

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL  
COMMISSION**

**Date of Institution: 20.05.2016**

**Date of Hearing: 02.05.2023**

**Date of Decision: 12.01.2024**

**COMPLAINT CASE NO.- 550/2016**

**IN THE MATTER OF**

**MR. AMJAD HUSSAIN,  
4885, PARAS NATH MARG,  
SADAR BAZAR,  
DELHI – 110006.**

**(Through: Mr. Manoj Khanna &**

**Mr. Rohit Dhingra, Advocates)**

**...Complainant**

**VERSUS**

- 1. THE ORIENTAL INSURANCE COMPANY LTD.,  
BOMBAY LIFE BUILDING,  
N-36, CONNAUGHT CIRCUS,  
NEW DELHI – 110001.**

**(Through: Mr. B.S. Arora & Mr. Mohit Arora, Advocates)**

- 2. ALVARES & THOMAS,  
THROUGH ITS PARTNER:  
HELEN ALVAERS,  
ALVARES CENTRE – NANTHOOR,  
MANGALORE-575005, INDIA.**
- 3. ONE WORLD LINES,  
THROUGH ALVARES & THOMAS,  
ALVARES CENTRE – NANTHOOR,**

MANGALORE – 575005.

4. **TRANSIT LOGISTICS,**  
THROUGH ALVARES & THOMAS,  
ALVARES CENTRE – NANTHOOR,  
MANGALORE – 575005.
5. **MAERSK LINES,**  
THROUGH MAERSK LINES INDIA PVT. LTD.,  
2<sup>ND</sup> FLOOR, MAX HOUSE,  
DR. JHA MARG, BLOCK A,  
OKHLA INDUSTRIAL ESTATE,  
NEW DELHI – 110020.
6. **MAERSK LINES INDIA PVT. LTD.,**  
2<sup>ND</sup> FLOOR, MAX HOUSE,  
DR. JHA MARG, BLOCK A,  
OKHLA INDUSTRIAL ESTATE,  
NEW DELHI – 110020.
7. **ABDULLAH MARHOOL ALSHAMRI,**  
FOR TRADING EST WAREHOUSE NO.  
21, BEHIND DAFA WAREHOUSE,  
NAWAN ROAD AL SHIFA,  
P.B. NO. 335322, RIYADH 11341.

...Opposite Parties

**CORAM:**

**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)**

**HON'BLE MS. PINKI, MEMBER (JUDICIAL)**

**HON'BLE MR. J.P. AGRAWAL, MEMBER (GENERAL)**

Present: Mr. Mukesh Kumar Singh & Mr. Rohit Dhingra, Counsel for the complainant.

Mr. Mohit Arora, Counsel for OP.

**PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL  
(PRESIDENT)**

**JUDGMENT**

1. The present complaint has been filed by the Complainant before this Commission alleging deficiency of service and unfair trade practice by the Opposite Parties and has prayed the following reliefs:

- a) *“Direct the Opposite Parties to pay an assured sum of Rs. 29,03,744/- (Rupees Twenty Nine Lakhs Three Thousand Seven Hundred Forty Four Only) for the loss suffered by the complainant on account of damage to the consignment in reference.*
- b) *Direct the Opposites Parties for compensate the complainant in the sum or Rs. 35,86,000/- (Rupees Thirty five Lakhs Eighty Six Thousand Only) being the charges levied by the local authorities at the port of discharge.*
- c) *Direct the Opposite Parties to compensate the complainant for the loss of business profits amount to Rs. 30,00,000/- (Rupees Thirty Lakhs Only) resulting from the cancellation of the contract for the supply of raw ginger.*
- d) *Award damages for mental harassment and loss of goodwill suffered by the complainant.*
- e) *Award costs in favour of the complainant and against the opposite parties. Total relief Rs. 94,89,744/- (Rupees Ninety Four Lakhs Eighty Nine Thousand Seven Hundred Forty Four Only).*
- f) *Pass any other and further orders as this Hon’ble Commission may deem fit and proper in the facts and circumstances of the case.”*

2. Brief facts of the case are that the Complainant is a self-employed individual and earns a living through trade in commodities. Opposite Party no. 1 is an

insurance company, Opposite Party no. 2 is engaged in providing custom clearance, transportation, shipping and allied services of consignments, Opposite Party no. 3 is a shipping company introduced to the Complainant by Opposite Party no. 2 & 4, Opposite Party no. 4 is a constituent of Opposite Party no. 1 as well as the agent of Opposite Party no. 3, Opposite Party no. 5 & 6 is in the shipping line which is responsible for the shipment of the consignment and Opposite Party no. 7 is the buyer of goods from Complainant, residing and trading from Riyadh, Saudi Arabia.

