(2012) 10 NCDRC CK 0029

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

M/S. Jindal Photo Films Ltd		APPELLANT
	Vs	
M/S. Navrang Roadways		RESPONDENT

Date of Decision: Oct. 3, 2012

Citation: 2012 0 NCDRC 622

Hon'ble Judges: J.M.Malik , Vinay Kumar J.

Advocate: Ajay Jain , P.K.Seth

Judgement

1. THE Complainant, M/s. Jindal Photo Films Ltd., has filed this complaint on 16.08.2000, against the Carrier, M/s. Navrang Roadways, OP1, who did not appear and was proceeded against ex-parte, vide order dated 21.10.2009 and against National Insurance Company Ltd., OP2. The factual matrix of this case is as follows. The complainant transacts the business of bulk supply of photography colour paper and related material, etc., under the brand name of ''Fuji ''. The Complainant has got various Branches and customers. On 22.09.1997, the Complainant, through its Ghaziabad Branch, had entrusted the consignment of 250 boxes of colour paper containing 500 roles to the Carrier, OP1, for its carriage from Ghaziabad to Varanasi, where the goods were to be delivered to its customer, M/s. Navjyothi Agency, Varanasi. OP1 issued Consignment Note in this context. The said Consignment was fully insured with the National Insurance Company Ltd., OP2.

2. THE Consignment did not reach the destination. On 03.10.1997, the Complainant Company enquired from OP1 and lodged a report regarding theft with the Police,

Ghaziabad. In the meantime, it transpired that the above said consignment was seized by the Police at Bapurwa, Kanpur and the driver of OP1 was also arrested. It also came to light that the driver of OP1 had illegally and fraudulently took the goods to some other place, instead of its original destination. OP1 informed the complainant that they had received the goods in question on ''Supardari '', from the judicial court, vide order dated 31.03.1998, at Kanpur. The Consignment was got released on 02.09.1998 and the same was re-booked to the Complainant ''s Company Branch at Ghaziabad.

In September, 1998, the Consignment of goods arrived at the Office of the Complainant. It transpired that the entire aforesaid Consignment of photographic colour paper stood spoiled due to rolls of photographic colour paper, being exposed to high temperature and humidity for months '' together. It is averred that the photographic material, if not to be used for considerable time, is to be stored in the temperature below IOC (International Oceanographic Committee). The said consignment remained in Police custody after the seizure and it was stored in a small room at Kanpur, even during summer and rainy season, where temperature and humidity were much more than required for storing the photographic paper. It is further averred that for storing the photographic paper the time limit is 18 months '' from the date when the Jumbo Roll are produced, provided it is kept under proper environmental conditions. The photographic sensitive emulsion slowly deteriorated on aging due to environmental conditions as the emulsion layer contains gelatin which is hygroscopic. Under the circumstances, the complainant had suffered loss to the tune of Rs.14,63,182/- , and the fault, if any, lies at the door of OP1 and since the goods were duly insured, and as such, OP2 is also liable to reimburse the losses/damages to the Complainant Company, in terms of the insurance policy. OP2 did not reimburse the losses despite 9-10 letters written by the Complainant, to it. OP1 was asked to settle the claim at Rs.14,63,183/- but no heed was paid.

The Complainant has claimed a sum of Rs.24,81,505.76, inclusive of interest @ 18% p.a. and has further prayed that interest @ 18% be awarded from the date of institution of this case, till its realization, against the OPs, jointly and severally.

3. OP 2 has, however, contested this case. It has listed the following defences. The above said loss/damage was caused by delay, as per Exclusion Clause No. 4.5 of the Institute Cargo Causes (A), which runs as follows, the Insurance Company is not liable for these damages:-

"In no case, shall this insurance, cover loss, damage or expense proximately caused by delay, even though the delay be caused by a risk insured against (except expenses payable under clause 2 above) ".

The case of the complainant is barred by law of limitation. No claim is maintainable against OP2, as there is no deficiency of service on the part of OP2. All other allegations have been denied.

We have heard the learned counsel for parties. The learned counsel for the complainant made the following submissions. OP2, the Insurance Company, is in the business of insurance and is liable to reimburse the losses suffered by the complainant Company, on the basis of the insured policy. He submitted that the case of the complainant stands proved to the hilt. In this context, he invited our attention towards CW-1/O, wherein it was mentioned that :-

"5. Our Technical Director, Sh. V. Chinnappan posted at Dadra has furnished us the technical information on Photographic Colour Paper reading as under:- "Photographic sensitive Emulsion slowly deteriorate on aging due to environment condition as the emulsion layer contains gelatin which is hygroscopic. Hence decay is faster. The deterioration is faster if it is not stored in proper condition also.The photographic material is to be stored below 10* C, if it is not used for a longer period. If the storage condition is not properly followed, sensitometric values of the photographic material like Speed, Contrast and D.max will be reduced and the fog level will increase and the material is to be rejected. The normal life of Photographic Color Paper is 18 months, provided it is kept under proper environmental conditions. This period of 18 months is to be reckoned from the date when the jumbo rolls are produced and acquire photographic properties ".

