(1997) 10 NCDRC CK 0066

In the National Consumer Disputes Redressal Commission

WELLBRINE CHEMICAL PVT. LTD. APPELLANT

Vs

Oriental Insurance Co. RESPONDENT

Date of Decision : 15-10-1997

Acts Referred:

Citation : 1997 3 CPJ 582

Hon'ble Judges : E.J.Bellie , Pulavar V.S.Kandasamy , Angel Arulraj J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant company M/s. Well brines Chemicals Pvt. Ltd., engaged the Ship M.V. Lokvikas for transporting their cargo of sale from Kandla Port to Kakinada Port. According to the complainant, regarding this they addressed a letter to he opposite party the Oriental Insurance Company on 10.11.1992 for insurance cover for all risks of 20,000 tonnes of cargo. THE complainant was to inform the opposite party on completion of the loading for the issue of final policy. This was followed up by a letter dated 11.11.1992 addressed to the opposite party which refers to the discussions had by the complainant and the opposite party during which the opposite party informed the complainant that they were not prepared to cover all the risks and would restrict the cover risks which were basic in nature. While this was not acceptable to the complainant, in view of the urgency involved, the complainant agreed for a basic coverage @ 0.35 paise per tonne and informed the opposite party that they were arranging to remit the premium due and requested the opposite party to issue a cover note urgently. THEreafter the cargo was placed on board the vessel at Kandla on 12.11.1992 in terms of the bill of lading of the same day issued by the Master of the vessel certifying that the quantity of 19, 990,720 tonnes had been loaded in bulk on board the vessel. On the same day the complainant also paid the insurance premium and the opposite party issued a cover note and insurance policy in favour of the complainant for a sum of Rs. 1,62,00,000/- in respect of the said cargo shipped on board the vessel M.V. Lok vikas. After completion of the loading the ship commenced the voyage at 6 a.m. on 12.11.1992 at Kandla Port. At about 6.38 a.m. while negotiating the turn in the basin, the vessel met

with a collision with another vessel which was anchored thereat. As a result of this collision the hatches Nos. 4 and 5 of the vessel M.V. Lok vikas suffered extensive damage and the cargo of the quantity of 1975 MT out of the total quantity stored in the said hatches were lost totally, owing to the salt dissolving in sea water. According to the complainants, they were informed about it in the morning of 13.11.1992 and they in turn informed it to the opposite party and also that they were liable to reimburse the damages. But the opposite party replied stating that they were not liable to reimburse because the accident had happened in the early hours of 12.11.1992 while the premium was paid during the working hours of the Company and therefore the insurance policy is void ab initio and ineffective. However under instructions from the complainant and the opposite party a survey was carried out on 29.11.1992 by M/s. Dave & Sons. THE stand taken by the opposite party was only with a view to avoid their liability to pay the insurance amount for the accident. During the discussion on 10.11.1992 and 11.11.1992 the premium was arrived at and that amounted to finalisation of insurance arrangements, and what remained was merely the formalisation of the arrangement and the payment of premium, which was done at the earliest possible time as soon as the opposite party''s office opened on 12.11.1992. After the discussion on 10.11.1992 and 11.11.1992 and thereafter until 13.11.1992 the complainants were not aware that the vessel had met with an accident and they came to know about it only on 13.11.1992 and thus they acted in most good faith. Complaining that the refusal to pay the amount by the opposite party amounts to deficiency in service, the complaint has been filed. THE complainants have claimed a sum of Rs. 16,00,492/- as the value of the cargo lost and Rs. 25,000/- as the expenses incurred by them and also Rs. 25,000/- for the alleged mental agony and hardship they suffered due to the attitude of the opposite party, all totalling to Rs. 16.50.492/-.