3. The facts leading to filing of the present complaint are that the Complainant received a query from the Opposite Party no. 7 for supply of 105 metric tons of fresh ginger. The Complainant made queries regarding the prevailing price of ginger in the market and cost of shipping of the goods from Hassan (India) to Dammam, Kingdom of Saudi Arabia. Opposite Party no. 2 quoted the cost of shipping of consignment in a reefer container from Mangalore (India) to Dammam (Saudi Arabia) and informed the Complainant that it shall engage the services of Opposite Party no. 5 for carriage of the consignment. Thereafter, Opposite Party no. 2 confirmed that it shall procure the reefer container from the Opposite Party no. 5 and also arrange for its stuffing and loading in a custom bound area.
4. The Complainant received a purchase order from the consignee on 11.11.2014 and the consignee clearly instructed the consignment be shipped in a 40HQ Reefer container, with temperature setting at 10-12 degree centigrade. The Opposite Party no. 2 after having discussed all requirements, instructions and particulars regarding shipping of the consignment, offered to load/stuff the consignment in collaboration with Opposite Party no. 5. The Complainant specifically instructed the Opposite Party no. 2 that the consignment was of fresh ginger and the same had to be shipped at a temperature of 11 degree

centigrade throughout the voyage as per the directions of the Opposite Party no. 7.

5. The Complainant took a marine cargo “Single Voyage (Sea) Policy” bearing No 215100/21/2015/303 dated 19.11.2014 from Opposite Party no. 1 to insure its cargo of fresh ginger and empty corrugated boxes. The Complainant forwarded the copy of purchase order to Opposite Party no. 2 via email on 22.11.2014. Following this, a container provided by Opposite Party no. 2 to 6 was stuffed with cargo comprising of ginger at Hassan (India) and the Complainant paid the freight and other charges to Opposite Party no. 2 to 6. The Opposite Party no. 2 had ensured the Complainant that it had obtained all necessary clearances and permissions and also sent a fumigated container to the complainant as per procedure and requirement. The Opposite Party no. 4, as an agent of Opposite Party no. 5, issued a bill of lading dated 23.11.2014 to the Complainant.
6. In course of time, the Complainant came to know that the consignment was actually shipped through Opposite Party no. 5 and who had issued another bill of lading dated 04.12.2014 through its agent in India being Opposite Party no. 6 and the said bill of lading showed the shipper (consignor) as Opposite Party no. 4 and the consignee was shown as some Al Maweed Marine Services situated at Dammam (Saudi Arabia). The consignment details were mentioned in the said bill of lading and the temperature at which the container was set was also mentioned. Contrary to specific instructions of the Complainant, the temperature was set at -11.1 degree centigrade instead of 11 degrees centigrade. There is no way this major anomaly and dereliction of contractual obligation by the Opposite Party no. 2 to 6 could have been discovered by the Complainant since the said bill of lading was never shown or handed to the Complainant. When the consignment reached the discharge port, the

authorities at Dammam (Saudi Arabia) notified that the goods had been damaged. The Complainant's buyer (Opposite Party no. 7) refused to accept delivery of the consignment. The Complainant wrote letter to the Opposite Party no. 1 and sought claim against its marine insurance vide protest letter dated 01.01.2015. The Opposite Party no. 5 vide email dated 05.01.2015, suggested the Complainant to approach its Cargo Insurance underwriters immediately and protect its interest and also further informed the Complainant that as per clause 9 of the terms & conditions governing bill of landing, his claim would become time barred on 15.12.2015.

