(1992) 12 NCDRC CK 0091

In the National Consumer Disputes Redressal Commission

VIJAY KUMAR KISHAN GOPAL — APPELLANT

Vs

UNITED INDIA INSURANCE CO.LTD — RESPONDENT

Date of Decision : 07-12-1992

Acts Referred:

Citation : 1992 3 CPJ 499 : 1993 0 CPC 337 : 1994 1 CLT 353

Hon'ble Judges : S.S.Sandhawalia , S.Kulwant Singh J.

Final Decision : Complaint dismissed

Judgement

1. THE focal question in this complaint has admittedly come to be - whether on or around the 9th of November, 1991 the truck load of rice despatched by the complainant was covered by the marine insurance policy under cover note No. 5860. It, therefore, suffices to notice the facts relevant to this issue alone.

2. THE complainant had taken out a Marine Insurance Policy under Cover Note 5860 (Annexure C-1) for transit insurance of consignments of paddy/rice upto the amount of Rs. ten lacs. THE instalment premium of Rs. 6,500/- against the said policy was paid by the complainant by his cheque dated the 31st of October, 1991. It is common ground that this cheque was dishonoured by the bank for lack of funds. On being informed of the same, the complainant issued another cheque for Rs. 6,500/- on the 8th of November, 1991 (this date is hotly disputed on behalf of the opposite parties) which was allegedly later encashed by the insurers. On the material date of 9th of November, 1991 the complainant despatched one truck load of Basmati rice valued at Rs. 1,44,000/- and odd vide declaration No. 20 (Aiuiexure C-3). This consignment was however, lost in transit and a First Information with regard thereto was lodged at the police station on the 13th of November, 1991 (Annexure C-4). It is the complainant''s case that he attempted to pay another cheque of Rs. 6,500/- only to the opposite parties Nos. 1 and 2 under the said policy which was however, refused to be received by them. The complainant lodged his claim for the loss of consignment of goods, but getting no response, therefor issued a legal notice to which a reply was given by the opposite parties Nos. 1 and 2 repudiating the claim (vide Annexure C-7) on

the ground that because of the dishonour of the cheque no premium was received by the Company and consequently the policy of insurance stood cancelled as per the express terms thereof. It was the firm case that the subsequent acceptance of another cheque on the 12th of November, 1991 was against a fresh policy of insurance vide cover note 5884. Unable to get redress from the insurers, the present complaint has been preferred, seeking relief to the tune of Rs. 2,50,000/- odd with interest @ 24% per annum from the 9th of November, 1991 till date.

In the reply filed on behalf of the opposite parties Nos. land 2, four preliminary objections were raised which however, were not seriously pressed at the threshold. On merits, the firm plea was that the policy of insurance vide cover note 5860 was obtained on the 24th of September, 1991 and was to be continued from time to time on the condition of payment of premium instalments strictly according to the covered despatches of goods. It was the firm case that the Company received premium upto the declaration No. 9 and thereafter no premium was received. However, for covering the risk of further consignments a cheque dated 31st of October, 1991 of Rs. 6,500/- was given by way of premium. This cheque was presented to the bankers on the 4th of November, 1991 (the previous three days being holidays) and was dishonoured for lack of sufficient funds. The, same was sent back to the complainant with the clear-cut information that since no premium was available for the despatches from the 1st of November, 1991 (i.e. after declaration No. 9) the Company was not responsible for and was not on risk for any further despatches.