2. THE opposite party in their written version contended that the complaint is not maintainable because the opposite party had rejected the claim of the complainant on merits after due consideration of the matter. THE alleged letters dated 10.11.1992 and 11.11.1992 were not at all received by the opposite party. THEre was only a telephonic call on 11.11.1992 for insuring the shipment on all risks basis and this oral proposal for all risks was not accepted by the opposite party and they (opposite party) suggested that they could arrange for only restricted coverage as per ICC ''C''. One Mr. Krishnamurthy, the Manager/ Representative of the complainant who participated in the negotiations finally offered to avail the basic insurance cover policy as per ICC''C'' conditions of this opposite party which was conveyed over phone at 10.30 a.m. on 12.11.1992. THE said Mr. Krishnamurthy visited the opposite party''s office at 12 noon and representing that the vessel was still under loading at Kandla Port and hence the complainants were not aware of the bill of lading number and assuring that the same will be furnished later, requested the opposite party to issue a Cover Note. At 3 p.m. on the same day an employee of the complainant''s company handed over a cheque for Rs. 1,22,985/- towards the premium charges to the opposite

party. THEreupon the opposite party issued a cover note bearing No. 29107. After acquiring knowledge of the loss occurred and knowing other particulars, making false representations to the opposite party, the complainant''s employee had got the cover note. On the ground of suppression of material facts by the complainant the contract of insurance is void ab initio. It is further contended that the dispute in question cannot be fairly adjudicated in a summary procedure under the Consumer Protection Act since a number of witnesses have to be summoned and examined to test the correctness of the contentions of the respective parties. THE opposite party would contend that there was absolutely no deficiency in service on their part as alleged by the complainant. This opposite party promptly refunded the premium amount by their cheque. For these reasons the complaint is liable to be dismissed. The point that arises for consideration is whether the opposite parties were deficient in service as alleged and if so what reliefs can be granted to the complainants.

It is not in dispute that an accident to the vessel M.V. Lok vikas had happened at 6.38 a.m. on 12.11.1992 and damage occurred to the cargo in it. The main contention of the opposite party Insurance Company is that while the accident happened at 6.38 a.m. on 12.11.1992, the contract of insurance was arrived only at 3 p.m. on that day and therefore they are not bound to pay the damages occurred due to the said accident. The complainant''s case is that even on 10.11.1992 they had sent a letter requesting the opposite party to issue a cover note and again on 11.11.1992 they sent another letter referring to the discussion had with regard to insurance of the cargo in question and stating that the insurance had been finalised, and on 12.11.1992 it was only formalized, and as such the contract of insurance had been already arrived at the time of the accident and therefore the opposite parties are liable to pay the, insurance amount. In this connection, the complainants have filed Exs. A 1 and A 2 dated 10.11.1992 and 11.11.1992 respectively, as copies of the letters sent to the opposite parties, but it is the unequivocal case of the opposite party that they never received any such letters. The complainants have not let in any evidence such as acknowledgements in proof of delivery of such letters to the opposite parties. Therefore the case of the complainants that there were discussion on 10.11.1992 and 11.11.1992 regarding insurance of the cargo stands unproved. According to the opposite parties there was only a telephonic enquiry on 11.11.1992 for insuring the shipment on all risks basis but this oral proposal for all risks was not accepted by the opposite party and they suggested that they could arrange for only restricted cover as per ICC''C'', and one Mr. Krishnamurthy, the Manager/Representative of the complainant who participated in the negotiations finally offered to avail the basic insurance cover policy as per ICC ''C'' conditions of the opposite party and it was conveyed to them over phone at 10.30 a.m. on 12.11.1992 and this Krishnamurthy visited the office of the opposite party at 12 noon on 12.11.1992 and after stating his inability to furnish the bill of lading number, requested the opposite party to issue cover note. On the representation of the said Krishnamurthy and on the details furnished by him the premium details were worked out and communicated to him. Subsequent to this at 3 p.m. an employee of the complainants'' company handed over a cheque for premium of Rs. 1,22,985/- and thereupon the opposite party issued a Cover Note. Thus according to the opposite parties only at 10.30 a.m. on 12.11.1992 the complainant''s Manager Krishnamurthy through phone offered to avail basic insurance cover policy as per ICC ''C'' conditions of the opposite party and then he visited the office of the opposite party at 12 noon and it was at 3 p.m. a cheque for Rs. 1,22,985/- towards the insurance premium was handed over to the opposite parties and thereupon a cover note was issued.