7. The preliminary inspection report by the Surveyor, Saudi Inspection, Survey and Loss Adjusting Co. was forwarded to consignee, who informed that the consignment was shipped contrary to its instructions and reached the discharge port in a frozen and damaged condition and it would not be saleable and hence the Complainant has to make its own arrangements to sell the same. Further, the relationship between the Complainant with the Opposite Party no. 7/consignee soured on account of the damage to the consignment and the buyer/consignee repudiated its contract with the Complainant to supply 105 metric tons of ginger.
8. In the meantime, the Complainant approached the Opposite Party no. 2 to 6 with his claim for reimbursement of loss caused to him but the Opposite Party no. 2 to 6 denied their liability and kept shifting the blame on each other. Opposite Party no. 1 vide letter dated 05.05.2015 informed the Complainant that *"this claim is being declined on the basis that the proximate cause of loss in this stance is the incorrect setting of temperature of the reefer container. As this was undertaken prior to the goods being loaded into the container, no liability rests with the Indian Insurer. As a result, we would recommend you take this matter directly with the carriers concerned."* Further, the Opposite

Party no. 7 refused to pay dues of the Complainant in respect of consignments shipped earlier on the grounds that the authorities are pressing him to clear the due relating to customs, detention and other charges. Aggrieved by the aforesaid acts and deficiency of service on the part of Opposite Parties, the Complainant approached this Commission.

9. Notice of the present complaint was issued by this Commission to the Opposite Parties. Opposite Party no. 1 has filed the written statement, however, the Opposite Party no. 2 to 6 failed to appear before this Commission despite effective service of proof and hence their right to file written statement was closed vide order dated 29.01.2021. Further, for Opposite Party no. 7, the Complainant vide order dated 05.09.2019, submitted that the name of Opposite Party no. 7 be deleted from the array of parties and this Commission as per the submission made by the counsel for the Complainant, has allowed the parties to delete the name of Opposite Party no.7 from the array of parties.
10. The counsel for Opposite Party no. 1 has contested the present case and submitted that there is no deficiency on the part of Opposite Party no. 1 in repudiating the claim as the said consignment was damaged due to the own fault of the Complainant and the Opposite Party no. 1 cannot be held liable for the same. Further, the Opposite Party no. 1 submitted that the negligence on the part of the Complainant was also confirmed by the Survey Report dated 28.08.2015, which clearly stated that “minus eleven-point one degrees Celsius (-11.1) was the setting of temperature for the refer container at the time of our arrival”. Hence, the Opposite Party no. 1 is not liable to compensate the Complainant. Moreover, the loading, packing, etc. was done by the Complainant and at that time of loading the reefer, proper precautions were not taken by the Complainant and his agents. As the loss has occurred due to

the insufficiency & incompetence of the Complainant, the insurance company cannot be held liable to cover the losses of the Complainant incurred to him and hence the complaint against the Opposite Party no. 1 should be dismissed.

11. The Complainant has filed the Rejoinder rebutting the written statement filed by the Opposite Party no. 1. Both the Complainant and the Opposite Party no.1 have filed their Evidence by way of Affidavit in order to prove their averments on record as well as filed their respective written arguments.
12. We have perused the material available on record and heard the counsel for the contesting parties.
13. The fact that the Complainant had bought Marine Cargo – Single Voyage (Sea) Voyage Insurance vide policy no. 215400/21/2015/303 for a total sum of Rs. 29,03,744/- from the Opposite Party no. 1 is evident from the records and the consignment of the Complainant was reached in the frozen and damaged condition at the destination and the claim of the Complainant was repudiated by the Opposite Party no. 1 vide repudiation letter dated 28.08.2015 is evident from the surveyor report attached with the written statement.
14. The *primary question* for consideration before us is *whether the Opposite Party no. 1 to 6 are deficient in providing its services to the Complainant.*
15. On perusal of record, we find that consignment for the supply of 105 metric tons has been booked by the company situated in Saudi Arabia namely Abdullah Marhool Al-Shamri Trading Est. vide purchase order dated 11.11.2014 from the Complainant and he sought quotation from the Opposite Party no. 2 for the shipment of consignment from Hassan (India) to Dammam, Kingdom of Saudi Arabia. The Complainant also sent purchase order to the Opposite Party no. 2 which reflects that temperature in the reefer container should be maintained between 10-12 degree Celsius, so that the consignment



reaches the destination in fresh condition. However, the booking confirmation sent by the Opposite Party no. 5 & 6 reflects that they have set the temperature at -11.1 degree Celsius which led to the consignment reached to the destination in frozen condition. The said booking confirmation has been reproduced below for the ready reference herein:

**MAERSK LINE** **BOOKING CONFIRMATION**

Booking No.: **952506130** Print Date: 2014-11-20 12:05 UTC

Booked by Party: TRANSIT LOGISTICS	Service Mode: CYCY
Contact Name: STEFAN RONALD DSOUZA	From: Mangalore, India
Booked by Ref. No.	To: Dammam, Saudi Arabia
Service Contract: 538567	Customer Cargo: Ginger
Price Owner: TRANSIT LOGISTICS	Business Unit: Maersk India (Madras)
Ref. No.	Shipper Ref. No:

