

**(1997) 07 NCDRC CK 0031**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

AMARNATH HARBANS LAL

APPELLANT

Vs

National Insurance Co.Ltd

RESPONDENT

**Date of Decision:** July 11, 1997

**Citation:** 1997 3 CPJ 189

**Hon'ble Judges:** A.P.Chowdhri , Desh Bandhu J.

**Final Decision:** Complaint disposed of

**Judgement**

1. THE complainant is a partnership concern and the present complaint has been filed through its partner Mr. Harbans Lal. THE firm is dealing in vegetable oils and as commission agent, including supplying and distribution of vegetable oils to different parties throughout the country. THE firm had obtained an Open Marine Policy initially for Rs. 10,00,000/- (Rupees ten lakhs only) for the period 20th August 1990 to 19th August 1991. On 12.6.91, one tanker No. RJ-14-G-0702 was loaded with 1208 Kgs. of mustard oil at Ghasana (Rajasthan) and the same was to be carried to Amingaon (Assam). THE invoice price of the oil was Rs. 3,42,468/- which in various documents on record has been recorded a rounded off to Rs. 3,42,000/-. GR No. 535 dated 12.6.91 was issued by the carrier M/s. Ravi Transport Services. THE tanker met with an accident near Gokulavas Khandia (Rajasthan) on 14.6.91. THE tanker was overturned and was badly damaged. Some of the oil leaked from its compartments resulting in loss of 5570 kgs. of oil; and the balance 6,510 kgs. oil only could be delivered to the consignee. THE carrier furnished short delivery certificate to the complainant. On learning about the accident, the complainant requested Mr. Pramod Chhabra, Surveyor and Loss Assessor based in Jaipur to visit the spot and carry out survey. Accordingly, Mr. Chhabra visited the site on 15.6.91 and submitted his report-dated 28.8.91 only. He assessed the loss to the tune of Rs. 1,57,909.50 taking the price of 5,570 kgs. of mustard oil @ Rs. 28.35 per kg.

2. ALTHOUGH initially the policy had been taken for a sum of Rs. 10.00 lakhs, the case of the complainant is that from time-to-time, the aforesaid limit was enhanced after obtaining necessary endorsement on the original policy and payment of additional premium. Further case of the complainant is that the unadjusted amount of insured value exceeded the value of various dispatches as per the declaration made from time to time and furnished to the Insurance Company in accordance with the terms and conditions of the Open Marine Policy. Further case of the complainant is that cheque No. 618366 dated 10.6.91 whereby the ensured amount was enhanced upto Rs. 20.00 lakhs was delivered on the same day i.e. 10.6.91 personally to Sh. M.M. Dutta Sr. Divisional Manager through complainant's employee one Mr. Praveen Kumar. On that day, on account of a fire incident, the office of the Insurance Company was being temporarily shifted from Himalaya House, New Delhi to some other place. Receipt for the said cheque was, however, issued in due course on 19.6.91 by which time another cheque-dated 17.6.91 had also been delivered to the Insurance Company regarding another consignment. The complainant lodged a formal claim, made available all relevant documents, but the Insurance Company failed to settle the claim and on the contrary, repudiated the same vide letter dated 31.1.92. The present complaint was filed on 22.4.93 claiming Rs. 1,62,871/- besides 18% interest and Rs. 10,000/- for mental agony and tension suffered by the complainant.

In the written statement filed by the Insurance Company, it was stated that in order to make the Insurance Company liable, the complainant was required to pay the premium either in cash or by cheque before the occurrence of the loss in view of the provisions of the Section 64VB of the Insurance Act, 1938. In the present case, the cheque for Rs. 6,651 /- was actually delivered to the Insurance Company only on 19.6.91 after the occurrence of the loss and after putting a date of 10.6.91 thereon. It was denied that the cheque had been delivered to the Senior Divisional Manager by the Company on 10.6.91 as averred by the complainant. With regard to the adjustment of the insured amount having regard to payment of premium from time to time and upward revision of the amount insured on payment of additional amount on obtaining endorsement, the Insurance Company set-out in detail the relevant data to show that on the date of dispatch of the consignment in question i.e. 12.6.91, the balance of the insured amount was only Rs. 2,78,000/- as against the invoice value of the consignment in question namely Rs. 3,34,000/-. The aforesaid credit balance was, therefore, totally insufficient to cover the invoice value of the consignment in question. It was for this reason and after due consideration of the facts and record that the Insurance Company had rejected the claim. Along with the written statement the Insurance Company filed Annexures, A & B giving break-up of the various dispatches and the invoice value thereof in terms of the inland transit

open policy from time to time as well as letter dated 31.1.92 rejecting the claim.

The complainant filed a replication in which no serious effort was made to show that unadjusted insured amount was available to the credit of the insured at the time of booking of the consignment in question but it was vehemently stated that cheque vide which premium of Rs. 6,651/- had been paid to Mr. M.M. Dutta, Sr. DM through its complainant's employee Praveen Kumar on 10.6.91 had in fact been so delivered and, therefore, the present case did not attract the application of Section 64VB.

3. IN a further rejoinder to the replication, the insurance Company specifically controverted the assertion that the cheque for the premium-dated 10.6.91 had, in fact, been handed over to Mr. M.M. Dutta, Sr. Divisional Manager on 10.6.91. It was stated that, in fact, the cheque was handed over on 19.6.91 when the receipt bearing that date was issued by the INsurance Company.

On behalf of the complainant, affidavits of Mr. Harbans Lal and Praveen Kumar have been filed. On behalf of the Insurance Company affidavit of Mr. M.M. Dutta, who was at the relevant time Sr. Divisional Manager, has been filed. In the affidavits, the aforesaid stand of the parties has been reiterated.