3. NOW, the transaction in question comes under the Marine Insurance Act, 1963. Section 23 of this Act lays down as to when a contract of insurance is deemed to be concluded. This Section reads thus: "23. When Contract is Deemed to be Concluded: A contract of Marine Insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy be then issued or not; and for the purpose of showing when the proposal was accepted, reference may be made to the ships covering note, or other customary memorandum of the Contract, although it be unstamped". We have seen that the complainant companies have failed to prove their case that there was discussion regarding the proposed insurance contract on 10.11.1992 and 11.11.1992 and in that connection Exs. Al and A2 letters were sent to the opposite party. Thus the complainant have not even established that there was a proposal by them on 10.11.1992 or 11.11.1992. The opposite parties would however say that on 11.11.1992 at 10.30 a.m. there was a telephonic call from the Krishnamurthy, the Manager/Representative of the complainant proposing insurance on all risks basis, but this was not acceptable to the opposite parties who suggested that they would agree only for restricted cover as per IGC ''C.'', and then the said Krishnamurthy talked over phone at 10.30 a.m. on 12.11.1992 offering to avail basic insurance cover policy as suggested by the opposite party, and then at 12 noon he visited the office of the opposite party, and at 3 p.m. the insurance premium was paid and then a cover note was issued. From this one can conclude that if at all there was a proposal it was at 10.30 a.m. on 12.11.1992 which was much later than the time of the accident i.e., 6.38 a.m. on that day. But as per Section 23 above seen a contract of Marine Insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer. There is nothing to show that even the said proposal made by said Krishnamurthy at 10.30 a.m. on 12.11.1992 was immediately accepted by the opposite parties. It was only at 3 p.m., a cheque for premium was given to the opposite parties and then a cover note was issued. Therefore it would seem apparent that the proposal of the complainant was accepted only at 3 p.m. on 12.11.1992. However it may be, even if it is to be held that the proposal should have been accepted by the opposite party at 10.30 a.m. on 12.11.1992 while the proposal was made by Krishamurthy, still it had happened only after the accident happened at 6.38 a.m. on that day. Thus there was no concluded contract of insurance at the time of the accident and therefore the opposite parties cannot be called upon to

reimburse the loss sustained by the complainant. Then the opposite parties have sent a letter Ex. A5 dated 17.11.1992 to the complainants which reads as follows:- "With reference to your above shipment proposed to us for transit insurance, we learn that the vessel met with a casualty on 12.11.1992 at early morning itself, at about 7.30 Hrs. while sailing out of Kandla port. This shipment was proposed for insurance and premium was paid in the afternoon of 12.11.1992, after the commencement of voyage and a maritime peril has already operated. As the cargo suffered loss before conclusion of insurance arrangements and consideration for the risk was paid after occurrence of a casualty, in breach of Insurance Rules & Regulations, we regret that the insurance is Void Abinitio and ineffective. We request you to please send policy back to us for cancellation from inception and for refund of premium. We regret not being able to assist you." In this letter the opposite party have sought to avoid the contract by giving clear reasons there for. It cannot be said that the opposite parties were avoiding the contract or repudiating their liability arbitrarily or for extraneous or irrelevant reasons. Therefore, in any event, it cannot be said that the opposite parties in refusing to pay the insurance amount claimed by the complainant were deficient in service. For this reason the complaint cannot be maintained in the Consumer Commission, and if there is any remedy that can be sought for in a Civil Court.

4. FOR the above reasons, the complaint cannot be maintained and no award can be passed. In the result, the complaint is dismissed. However, there will be no order as to costs. Complaint dismissed.

