

CHANDRASHEKHAR EXPORTS PVT. LTD. v. NEW INDIA ASSURANCE CO. LTD.

CHANDRASHEKHAR EXPORTS PVT. LTD.

...Appellant

NEW INDIA ASSURANCE CO. LTD.

...Respondent

Case No: REVISION PETITION NO. 590 OF 2011

Date of Judgement: 06 December 2023

Judges:

DR. INDER JIT SINGH

PRESIDING MEMBER

For Appellant: MR. PRAVIN SATALE, ADVOCATE

For Respondent: MR. KAPIL CHAWLA, ADVOCATE

Facts:

On 16/01/2004, petitioner took marine insurance policy from respondent insurance company valid from 16/01/2004 to 15/01/2005. Petitioner opened advance premium deposit account to pay premiums towards the policy. Petitioner had to submit declaration for each shipment transaction, after which respondent would issue cover note adjusting balance in account. If balance insufficient, respondent informed petitioner to deposit money to make up shortfall. On 13/05/2004, petitioner dispatched maize for export and submitted 6 declarations (no. 38-43) to respondent for insurance. On 14/05/2004, maize consignment got damaged due to rains during unloading. Petitioner informed respondent about loss and filed insurance claim. Respondent rejected claim saying on date of loss, premium account had

insufficient funds.

Court's Elaborate Opinions:

Petitioner submitted 6 declarations together for insurance, so respondent should have processed all 6 declarations as one lot. If total premium required was insufficient, respondent should have informed petitioner on same day and asked to deposit deficient amount. Instead respondent chose to cover declarations 38-40 with available balance but did not cover 41 due to lack of funds. Respondent failed to inform petitioner about insufficient funds to cover declaration 41 on same day. It informed petitioner only on 19/05/2004 while damage happened on 14/05/2004. Petitioner reasonably believed all 6 declarations were covered as they were submitted together. Failure by respondent to inform petitioner on same day about insufficient funds and leaving declaration 41 uncovered amounts to deficiency in service.

Arguments by Parties: Petitioner:

State Commission allowed appeal in absence of petitioner, without giving opportunity of hearing. Insurance company failed to inform petitioner about inadequacy of funds on same day. Insurance company violated principles of natural justice.

Respondent:

It was petitioner's responsibility to maintain adequate balance for premium. On date of loss, account balance was insufficient to adjust premium. Respondent rightly repudiated the claim, no deficiency of service on its part. Order of State Commission should be upheld.

Sections and Laws Referred:

Revision Petition filed under Section 19 & 21 of Consumer Protection Act 1986. Order challenged: dated 09/06/2010 in First Appeal No.1598/2007 in State Commission Maharashtra.

Case Laws Referred:

No case laws were referred in the order.

Full Text of Judgment:

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondents detailed above, under section 19 & 21 of Consumer Protection Act 1986, against the order dated 09.06.2010 of the State Consumer Disputes Redressal Commission, Maharashtra (here in after referred to as the 'State Commission'), in First Appeal (FA) No.1598 of 2007 in which order dated 26.10.2007 of District Forum Kolhapur (here in after referred to as District Forum) in Consumer Complaint (CC) No. 214 of 2005 was challenged, inter alia praying for setting aside the impugned judgment and order dated 09.06.2010 passed by the State Commission in FA No. 1598 of 2007 and for confirming the judgment and order dated 26.10.2007 in CC No. 214 of 2005 passed by the District Forum, Kolhapur.

2. While the Revision Petitioner (here in after also referred to as Complainant) was Respondent and the Respondent (here in after also referred to as OP/Insurance Company) was Appellant in the said FA/1598/2007 before the State Commission, the Revision Petitioner was Complainant and Respondent was Opposite Party before the District Forum in the CC No. 214 of 2005. Respondents filed their Written Arguments/Synopsis on 23.02.2017 and 19.09.2023. Despite directions, the Petitioner has not filed the Written Arguments/Synopsis.

3. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Forum and other case records are that: –

(i) On 16.01.2004 the Petitioner took Marine Insurance Policy from the Respondent/Insurance Company for the period commencing on 16.01.2004 and ending on 15.01.2005. The Petitioner opened Advance Premium Deposit Account for depositing premium towards the said Policy. During the Policy period Petitioner was required to submit the declaration for every transaction and there after the Respondent used to issue cover note after adjusting the balance and if the balance was found insufficient, the Respondent used to inform the Petitioner for making

up the insufficiency amount towards Insurance Premium and accordingly the Petitioner used to deposit the money in the said account. The Petitioner was having business relations with the Respondent last three to four years.

(ii) On 13.05.2004, the Petitioner after procuring the Maize from various places sent for export by Ship. The Petitioner submitted declaration No.38, 39, 40, 41, 42 and 43 to the Respondent regarding dispatched Maize and the Respondent/Insurance Company issued Insurance Certificate against these declarations. On 14.05.2004, the whole consignment while unloading from the truck got damaged due to heavy rains and the Petitioner immediately informed the Insurance Company regarding the loss due to damage. On 19.05.2004, the Respondent/Insurance Company informed the Petitioner that the amount required for the payment of premium was short of Rs.6834/-and accordingly the Petitioner deposited the said amount with the Respondent. On 16.08.2004, the Insurance Company appointed a Surveyor, who assessed the loss to the tune of Rs.4,04,505.60/-. The Petitioner submitted the Marine Insurance Claim with the Respondent claiming damages of Rs.4, 44,956/- on 26.08.2004. The Insurance Company rejected the claim of the Petitioner on the ground that on the date of occurrence of loss, the Petitioner's Advance Premium Deposit Account was short of required amount of premium. Hence, the Petitioner/complainant filed complaint before the District Forum.

