd''s LR 154.

7. AFFIDAVIT evidence was filed on behalf of the complainant as also on behalf of opposite party. Advocates for the parties have filed written arguments and besides that they were also orally heard.

8. WE have gone through the record and considered the submissions made by learned Counsel appearing on both sides.

9. INSOFAR as the preliminary objections raised on behalf of opposite parties are concerned, we do not find any merit in the said objections. The complaint does not involve any complicated question of fact or law as alleged by the opposite parties. On the question of non-joinder and mis-joinder, it is suffice to point out that the liability of the Insurance Company is independent of the liability of the ship owners. The liability of the Insurance Company is governed by the terms of the insurance policy and ICC (C) and TPND.

10. LEARNED Counsel for the complainant had submitted before us that the policy in question is, in fact, governed by ICC (A), but this submission of learned Counsel for complainant is without any merit whatsoever. The insurance policy Ex. B on record clearly stipulates that all risks are covered as per Clauses 3, 5, 10, 11, 17, 24. Clause-3 pertains to ICC (C). ICC (A) is governed by Clause-1 of the policy in respect of which no risk was covered. Besides this, the case of the complainant throughout has been that ICC (C) with TPND coverage had been issued as is clear from Ex.T letter dated 3.4.1997 written by opposite party to the Insurance Company which is at page 63 as well as letter dated 2.4.1997 Ex.S which is at page 60 and letter dated 29.8.1997 of the opposite party to the Insurance Company which is at page 73 to which our attention has been drawn by learned Counsel for opposite parties. In fact, in the rejoinder complainant has itself stated that the policy in question covered all risks as per Clauses 3, 5, 10,11,17, 24 including non-delivery of separate peril risk.

11. THE case of the complainant is that the claim is covered under Clauses 9, 12,

16 of the ICC (C) coupled with TPND and exclusion Clause 4.6 of ICC (C) is not applicable to the case. The relevant clauses around which the controversy centres are reproduced below: "Risk Covered 1. This insurance covers, except as provided in Clauses 4, 5, 6 and 7 below, 1.1 loss of or damage to the subject matter insured reasonably attributable to 1.1.1 fire or explosion 1.1.2 vessel or craft being stranded grounded sunk or capsized 1.1.3 overturning or derailment of land conveyance 1.1.4 collision or contact of vessel craft or conveyance with any external object other than water 1.1.5 discharge of cargo at a port of distress 1.2 loss or damage to the subject matter insured caused by 1.2.1 general average sacrifice 1.2.2 jettison EXCLUSION 4.6 Loss damage or expense arising from insolvency or financial default of the owners managers charters or operators of the vessel.

9 If owning to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein of the transit is otherwise terminated before delivery of the goods as provided for in Clause 8 above, then this insurance shall also terminate unless prompt notice is given to the Underwriters and continuation of cover is requested when the Insurance shall remain in force, subject to an additional premium if required by the Underwriters, either 9.1 until the goods are sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the goods hereby insured at such port or place, whichever shall first occur, 9.2 If the goods are forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named herein or to any other destination, until terminated in accordance with the provisions of Clause-8 above.

12. WHERE, as a result of the operation of a risk covered by this insurance, the insured transit is terminated at a port place other than that to which the subject matter is covered under this insurance, the Underwriter will reimburse the Assured for any extra charges properly and reasonably incurred in unloading string and forwarding the subject matter to the destination to which it is insured hereunder. This Clause 12, which does not apply to general average of salvage charges, shall be subject to the exclusion contained in Clauses 4, 5, 6 and 7 above, and shall not include charges arising from the fault negligence or financial default of the Assured or their servants. MINIMISING LOSSES 16. It is the duty of the Assured and their servants that their agents in respect of loss recoverable hereunder, 16.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and 16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised and the Underwriters will, in addition to any less recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties. INSTITUE THEFT PILFERAGE AND NON-DELIVERY CLAUSES (FOR USE ONLY WITH INSTITUTE CLAUSES) In consideration of an additional premium it is hereby agreed that this insurance covers loss of or damage to the subject matter insured caused by theft or pilferage or by non-delivery of any entire

package, subject always to the exclusions contained in this insurance."