3. IT stands vehemently denied that a second cheque of Rs. 6,500/- was either issued on the 8th of November, 1991 or was in any way in continuation of the previous cheque. IT is the case that in fact a fresh insurance was obtained by the complainant vide cover note 5884 receipt No. 526454, dated the 12th of November 1991 by the payment aforesaid. This, according to the opposite party has no link with the earlier cheque issued by the complainant because the earlier policy stood cancelled by virtue of dishonouring of the cheque. Consequently, the fresh policy having come into effect on the 12th of November, 1991, the opposite parties Nos. 1 and 2 were not responsible for any despatches from the 1st of November to the aforesaid date. IT is further clarified that the second cheque was issued on the 12th of November, 1991 for obtaining a fresh policy. All other allegations of the complainant were soundly controverted. Since, no relief whatsoever, has been claimed against opposite parties Nos. 4 & 5, it is unnecessary to refer to their pleadings. Since the material facts relevant to the basic question are not in serious dispute, it is wholly unnecessary to advert in any great depth to the evidence adduced by the opposite parties. It suffices to mention that apart from the documents relied upon, the complainants rested themselves content with the affidavit of Shri Vijay Kumar Sabharwal a partner of the complainant concern and in his cross examination Mr. Sabharwal admitted that 1st to 3rd of November, 1991 were bank holidays and that the cheque issued by him dated the 31st of October, 1991 was dishonoured by his bank. He

also expressly admitted the document R-l, which he had received from the Insurance Company with regard to the dishonour of the cheque. In rebuttal the affidavit of Shri V.K. Malik,, the former Branch Manager of the United India Insurance Company Limited at Kurukshetra and the affidavit of Kashmira Singh alongwith the relevant documents (the authenticity of which was not challenged) was placed on the record.

4. IN his cross examination Shri V.K. Malik reiterated his stand that the first cheque was deposited with the bankers on the 4th of November, 1991 and repudiated any suggestion that this was done later on the 6th of November, 1991. He was equally categoric that the premium for the fresh insurance policy was paid on the 12th of November, 1991 and denied all suggestions that this was in continuation of the old policy. He fully explained that the alterations in C-8 were made before issue when it was found that the original cheque had been dishonoured and consequently a fresh policy has to be necessarily issued. Mr. Rao Ranjit, the learned Counsel for the'' complainant faced with a somewhat uphill task has painstakingly but vainly projected the case of his client. It was first sought to be argued that the complainant had been maintaining sufficient funds in the Bank against the cheque issued on the 31st of October, 1991. However, owing to some earlier or later post-dated cheques issued by the complainant the credit balance in the bank at the material time of presentation of the cheque by the opposite party had inadvertently gone below the amount resulting in its dishonour by the Bank. It was suggested that the complainants were in no way responsible therefor and probably the Bank had faulted in not honouring the cheque. In any case, it was the stand that the complainants immediately made amends therefor by issuing a fresh cheque when the dishonour of the earlier one was brought to their notice. We are afraid that there, is no modicum of merit in the aforesaid submission. It is not in dispute that when the cheque of the complainant dated the 31st of October, 1991 was presented for encashment, at that time the credit balance therein was insufficient for honouring the same. It is somewhat elementary that it was the duty of the complainants to maintain sufficient funds or to have had overdraft facilities or otherwise ensure that the cheque issued by them was honoured by their bankers. That admittedly was not done. Even assuming at the highest that there was some error or lack of accommodation on the part of the bankers, the consequences thereof have necessarily to fall on the complainants and not on the opposite party. It is elementary that in such a transaction the complainant''s bankers are his agents and as their principal the complainants alone are responsible for the acts of their bankers. Any breach in their relationship would be a matter of dispute inter se between the complainants and their bankers and the opposite party cannot in any way be victimised or liable therefor. Once the cheque was dishonoured, as it admittedly was, it would be plain that no premium was paid against the relevant cover note. No. 5860 and the insurance cover therefore, virtually never came into being for the relevant period. The primal submission of the learned Counsel, therefore, must fail. It was then somewhat

vehemently contended that the subsequent cheque purported to have been issued on the 8th of November, 1991 must be deemed to be in continuation of the earlier insurance cover and would relate, back to the transactions earlier from the date of the 31st of October, 1991. Some reliance was sought to be placed on certain corrections made in the document C.S, which were, alleged to be over-written or altered.