We thank you for your booking and enclose your booking details as follows :-

Quantity	Size/Type/Height	(Uln)	Collapsible	Sub. Equip	Gross Weight	Pack. Qty/Kind	Cargo Volume
1	40 REEF	9.6			27,216 KGS		

From	To	Vessel	Voy No.	ETD	ETA
Mangalore Terminal	Colombo Terminal	TIGER CORNAN	01DS	2014-11-26	2014-12-01
Colombo Terminal	Salah Terminal	SEA LAND RACER	1502	2014-12-10	2014-12-14
Salah Terminal	Dammam Terminal	NORTHERN JUSTICE	1411	2014-12-16	2014-12-22

Type	Location	Release From Date	Time	Release To Date	Time	Return Date	Time	Load Ref.
Empty Container Depot	OPAL ASIA DEPOT 1 P.LTD.Mangalore	2014-11-20	01:00					
Return Equip Delivery Terminal	OPAL ASIA DEPOT 1 P.LTD.Mangalore MS Delta Infralogistics Workshop Lt Mangalore India Mangalore Terminal Mangalore Terminal Mangalore Port Mangalore India							

Temperature	Atmosphere	Humidity	Ventilation	Reefer cont. type	GenSet	Sortie Cont.
-11.1 C 12 F		No	Closed	Standard	Export: No Import: No	No

No. of Probes	Ethylene Filter	Drain Holes	Cold Treatment	High Value Cargo	Individual Quick Frozen	Stuffle Cont.
	Closed	Closed	No	No	No	No

Merchant Heutage Release Reference: Booking is valid till 24/Nov/2014

**Heutage Instructions:**  
 OPAL ASIA TERMINAL Yard  
 Booking is valid till 24/Nov/2014  
 Regards,

The document is subject to following:  
 \* This booking and carriage are subject to the Maersk Line Terms and Conditions of Carriage which are available upon request from the carrier or its representatives and are subject to its acceptance on the Maersk Line website: <http://www.maerskline.com> under "Services" / "General Business Terms".  
 \* The shipment is subject to tariff rates unless it is exempt and applicable service contract number is provided.  
 \* The carrier's right to substitute the named and/or performing vessel(s) with another vessel or vessels at any time.  
 \* Arrived, loading, departure and transit times are estimated and given without guarantee and subject to change without prior notice.  
 \* All consignees are given pre-emptive customer only and subject to change without prior notice.  
 \* Shippers destined for or carried/transhipped via the USA.  
 \* The document is given subject to the customer providing the correct cargo description in accordance with U.S. law, including U.S. Customs requirements as described by Customs Rules and Regulations.  
 19 CFR Parts 4, 113 and 178 of October 31, 2002

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16. From the aforesaid, it is apparent that the Opposite Party no. 2 to 6 were negligent as they have failed to comply with the material requirement of the Complainant in terms of the temperature, necessary for the consignment to reach to the destination in fresh condition.

17. Before deciding the liability upon the Opposite Party no. 1 to 6, the *main question* for consideration before us is *whether the Opposite Party no.1 was right in repudiating the claim of the Complainant.*
18. To deal with issue, we deem it appropriate to refer to the Insurance policy issued by Opposite Party no. 1 for the ready reference herein:

वि ओरिएण्टल इश्योरेंस कम्पनी लिमिटेड THE ORIENTAL INSURANCE COMPANY LIMITED  
 MARINE CARGO SINGLE VOYAGE (SEA) POLICY Undertaking

WHEREAS the ASSURED named in the Schedule hereto have represented to THE ORIENTAL INSURANCE COMPANY LIMITED (hereinafter called the "Company") that they are interested in or duly authorized to make the Insurance mentioned and have paid the premium hereinafter stated.  
 THE COMPANY HEREBY PROMISES AND AGREES with the Assured, their Executors, Administrators and Assigns that the Company will insure against loss damage liability or expenses subject to Clauses, Endorsements, Conditions and Warranties contained in the Schedule and attached thereto

**SCHEDULE**

Policy No : 215100/21/2015/303  
 Cover Note No : 215100335439  
 Insured's Name : M/S ASHAR IMPEX  
 Code : 49935245  
 Address : 4885, PARAN NATH MARG, SADAR, BAZAR, DELHI-6