12. According to the complainant TPND is an additional cover which was taken by the complainant on payment of additional premium and this coverage of risk is in addition to risks covered under Clause-I of the policy. It is also pointed out that though in the printed policy Ex.B at page 29 Clause-5 speaks of Institute Theft, Pilferage and Non-Delivery, yet the additional coverage on payment of additional premium relates to insured cover caused by theft or pilferage, or by non-delivery of the consignment. In this respect, it has been submitted by learned Counsel for the complainant that as per rule of construction typing supersedes the printed material and even if there is any ambiguity in construction, it has to be decided in favour of the complainant. It is pointed out that Annexure R-1, which is at page 104 filed by the opposite party, clearly stipulates risks as per ICC (C) including TPND and War/Strike Risks as per clauses attached to the open policy. According to learned Counsel for complainant, the loss on account of non-delivery is an independent peril and is not dependent upon loss caused by theft or pilferage. It has been pointed out that in TPND Clause loss is covered on account of theft or pilferage, or by non-delivery of the consignment and as such the non-delivery is disjunctive and not dependent upon theft or pilferage. It has been pointed out that the claim of the complainant was repudiated by the opposite parties mainly on the advise given by INCE and Company, Solicitors which is Annexure R-2 at page 160 of the record and the said opinion is based upon the case of Middows (supra) which had been set aside by the Court by appeal and the judgment, Court of appeal was upheld by House of Lords, which decision is reported in Lloyd''s List of Report (1941) Vol. 70 No. 5. It has been pointed out that the wording of the TPND Clause in Middows case was different than one, which is before the Commission. In Middows case it was held by Hilbery, J. that non-delivery was not itself an additional risk rather the assured had to prove non-delivery in the circumstances consistent with theft or pilferage and it was for the Underwriter to show that the loss was caused by something for which they were not liable. The risk covered in the case of Middows was "theft, pilferage and non-delivery". It has been pointed out that the interpretation in Midddows case has been accepted by Arnould''s Law of Marine Insurance and Average (16th Ed. 1997). The editors of Hudson (Institute Clauses 2nd Ed. 1995) took a different view. In their opinion, the words "by theft or pilferage, or by non-delivery of an entire package" do not by their context have to be construed ejusdem generis, but the same are required to be considered two separate perils insured, (1) theft or pilferage, and, quite separately, (2) non-delivery of an entire package. This construction is supported by the comma which appears after the words "pilferage", and by the repetition of the words "or by" before "non-delivery". The contention of learned Counsel for complainant, in our view, is well founded and the peril of non-delivery is independent of theft or pilferaqe and it does not depend upon theft or pilferage of the consignment. The clauses referred to by Hutson and Institute Clauses are similar to the clause before us. Thus, the very basis and the opinion of I.N.C.E. and Co., London Solicitors on the basis of

which the claim of the complainant was repudiated is erroneous. The case before us is a clear case of non-delivery of consignment at Hazira where the voyage terminated on account of arrest of the vessel, even though the consignment was to be delivered to the complainant at Bombay. Even though orders had been obtained from the Bombay High Court for bringing the vessel to Bombay, yet the owner of the ship has broken the arrest and fled away. The whereabouts of the ship were not known for quite some time and on account of non-delivery of the consignment, the complainant had taken steps to minimise the loss under Sue and Labour Clause. It was only on account of the efforts made by the complainant that the ship could be located at Singapore. It is pertinent to note that the agents of opposite party by fax dated 17.2.1997 had confirmed that: "We believe it unlikely that she (vessel will delivery her cargo as required under Bill of Lading and we do not believe it likely that she will again call at the port in India".

13. THUS, the investigators referred to the dishonest intention of the ship owner to deprive the insured of the consignment.

14. LEARNED Counsel for the complainant has also pointed out that Hutson Institute Clauses Book has also stated that the loss referred to in Clause-16 includes a threatened loss. The Sue and Labour Clause will apply if peril had operated. According to learned Counsel for opposite party under Clause-12 of the Policy peril of non-delivery had not operated as transit terminated at Hazira and no policy was taken after transit was over. In our view, the case of the complainant would be covered under Clause 12 of the policy since on account of non-delivery of the consignment the peril under TPND had operated. The complainant had taken steps to minimise the loss on account of non-delivery of the consignment and had taken various steps including arrest of the ship at Singapore, delivery of the consignment at Singapure, reshipment of the consignment from Singapore to Bombay and so on.

15. LEARNED Counsel for the complainant places reliance on the case of Ashapura Minechem Ltd. v. United India Insurance Co. Ltd., I (2010) CPJ 294 (NC) in Original Petition No. 433 of 2000, decided on 5.1.2010 by this Commission to which one of us (Hon''ble Mr. Justice K.S. Gupta, Presiding Member) is a party. However, as pointed out by learned Counsel for opposite party, the said case is distinguishable. In Ashapura''s case, the ship has proceeded to China and was contemplating to illegally discharge the cargo in China and M/s. IBM after investigation in that case were of the view that it is not an excluded risk under ICC (C) and hence the consequent expenses/loss at Ningbo would be covered under the policy. Accordingly, it was held that in the light of the finding of IMB with respect to non-applicability of Clause 4.6 of ICC (A) repudiation made on the basis of exclusion Clause 4.4 was bad in law.