5. THE submission aforesaid has only to be noticed and rejected. On the present record it is not in dispute that under the marine insurance policy issued in favour of the complainant the insurance risk covered and the premium paid for was upto the 31st of October, 1991 and thereafter it had to be freshly covered by further payments by way of premium. It is common ground that the transit policy earlier had expired with Declaration No. 9. THEreafter, the complainants were obliged under the terms and conditions of the policy to cover the future risks after the 31st of October, 1991 and accordingly they tendered their cheque of even date. In cross-examination it was conceded that the 1st, 2nd and 3rd of November were. Bank holidays and the opposite party without any delay presented the cheque for payment on the 4th of November itself. It bears repetition that the said cheque, was dishonoured and consequently the. insurance, cover stood lapsed. This was brought to the notice of the complainant in no uncertain terms by Ext. R.1 (the authenticity whereof was expressly admitted in cross-examination) dated the 11th of November, 1991 and the relevant part thereof merits notice, in extenso :- "With reference to the above your cheque No. 494626 dated 31.10.91 for Rs. 6,500/- has been returned back by our bankers as "Refer to Drawer". Above, receipt was issued for extension of our Cover Note No. 5860 dated 24.9.91 for Marine policy for despatches from Kurukshetra to any where in Punjab. Since now no premium is available for above despatches in your account right from 1.11.91 i.e. any despatch after declaration No. 9. Hence Company is not responsible, and is not on risk for any despatches made after declaration No. 9, which may please be noted. As it is printed on our receipt itself that "In the event of dishonour of cheque, insurance cover provided under the document automatically stands cancelled from inception, irrespective of whether separate communication is sent or not."

6. THE contents aforesaid are self-evident and the receipt of this communication stands admitted. What merits particular notice is the date thereof namely the 11th of November, 1991. This would make it manifest that till that date the opposite party had not received any fresh cheque or payment either in substitution or in continuation of the earlier dishonoured document. This date seems to give the lie direct to the somewhat tenuous suggestion that the complainants had delivered a fresh cheque allegedly dated the 8th of November to the Company in order to suggest that the same would cover the subsequent loss of the consignment on the 9th of November, 1991. Much ado was raised on behalf of the. complainant with regard to the corrections made in Ext.C.8 which is a receipt voucher for the second cheque, issued by the complainant. This document far from helping the complainant seems to frontally negative the

complainant''s stand that the second cheque was tendered on the 8th of November, 1991. Clearly enough the date of this document is the 12th of November, 1991, three or four days after the loss of the consignment on the 9th of November, 1991. Obviously, the tendering of this cheque which as yet had to be collected subsequently cannot relate back to a loss prior to the said date. Yet again this document expressly mentions that this payment has been received under a new Cover Note No. 5884 dated the 12th of November, 1991. The corrections made in this document are more than amply explained even in the cross-examination on behalf of the complainant of Shri V.M. Malik, the Branch Manager of the Insurance Company. He was categoric in his forthright answers on oath that the insurer had issued a new cover note and the cheque therefor was received only on the. 12th of November and not earlier at all. He. stoutly controverted any suggestion that such a cheque was received on the 8th. Mr. Malik further clarified that the Company''s cashier had first wrongly made certain entries in the said document but before its issue when it came to his notice that the earlier cheque had been dishonoured, the requisite corrections were made in C.8 and thereafter this corrected document was handed over to the insurer. He stoutly denied any innuendo that these cuttings have been made subsequently in order to deny the complainant''s claim and volunteered that it was only on the 13th of November that the insurers had come to know about the loss of the consignment in transit.

In view of the afore-noticed evidence and the findings arrived at the alternative second submission of the learned Counsel for the complainant must also necessarily fail and is rejected.

7. IT would be manifest from the. above that the answer to the question posed at the very outset has, therefore, to be rendered in the negative. Both as a matter of law and fact, it has to be held that the truck-load of rice despatched by the complainant on the 19th of November, 1991, was not covered by Cover Note No. 5860, earlier issued by the. insurance company. The. opposite, party was, therefore, right and amply justified in repudiating the insurance claim lodged by the complainant. Lastly, it deserves recalling that inevitably herein the question is whether there was any deficiency in the services undertaken to be. rendered by the insurers. Once, it is firmly found that there was an adequate foundational base for the denial of the complainant''s claim, it cannot possibly be said that it was so. Consequently, no relief can be extended to the complainant within the consumer jurisdiction and therefore, this complaint must fail and is hereby dismissed. However, we are disinclined to burden the consumer-complainant with any costs. Complaint dismissed.

