

(2010) 05 NCDRC CK 0007

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

NATIONAL INSURANCE
COMPANY LTD

APPELLANT

Vs

Sri Eshwara Sai Oil Mills

RESPONDENT

Date of Decision: May 26, 2010

Citation: 2010 3 CPJ 336

Hon'ble Judges: Ashok Bhan , S.K.Naik J.

Advocate: Kishore Rawat , Antima Bazaz

Judgement

1. NATIONAL Insurance Company Limited-petitioner herein, which was the Opposite Party before the District Consumer Disputes Redressal Forum, Karimnagar (for short "the District Forum") has filed this Revision Petition against the Order of A. P. State Consumer Disputes Redressal Commission, Hyderabad (for short "the State Commission" in First Appeal No. 456 of 2006 whereby the State Commission has dismissed the Appeal filed by the petitioner. The District Forum had allowed the Complaint and directed the petitioner to pay Rs. 2,70,000 along with interest 9% p.a. from the date of Complaint, i.e., 29.8.2005, till realization and costs of Rs. 1,000.

2. COMPLAINANT/respondent is the owner of Ashok Leyland Oil Transportation Vehicle (for short "Oil Tanker") bearing Registration No. AP 15W 3552 and is carrying business of edible oils. Respondent got the stock/oil/consignment to be transported through the Oil Tanker with the petitioner-Insurance Company from time to time. He had taken CARRIAGE LEGAL LIABILITY POLICY No. 55130046039700000089 for the period from 11.2.2004 to 10.2.2005.

3. ON 3.1.2005, while transporting the consignment of RBD Palm Oil from Kakinada to Jagtial, the Oil Tanker turned turtle at Kondagutta due to which the oil worth Rs. 3,72,068 spilled on the main road. There was loss to the Tanker worth Rs. 3,00,000 as well. Several injuries were caused to the driver and the cleaner of the Oil Tanker. Petitioner got F.I.R. No. 1 of 2005 registered at Police Station, Mallial on 3.1.2005. Thereafter, respondent filed the claim with the Insurance Company. On receipt of the intimation, petitioner appointed Shri K. David Vijay Kumar as Surveyor to conduct the survey. The Surveyor, after making inquiry, submitted his Report on 30.5.2005. The Surveyor, in his Report, under the heading "NOTE" and "CONCLUSION", reported as under:

"Note- The insured has disclosed that the oil which purchased from M/s. Ruchi Infra Structure Ltd., Kakinada is for his own retail business purpose. He has no contract with Ruchi Infrastructure Ltd., Kakinada. This transaction falls under the exclusion of 2(a) the C.L.L. Policy. Conclusion: The survey and assessment were made after gathering all possible information from the Insured, I.V. driver, police personnel at Malial P.S. Karimnagar, personal verification of things at spot and verification of invoice, R.C., D.L., Permit, etc. I confirm that the Loss or RBD Palmoline Oil due to an Accident to Tanker bearing Regd. No. AP-15/W-3552 on 3.1.2005 i.e. Rs. 2,70,000 only. However, the Insurers has not liability as this claim falls under the exclusions of Clause 2(a) the C.L.L. Policy."

4. IN view of the Report submitted by the Surveyor and the fact that the claim was not payable in terms of the Exclusion Clause 2 (a) of the Policy of Insurance, the petitioner repudiated the claim vide its letter dated 27.6.2004.

5. AGGRIEVED by the repudiation of the claim, the respondent filed the complaint before the District Forum. Initially, the petitioner-Insurance Company was proceeded ex parte. However, Written Statement and Affidavit in support thereof was filed subsequently. Note: As there was a dispute as to whether the petitioner had filed the Written Statement and the Affidavit in support thereof, we had sent for

the original record. On perusal of the original record, we find that the Written Statement as well as the Affidavit in support thereof, are on the record thereof.

6. IN the Affidavit filed, the petitioner had categorically pleaded that the Insurance Company was not liable to entertain the claim in view of the Exclusion Clause of the Policy.

7. THE District Forum, without noticing the Written Statement filed by the petitioner and the Affidavit file in support thereof, allowed the Complaint and directed the petitioner to pay Rs. 2,70,000 along with interest @ 9% p.a. from the date of Complaint, i.e., 29.8.2005 till realization along with costs of Rs. 1,000.

8. AGGRIEVED by the Order passed by the District Forum, petitioner filed an Appeal before the State Commission, which has been dismissed by the impugned Order holding that the vehicle was insured solely for the purpose of carrying oil and the Policy was issued for carrier's legal liability. It was held that the District Forum had rightly allowed the Complaint after taking into consideration, the facts and circumstances of the case.