16. LEARNED Counsel for opposite party had placed reliance on the judgment in Concord of India Insurance Co. v. Ravi Thokassaria, 1974 Ker. Ser. 649. Learned Counsel for opposite party has pointed out that in this case reliance was placed

on the Middows case which has been overruled by the House of Lords and in the Kerala Series there was difference in the clause in question and the said case is not applicable. In that case, the Kerala High Court had noted that there was not even an allegation much less proof that the non-delivery was due to maritime peril. In our view the contention of learned Counsel for the complainant is well founded.

17. IN view of the above, we are of the opinion that on account of non-delivery of the consignment at Hazira/Bombay the peril had operated and the complainant would be entitled to expenditure made for minimising the loss under Sue and Labour Clause contained in Section 78 of the Indian Marine Act. The said peril of non-delivery is independent and is not dependent upon theft or pilferage as held in Middows case which was subsequently overruled by Court of appeal and the decision of Court of appeal was confirmed by House of Lords. Insofar as the Exclusion Clause 4.6 is concerned, non-delivery was not on account of financial default of the Owners, Managers, Charterers or Operators of the vessel. In spite of the arrest of the ship for financial default at Hazira, the consignment of all other consignees have been delivered by the ship and in case of the complainant even if the delivery was to be given at Bombay, yet it had agreed to receive the delivery at Hazira, but in the meantime the ship broke arrest and sailed out of India to a destination which could only be located after efforts were made by the complainant to minimise the loss on account of non-delivery. In our opinion, in the facts and circumstances of the case, Clause 4.6 of the Policy would not come into play and the claim put up by the complainant cannot be rejected on this ground.

18. COMING to the claim of the complainant, the complainant is entitled to reimbursement of reasonable expenditure incurred for minimising the loss. In respect of claim for Rs. 36,22,735 which is claimed to have been paid to M/s. Harichania and Harichania, reliance has been placed on bill which has been produced by the complainant with affidavit evidence and is at page 213 and 214. There is nothing on record to show as to how the said payments were made and no proof of payment as such has been filed. Fee is said to have been claimed on the basis of 10% of the value of Cargo plus expenses, in our view, the fee claimed is highly exaggerated and in the facts and circumstances we are of the opinion that reasonable fee to which the claimant would be entitled could be rounded to Rs. 3.5 lacs which would be 1% of the total claim which would include the expenses.

19. IN respect of claim for legal fees paid to M/s. Khattar Wong and Partners to the tune of Rs. 1,05,250 (US$ 4210), the complainant have filed letter dated 31.7.1997 which is at page 215 which states that the entire amount payable to Singapore parties has already been remitted after obtaining the Reserve Bank of India permit and Bank debit advice as proof of remittance was also enclosed with the said letter to the Insurance Company. In view of this, the complainant is held entitled to the said claim of Rs. 1,05,250.

20. REGARDING claim of unloading/loading/stevedoring charges/port charges etc. paid to M/s. Barwil Agencies PTE Ltd. to the tune of Rs. 13,48,875 (US$ 7258), the complainant has filed documents which are at page 225 showing the payment of the said charges and as such the complainant is held entitled to the claim for Rs. 13,48,875.

21. REGARDING claim for freight charges for transhipment from Singapore to Mumbai by SCI vessel MV Ravidas @ US$ 36 PHT for 3425.900 HT the bill from Shipping Corporation of India has been annexed which is at page 226 and as such the complainant is held entitled for the said amount of Rs. 44,41,200.

22. REGARDING claim for insurance of Hull and Mech of M.V. "Grand Coral" as per directions of the High Court of Singapore @ US$ 4000 as per SIMCO INS Broker Bill which has been filed at page 233 and as such complainant is entitled to the said amount of Rs. 1,44,000.

23. IN respect of claim for Rs. 2.5 Lakh towards Local Lawyer''s fees (George Rebello), Survey fee, travelling to Singapore Supervision by Mr. A.K. Mahendru (President) of Loading/Unloading and transhipment follow up actions, out of pocket expenses incurred to minimise the loss, the complainant has filed proof relating to payment of fees of Rs. 35,500 which is at page 234. The complainant is held entitled to the said amount of Rs. 35,500 and besides that the complainant is granted a sum of Rs. 64,500 towards other expenses claimed under this head as also and under the head expenses towards fax and bank''s international calls incurred.

24. IN view of the above, we are of the opinion that the complainant would be entitled to a total claim of Rs. 64,89,325 towards the expenses incurred by them to minimise the loss. The complainant shall be entitled to 9% interest on the said amount from the date of repudiation of the claim i.e. 6.5.1998 till payment is made. Besides this, cost of Rs. 50,000 is also awarded in favour of the complainant as litigation expenses of this complaint. The complaint is accordingly allowed in aforesaid terms. Complaint allowed.

