(2003) 02 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

AJAY KUMAR SEHGAL APPELLANT

Vs

Branch Manager, United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 28-02-2003

Acts Referred:

Citation : 2003 4 CPJ 391 : 2004 1 CPR 411

Hon'ble Judges : D.M.Patnaik , Pramodnath Das J.

Final Decision : Appeal allowed

Judgement

1. COMPLAINANT the proprietor of M/s. Banaras Beauty Textile at Bhubaneswar is in appeal against the order of dismissal of his complaint petition. COMPLAINANT and his brothers used to carry on business in textiles and garments namely M/s. Beuatex Ladies Centre, Proprietor Ram Narayan Sehgal and M/s. Banaras Beauty Textiles, Proprietor the present complainant in this case. All the shoping establishments are under the same roof but under respective managements of all the brothers. Insurer is New India Assurance Company Ltd. for all these establishments. On 2.9.1992 one Surendra Marth was carrying cash of Rs. 72,700/- and cheque of Rs. 3,000/- in respect of all the shops for deposit in the UCO Bank. Some unknown culprits snatched away the amount and out of this an amount of Rs. 20,000/- belonged to the present complainant''s establishment. Matter was reported to the police and a claim was also lodged with the Insurance Company. The later repudiated the claim on 25.9.1995 holding that there was violation of the terms and conditions of the policy i.e. the person who was carrying the money in question was not the employee of the complainant. The District Forum held that the claim was barred by limitation inasmuch as repudiation was on 25.9.1995 whereas the claim was filed on 30.8.1999. The Forum did not go into the merit of the case.

2. HEARD Mr. J.K. Mohapatra, the learned Counsel for the complainant and Mr. B. Das Mohapatra, the learned Counsel for the respondents. The finding as to limitation is wholly unacceptable to us. Our attention is drawn to letter dated 28.1.1998 of the Insurance Company wherein replying to the letter of the

complainant for non-settlement of the dues they informed him to have received the letter of the complainant dated 16.1.1998. But it did not contain any details of the policy and, therefore, they are unable to act. It seems thereafter on 5.2.1998 under Annexure-8 the complainant also made a representation to them covering about three pages. To this the Insurance Company by their letter dated 10.2.1998 under Annexure-9 wrote to them acknowledging the receipt of the letter dated 5.2.1998 and also gave out to have taken the matter with the concerned Regional Office and would revert back in due course. The District Forum held that the repudiation was on 25.9.1995 and, therefore, the claim was barred by limitation. We accept that if 25.9.1995 is taken to the date of repudiation and there would have been no further correspondences from the side of the Insurance Company, the finding would be correct. But when the complainant subsequently moved, they accepted his claim as a subsisting one and, therefore, wrote that the matter is being looked into. If they took up the matter for consideration at a particular point of time that would certainly extend the period of limitation. Therefore, we hold that the case was not barred by limitation. So far as the merit is concerned, there is no dispute with regard to the fact that the said Surendra Marth was carrying the money out of which Rs. 20,000/- belonged to the complainant''s establishment. We have already held in the case of United India Assurance Company Ltd. v. Ram Narayan Sehgal, vide Appeal No. 219/2001 disposed of on that even if that Surendra Marth was carrying the money for the complainant it would be unreasonable for the Insurance Company to repudiate the claim on the ground that the person carrying was not authorised to carry the money. In the facts and circumstances of the case, we hold that Surendra Marth was the person who was an employee of the complainant and was carrying the money. Admittedly money has been snatched away from the said Surendra Marth. Loss of money from the custody of Surendra Marth is not disputed. Therefore, we allow this claim of the complainant and direct the Insurance Company to pay the amount of Rs. 20,000/- with 12% interest from the date of repudiation till payment. The amount be paid within a period of two months from the date of communication of the order. Mr. Pramodnath Das, Member-I agree. Appeal allowed.