4. WE have heard Mr. Ravinder Bhatt, Advocate for the complainant and Mr. N.K. Pare, Advocate for the OP and have carefully gone through the records including the written notes filed by both sides.

There is no dispute that the fate of this case turns on the question whether cheque No. 618366 dated 10.6.91 for Rs. 6,651/- was delivered to Mr. M.M. Dutta, Sr. Divisional Manager of Insurance Company on 10.6.91 or the same was delivered in the office of the Insurance Company on 19.6.91. The date of cheque assumes significance as the loss in this case took place on 14.6.91 and that date, having regard to the dispatches made by or on behalf of the complainant, did not leave enough margin to cover the invoice value of the consignment sent from Ghasana in Rajasthan to Amingaon in Assam on 12.6.91 which ultimately suffered loss on account of an accident on 14.6.91. On behalf of the complainant, it was contended that statement of Account from the Bank of Saurashtra, Chandni Chowk, Delhi showed that cheques issued after cheque in question were encashed on 14.6.91

which indicated that the cheque in question must have been issued on or before 14.6.91. It has also been contended that the Insurance Company was not sending the cheques for collections as soon as they were received, but a large number of cheques bearing various dates of May and June, 1991 were all sent in one lot and got encashed on 20.6.91 as shown by the Statement of Account furnished by the Syndicate Bank. It has also been pointed out that the averment that the office of the OP was under shifting on account of fire incident that is what necessitated the delivery of the cheque to the Sr. Divisional Manager who was a responsible officer of the Company. Receipt for the same was not insisted there and then because of the extraordinary circumstances on account of the fire incident and temporary shifting of the office records, etc. It was also pointed out that not only the cheque dated 10.6.91 but also cheque dated 17.6.91, the receipt issued was only on 19.6.91.

On behalf of the Insurance Company it was stated that in the complaint, the allegation made was gloriously vague. It was extraordinary that cheque on account of premium should have been delivered to the Sr. Divisional Manager instead an officer dealing with the receipt of the premium. It was also extraordinary that no receipt was obtained on that day and even more significantly no protest was made when the receipt was eventually issued on 19.6.91 qua the cheque stated to have been delivered on 10.6.91. The Insurance Company did not keep the cheque with itself but deposited the same in its bank on the next following day i.e. 20.6.91 vide pay-in- slip Annexure A and the payment was credited to Insurance Company's account on 22.6.91 vide banker's certificate Annexure B. It was also submitted that Mr. M.M. Dutta had filed his affidavit categorically contradicting the averment that the cheque in question had been delivered to him on 10.6.91. On the contrary, he confirmed that the cheque had been delivered in the office of the OP on 19.6.91 when necessary receipt was issued.

5. IT bears repetition that in the written statement, the Insurance Company set out precise details of various dispatches and the balance unadjusted insurance amount available under the Open Marine Policy during the relevant period. The declarations, which are relevant in this behalf, are declaration Nos. 15 and 16. Those were set-out in necessary detail and the said declarations were filed as Annexures A & B with the written statement. After making adjustment of the insured amount to cover dispatches relevant to declaration No. 15, the balance amount available was Rs. 2,78,000/- IT was at that stage that dispatches relating to declaration No. 16 started. The dispatch in dispute which was involved in the accident was of the value of Rs. 3,43,000/- (rounded off amount) and this was the third dispatch under declaration No. 16. The aforesaid balance of Rs. 2,78,000/- did not therefore, cover the invoice

value of the dispatch in question namely Rs. 3,43,000/-. On behalf of the complainant it was argued that the claim of the complainant was only to the extent of Rs. 1,62,871/- which was well within the limit of Rs. 2,78,000/-, which was the balance, carried forward immediately before Declaration No. 16. In order to meet his contention, the Insurance Company has placed reliance on *R. Mani v. Kumari Enterprises & Others, II (1996) CPJ 249 (NC)*. It was observed by the National Commission in para 10 of the report that a novel argument had been advanced on behalf of the appellant (insured) that the Open Marine Insurance Policy at the relevant time had a credit balance of Rs. 69/- and, therefore, the consignment could have been insured to the value of Rs. 24,500/-. Rejecting the argument Hon'ble Mr. Justice B.S. Yadav, speaking for the National Commission observed as follows:

"When under the policy consignment worth Rs. 60,000/- was dispatched the Insurance Company could not cover the risk for part of the amount to the extent of credit balance. The risk had to be covered either/or the whole amount or not at all if full payment is not paid for the risk. Admittedly in the present case the declaration with the due premium was sent to the Insurance Company after the accident and the Insurance Company was within its right not to accept the risk. Therefore, the argument of the appellant that the Insurance Company should be made liable to the extent of Rs. 24,500/- has no force."

(Emphasise supplied) Before us are affidavits of Mr. Praveen Kumar and Mr. Harbans Lal on the side of the complainant and the affidavit of Mr. M.M. Dutta, Sr. Divisional Manager at the relevant time, on behalf of the Insurance Company regarding the date of delivery of cheque on account of premium. On the decision of the question, depends the fate of this case.

6. WE are clearly of the view that the question can be satisfactorily decided in a regular trial, which is possible only in the Civil Court. WE, therefore, dispose of the complaint leaving it open to the complainant to move the Civil Court for proper relief. The Insurance Company appears to have rejected the claim after applying its mind and we find no deficiency in service. It is hoped that the time during which the complaint remained pending before this Commission shall be waived in case the Civil Court is approached for the purpose. A copy of the order be communicated to both the parties. Complaint disposed of.