9. BEING aggrieved, the petitioner-Insurance Company has filed this Revision Petition.

10. COUNSEL for the parties have been heard at length.

11. THE operative part of the Policy and the Exclusion Clause 2 of the Policy, reads as under:

"NOW THIS POLICY WITNESSETH that during the currency of this Policy or any further period for which it may be in force subject to the limits terms provisions exclusions exceptions and conditions contained herein or endorsed hereon the Company hereby agrees to indemnify the insured against his legal liability for actual physical loss of or damage to goods or merchandise directly caused by the fire and/or accident to the vehicle registered under No. _____ whilst such goods or merchandise are actually transported in the said vehicle provided that fire or accident has arisen on account of negligence of the insured or negligence or criminal act of his servants and further provided that the vehicle is damaged by such fire or explosion or accident, and a claim in respect thereof is admitted under the motor comprehensive insurance policy covering the vehicle. The cover will commence with the loading of cargo on the vehicle and will be in force until unloading of the cargo at the discharging point or expiry of 3 days after the first arrival of the vehicle at the destination town whichever may first occur."

EXCLUSIONS 1 2. Liability in respect of damage to property- (a) belonging to the Insured or to any servant, agent, or sub-contractor of the Insured or to third parties unless such property is covered by a contract of carriage entered into by the Insured in an approved form; (b) in the control of the Insured or of any servant, agent or sub-contractor of the Insured unless such property is covered by a contract of carriage entered into by the Insured in an approved form."

[Emphasis supplied]

12. PERUSAL of the Policy and its nomenclature, shows that the Policy in question was given to the carrier to cover his legal liability while he is acting as a carrier under the Contract of Carriage. In case, any damage is caused to the consignment, which is being transported under the Contract of Carriage, the carrier becomes legally liable to pay compensation under the Carriers Act and, consequently, the

Insurance Company becomes liable to indemnify the carrier for the same. In case, the insured is transporting his own consignment, the Insurance Company does not become liable to indemnify the carrier as the same falls under the Exclusion Clause of the Policy. Under the Exclusion Clause, the liability in respect of the damage to the property belonging to the insured or any of his servants or agents is specifically excluded.

13. THE case of the petitioner throughout has been that the consignment in question, which was being transported, was of the respondent/complainant. A perusal of the Complaint makes it clear that the respondent was carrying his own consignment in the Oil Tanker. The State Commission has failed to consider the specific stand taken by the petitioner in its Written Statement as well as in the ground of the Appeal to the effect that in view of the Exclusion Clause 2(a) of the Policy, the Insurance Company was not liable to indemnify the respondent of the loss suffered by him. The Policy in question covers the legal liability of the insured while he is acting as a carrier under the Contract of Carriage, that is to say, the insured entered into a Contract of Carriage for transporting the consignment of a 3rd Party. If the consignment is lost or damaged and the carrier becomes liable to pay under the Carriage Act, the Insurance Company is liable to indemnify the carrier to the extent of his liability. In the present case, the consignment, which was being carried, belonged to the insured himself and, therefore, as per the Exclusion Clause 2(a) of the Policy, the Insurance Company was not liable to indemnify for the loss suffered by the respondent. The Fora below have misinterpreted the Terms of the Policy and, therefore, the Order passed by them is liable to be set aside.

14. THE consignment belonging to the insured is not covered under the Policy. In case the insured was interested in taking the insurance cover for the said consignment, he should have taken INLAND TRANSIT POLICY and not CARRIERS LEGAL LIABILITY INSURANCE POLICY. Perusal of the Proposal Form, which is on record, shows that the Policy was for the CARRIERS LEGAL LIABILITY and, as per the operative part of the Policy and the exclusions thereunder, the Policy would not cover the risk of consignment belonging to the insured. Merely because the consignment was lost/damaged, while being carried in the vehicle in question, would not entitle the insured to the claim under the Policy when the Policy is subject

to the Terms and Conditions and the specific cover granted. The State Commission has erred in holding that the petitioner was liable to pay merely because the consignment was lost/damaged while being carried in the vehicle in question.

15. RESPONDENT did not lead any evidence to show that the consignment belonged to the 3rd Party. The onus was on the respondent to show that the consignment being carried was not of his own but of a 3rd Party which it has failed to prove. Rather, the reading of the Complaint clearly shows that the consignment in question belonged to the respondent which fact was confirmed by the Report of the Surveyor.

16. THE District Forum, in its Order has held that the Surveyor appointed by the petitioner was not authorized to do the survey as his licence had expired on 22.7.2003. This plea was not raised by the respondent specifically. Since, this point has not been raised by the respondent, there was no opportunity for the petitioner to controvert the same. The licence of the Surveyor, which had expired on 22.7.2003, was renewed by the Insurance Regulatory and Development Authority (for short "the I.R.D.A.") on 10.7.2003 and the validity of which was upto 22.7.2008. The renewed licence has now been put on record before us. The finding of the District Forum that the Surveyor did not have the authority to conduct the survey as his licence had expired, is set aside in view of the fact that the I.R.D.A. had renewed the licence of the Surveyor before its expiry, i.e., on 10.7.2003.

17. THE Fora below have clearly misread and misinterpreted the Terms and Conditions of the Policy in question and, therefore, the Orders, under Revision, cannot be sustained.

18. FOR the reasons stated above, the Revision Petition is accepted, Orders under Revision are set aside and the Complaint is Ordered to be dismissed leaving the parties to bear their own costs. Revision Petition allowed.