4. Vide Order dated 26.10.2007, in the CC No. 214 of 2005 the District Forum has allowed the complaint.

5. Aggrieved by the said Order dated 26.10.2007 of District Forum, Insurance Company/Respondent here in appealed in State Commission and the State Commission vide order dated 09.06.2010 in FA No. 1598/2007 has allowed the Appeal in the absence of complainant/Petitioner here in, quashed and set aside the order passed by the District Forum.

6. The Revision Petition has been filed with a delay of 32 days. The delay in filing the Revision Petition is condoned after considering the reasons stated in the condonation of delay application.

7. Petitioner has challenged the said Order dated 09.06.2010 of the

State Commission mainly on following grounds:

(i) The State Commission, without affording opportunity of being heard to the Petitioner, in singular absence of Advocate for the Petitioner should not have allowed the Appeal filed by the Respondent. State Commission was not justified in reversing the finding of fact recorded by the District Forum that the Respondent deliberately adjusted the premium for consignment No. 38, 39, 40, 42 and 43 and excluded the consignment bearing declaration No.41 so as to deprive the claim amount payable to the Petitioner.

(ii) The State Commission failed to appreciate that even assuming that the Petitioner was liable for payment of Insurance Premium, however duty casts upon the Respondent to call upon the Petitioner to deposit the short amount of Insurance Premium. The findings recorded by the State Commission are beyond the specific pleadings of the Respondent. The State Commission has completely overlooked the fact that the District Forum had rightly allowed the complaint filed by the Petitioner holding the Respondent liable for the deficiency in service.

(iii) The State Commission failed to appreciate that the Respondent was duty bound to inform the inadequacy of the balance in Advance Premium Deposit Account to the Petitioner and its failure to inform to the Petitioner was violation of principle of natural justice.

8. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

8.1 It is contended that the Petitioner was not given an opportunity of being heard by the State Commission. The State Commission allowed the Appeal of the Respondent in the absence of Petitioner here in.

8.2 On the other hand it is contended by the Respondent/Insurance Company that on 14.05.2004, the complainant submitted in all six declarations bearing entry No. 38 to 43 for issuing cover note in respect of six consignments. After debiting the premium in respect of declaration of entry No. 38, 39 and 40 from the complainant's account. The balance amount remained was Rs.1769/- whereas the premium required in respect of declaration was Rs. 2698/- and whole premium could not be debited from the complainant's account. So the premium in respect

of declaration no. 42 and 43 remained unpaid. Therefore at the time of declaration in question on 14.05.2004 the balance in complainant's cash deposit account was insufficient for adjusting there quisite premium and it is the responsibility of the complainant to keep the adequate balance amount in his account. Therefore, the Respondent had rightly repudiated the claim of the complainant and there is no deficiency on the part of Respondent. The order passed by the State Commission be upheld.

9. No doubt in any insurance contract, payment of premium is a sine qua non for any insurance cover; present is a case where the Petitioner opened advance premium deposit account for paying the premium for various consignment's insurance. During the policy, Petitioner was required to submit the declaration for every transaction and thereafter the respondent used to issue cover note after adjusting the balance, and as contended by the Petitioner, the respondent used to inform the Petitioner for making up the insufficiency of amount towards premium and accordingly the Petitioner used to deposit the money in the account. The Petitioner has submitted six declarations with Nos. 38 to 43 on the same day. The Respondent insurance company covered declaration at Sr.No. 38 to 40, but the declaration at Sr.No. 41 was not insured as balance in the advance premium deposit account was insufficient towards premium. This consignment got damaged, and Respondent repudiated the claim on the ground of it not being insured, although the Survey or appointed assessed the loss at Rs.4,04,505/-. If all the six declarations from 38 to 43 were submitted together as one lot by the Petitioner on the same day, ideally the Respondent Insurance Company is expected to process all together and if the premium amount required for all the six declaration together was not sufficient, it ought to have immediately informed the Petitioner on the same day and asked him to deposit the deficient premium. But the Respondent Insurance Company choose to cover declaration at Sr. No. 38 to 40 with the available balance and did not cover declaration at Sr. No. 41 on account of insufficient balance in the advance premium account. In this situation, we are of the considered view that Respondent insurance company ought to have informed the Petitioner about the insufficiency of balance in the

advance premium account to cover declaration No. 41 on the same day itself, but it failed to do so and informed the Petitioner on 19.05.2004 only, while the damage to consignment had already happened on 14.05.2004 and intimation of same was given to Respondent insurance company immediately. The Petitioner made further deposit in the advance premium account on 19.05.2004, immediately on receipt of intimation from the Respondent insurance company. In the given facts and circumstances of the case, it was normal for Petitioner to believe that all the six declarations, which were sent together on the same day, have been covered for insurance. Hence, the act of Respondent insurance company in not informing the Petitioner about insufficiency of funds on the same day itself i.e. when it received the six declarations, and allowing declaration 41 remain uncovered amounts to deficiency in service.

10. Hence, we are of the considered view that District Forum rightly allowed the claim filed by the Petitioner, holding the Respondent liable for deficiency in service, and State Commission went wrong in setting aside the order of the District Forum. Hence, we have no hesitation in setting aside the order of the State Commission, and the same is hereby set aside. Accordingly, the Revision Petition is allowed and order dated 26.10.2007 of District Forum is restored.

11. The pending IAs in the case, if any, also stand disposed off.