Prev Policy No :  
 Cover Note Dt : 19-NOV-14  
 Issuing Office : DO 24 NEW DELHI  
 Code : 215100  
 Address : Bombay Life Bldg. N-36 Con.Circus NEW DELHI NEW DELHI DELHI 110001

Tel /Fax /Email : / / NA  
 Tel /Fax /Email : 011- 23312974,23313892 / 011-23323356 / 215100@orientalinsurance.co.in

Agent/Broker Details  
 Dev.Off.Code : NA0000001457 K.J. SINGH  
 Agent/Broker : BA0000119111 BABITA AGGARWAL  
 Address : E-28, BLOCK-E, PREET VIHAR, NEW DELHI, DELHI, DELHI, 110092  
 Tel/Fax/Email : 9312238922/9312238922/9312238922

Collection No & Dt : CHQ 2023007293 - 21/11/2014

**RISK DETAILS**

SI No: 1 Voyage FROM DELHI India TO DAMMAM (WH TO WH) United Arab Emirates  
 Mode of Transit : SEA Vessel Name: MAERSK DHARHRAN Voyage No: 1402  
 Bill of Lading No: TLEXP/OWL/1004 Date: 23/11/2014  
 Basis of Valuation: Cost Insurance and Freight (CIF) + 0 %

SI No	Commodity	No of Units	Marks & Nos	Packing	Value Type	Sum Insured	Rate	Marine Premium
1	FRESH GINGER & EMPTY CORRUGATED BOXES		INVOICE NO. AI/ASHG/12/14 DT.19/11/14			29,03,744	0.1500	4,356

Remarks :  
 Sr. No. Cover Sum Insured

Place : NEW DELHI  
 Date : 21/11/2014



For and on behalf of  
 The Oriental Insurance Company Limited  
 D O 21  
 (Bombay Life Building)  
 Ph : 23313892  
 23312974  
 Authorised Signatory

In case of any query regarding the Policy please call Toll Free  
 Scanned by CamScanner

19. From the perusal of Marine Cargo - Single Voyage (Sea) Policy, it is clear that the said consignment was insured (warehouse to warehouse) from Delhi (India) to Dammam (Saudi Arabia) and the said incident was occurred during the stuffing of the consignment when the temperature was wrongly set to minus 11.1 degrees Celsius instead of 11 degrees Celsius due to which, the losses have been suffered by the Complainant. Furthermore, it is clear that the repudiation has been wrongly done by the Opposite Party on the ground that temperature of the reefer container has been per set to minus 11 degrees Celsius prior to the loading of shipment as the said consignment was insured from Delhi (India) to Dammam (Saudi Arabia) and the stuffing in reefer container was done at the custom bound area situated in Mangalore (India).
20. In view of the abovementioned circumstances, the Opposite Parties no. 1 in the present case is deficient in repudiating the claim of the Complainant as the said consignment was duly insured against the losses and the said losses were occurred during the voyage as prescribed in the policy.
21. Keeping in view the facts of the of the present case, *we direct the Opposite Party no. 1 to pay a sum of Rs. 29,03,744/- (sum insured in the policy) to the Complainant* alongwith the simple interest as per the following arrangement:
- A. An interest @ **6%** calculated from **28.08.2015** (being the date on which the said claim was repudiated) till **12.01.2024** (being the date of the present judgment);
  - B. The rate of interest payable as per the aforesaid clause (A) is subject to the condition that the Opposite Party no. 1 pays the entire amount on or before **12.03.2024**;
  - C. In case the Opposite Party no. 1 fails to refund the amount as per the aforesaid clause (A) on or before on or before **12.03.2024**, the entire amount is to be paid with an interest @ **9%** p.a.

calculated from **28.08.2015** till the actual realization of the amount.

22. In addition to the aforesaid and taking into consideration the facts of the present case, we find that the deficiency on the part of Opposite Party no. 2 to 6 has also been established, therefore, the Opposite Party no. 2 to 6 are directed to pay to the Complainant:

**A.** sum of Rs. 2,00,000/- as cost for mental agony and harassment;  
and

**B.** The litigation cost to the extent of Rs. 50,000/-.

23. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.

24. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.

25. File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)**  
**PRESIDENT**

**(PINKI)**  
**MEMBER (JUDICIAL)**

**(J.P. AGRAWAL)**  
**MEMBER (GENERAL)**

Pronounced On:  
**12.01.2024**