6. In this connection, we are enclosing extracts as ANNEXURE-A from "The Manual of Photography " (English Edition), published by Focal Press, London and Boston. The caption

"Packing and storage of films and papers " is given on page No.154. We have marked the relevant portion with green highlighter. From the portion so marked it would be observed that photographic material should be stored in sealed packets in a refrigerator at a temperature below 10* C.The shelf life of colour materials can be prolonged by storage in a freezer at a temperature down to minus 18*C. Like other photographic materials, Photographic Colour Paper is also emulsion coated and, therefore, behave in exactly the same way as negative materials using more or less similar light sensitive materials, i.e., suspension of silver halides in gelatin. 7. The normal shelf life of photographic colour paper is about 18 months, but emulsion can become useless in a few weeks time if the goods are stored at above 40*C. We are also enclosing the relevant extracts as ANNEXURE-B, from the Focal Encyclopedia of Photography (Desk Edition) and the caption ''Sensitized material '' is given on page No.540. We have marked the relevant portion with green highlighter. From the portion so marked, it will be clear that problem arises through the inherent instability of the emulsion under the hot and humid conditions which produce faults/ defects normally associated with the out-of-date films. 8. In the instant case the goods were exposed to high temperature and humidity not only for few weeks but for months together during the period when these were lost and in police custody and hence the photographic properties of the material are spoiled. It would be appreciated that the goods were stored under Police custody, in a very small room at Kanpur even during summer and rainy season, where temperature and humidity were much more than required for storing the Photographic Colour Paper ".

4. IT was argued that the above said evidence remains unrebutted on the record. The films were damaged and both the opposite parties are equally responsible for the same.

We find it extremely difficult to countenance the above stated contention. This is clear that insurance company is not liable for the above loss. The complainant itself is responsible for the above said damage/loss. The facts emanating from the complaint itself depicts negligence on the part of the complainant itself. Certain dates are very important to know the true picture of this case. Few facts in the complaint are not very clear. It is not mentioned when the consignment was sent from Ghaziabad to Varanasi. However, it is stated that the OP1 issued the Consignment Note, dated 22.09.1997, in favour of the complainant company. The date when the theft was actually committed finds no place in the complaint. However, the FIR was lodged on 03.10.1997. The record shows that recovery of the goods were effected on 13.10.1997, but the complaint is conspicuously silent about that. This is pertinent to note that the recovery of goods was affected on 13.10.1997, yet no effort was made either by the complainant or OP1 to get the goods back immediately on ''Superdari ''. The complainant was well aware that the life of the goods was very short. The complainant is an expert in Photographic properties. His knowledge cannot be equated with the knowledge of Carrier or anybody else. The attitude of the complainant adds a shocking dimension to the situation. It did not try to take the goods on ''Superdari '', for the reasons best known to it. It appears that the complainant thought that why should he care when he could get the insurance amount from the insurance company. The complaint itself goes to reveal that the Consignment was got released by OP1 from the police on 02.09.1998, i.e. after the delay of 11 months. This is also pertinent to note that the complainant did not smartly mention the date of recovery of the goods. The complainant did not dot the I ''s and cross the T ''s to understand his position clearly. He has placed on record the recovery memo which shows that the goods were recovered on 13.10.1995. It appears that the year of 1995 was incorrectly/inadvertently typed instead of 1997, due to typographical mistake. It should be 13.10.1997. He also did not disclose when the goods were sent. Likewise, OP1 also knew that the above said goods were of perishable nature and they should be released on ''Superdari '', immediately. The complainant committed an egregious mistake as it did not recover the goods immediately and like a silent spectator allowed the goods to go awry. Therefore, it is said that ''A stitch in time saves nine ''.

It is crystal clear that the damage was caused due to the delay. Delay is on the part of the complainant for which no liability can be fastened upon the insurance company.

5. AGAIN opposite party No.1 is also not liable for this damage. The moment the goods were recovered from the culprits, its duty came to an end. It is for the complainant to receive the goods on Superdari without any delay. In the result, we find that the complainant has made a clumsy attempt to involve the opposite parties in this case unnecessarily. The complaint is therefore dismissed but there shall be no orders as to costs.