
(1993) 04 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

AJMER SINGH COTTON AND GENERAL MILLS

APPELLANT

Vs

UNITED INDIA INSURANCE

RESPONDENT

Date of Decision : 13-04-1993

Acts Referred:

Citation : 1993 0 NCDRC 8 : 1993 1 CLT 426 : 1993 1 CTJ 469 : 1993 2 CPJ 160 : 1993 2 CPR 115 : 1995 2 CPC 430

Hon'ble Judges : A.S.VIJAYAKAR , B.S.YADAV J.

Advocate : AJAY KUMAR , S.M.SURI

Judgement

1. THE appellant, M/s. Ajmer Singh Cotton & General Mills, (for short the firm) is carrying on the business of cotton ginning and also dealing in cotton products at Kotkapura, District Faridkot, Punjab. For business, the firm had been purchasing cotton from the open market at Kotkapura and from the surrounding villages and processed the same. They also process the cotton seeds in their Mills, and had also obtained cash credit facilities of about Rs. 12,00,000/- from New Bank of India, Kotkapura. The stocks of the cotton and other by-products kept in the business premises and the godowns are being insured on the day to day basis with the United India Insurance Company and Oriental Fire and General Insurance Company (whose officers have been arrayed in the complaint as Opposite Parties Nos. 1 to 5). While insuring, the officers of the said Insurance Companies examined the quantity of products lying at the said premises of the firm. On 8th June, 1990 at about 9.30 p.m. a fire broke out in the premises of the appellant and the stock lying in the factory and godown were totally damaged/destroyed. The surveyor appointed by the Insurance Companies, assessed the loss to the tune of Rs. 22,26,808/-. Based on the said report the liability of the United India Insurance Company was assessed at Rs. 10,57,583/- and the liability of the Oriental Fire and General Insurance Company was assessed at Rs. 5,25,678/- The Oriental Fire and General Insurance Company released an amount of Rs. 4,25,484/- on 22nd March, 1991 while the United India Insurance Company released an amount of Rs. 10,47,583/- on 6th June, 1991. The firm accepted the said amount and issued vouchers about full and

final settlement.

2. THEREAFTER , the firm filed a complaint under the Consumer Protection Act, 1986 (for short the act) before the State Consumer Disputes Redressal Commissions, Punjab at Chandigarh which was registered as Original Complaint No. 20 of 1991. The grievance of the Complainant-Appellant was that the payment was released to them by the United India Insurance Company after a period of about one year from the date of the incident whereas the Oriental Fire and General Insurance Company released the amount to them about nine months after the date of mishap, in spite of the fact that the surveyor had submitted his report to the said Insurance Companies on 13th July, 1990. They therefore, claimed interest @ 18% p.a., from July 13, 1990 upto the date the payments were made by the said Insurance Companies. The Insurance Companies contested the complaint petition and a plea was taken that the claim of the claimant had been paid and satisfied under the terms and conditions of the policies and the complainant in token of the acceptance of the same, had willingly and voluntarily given discharge receipts in full and final settlement of their claims and therefore, the complaint was liable to be dismissed on that ground alone. It was also pleaded that the policies were taken by the complainant on 5.6.1990 whereas the alleged mishap occurred on 8.6.1990 and as such required close scrutiny to rule out the possibility of any ante dating of the insurance policies. The voluminous materials and intricacies warranted a serious and close scrutiny by the Insurance Companies and moreover clarifications had to be taken from the Head Offices and hence a reasonable lapse of time, could not by any stretch of imagination, be termed as deficiency in the rendering of services.

3. BEFORE the State Commission, it was urged on behalf of the Opposite Parties that once the amount has been received in full and final settlement of his claim by the insured, he is debarred from filing a complaint under the Act and the only remedy left to the insured was to approach the ordinary Civil Court. The State Commission accepted the plea of the Insurance Company and relying upon the order passed by this Commission in Jiyajeerao Cotton Mills Ltd. v. New India Assurance Co. Ltd. (Original Petition No. 52 of 1991, decided on November 28, 1991) declined to exercise its jurisdiction and dismissed the complaint with the observation that whatever has been said in the order, would not come in the way of the complainant in subsequent proceedings which the complainant might be advised to initiate against the insurers and it would not adversely or prejudicially effect them.

4. AGGRIEVED against the dismissal of their complaint by the State Commission, the Firm has come before this Commission in an appeal. It was urged on behalf of the Opposite Parties that the amounts for which receipts admittedly have been signed by the complainant have been received by them in full and final discharge of their claims and therefore, this appeal is liable to be dismissed on that very ground. As noticed earlier, that ground prevailed with the State Commission and

reliance was placed upon the aforementioned order of this Commission. Before we proceed further, we may mention here that in Jiyajeerao's case (Supra) the Complainant had challenged certain deductions made by the Insurance Company while settling his claim and according to the claimant of that case, those deductions were illegal. The receipt passed by the insured to the Insurance Company in full and final settlement of his claim did not indicate that the payment was received by the claimant under protest. There was no allegation that the claim was settled after delay. Upon those facts this Commission observed in the order passed in that case : "The records disclose that the Insurance Company had settled the claim long ago and that the dispute now is as to whether the deduction of certain amounts by the Insurance Company while settling the claim was proper in law. This is a matter in respect of which the petitioner should seek his redress before a Civil Court inasmuch as there has been no deficiency in service on the part of the Insurance Company. The receipt passed to the Insurance Company by the petitioner does not indicate that the payment was received by the petitioner under protest. It is however alleged by the petitioner that the amount was received by the Company under protest. This is a matter which the petitioner Company may agitate before the Civil Court for a proper adjudication after taking evidence.

5. IT is to be noticed that in the present case the claimant is not making any grievance about the amount paid under the claims lodged under the policies. It is also not their case that the receipts were got executed by fraud or under undue influence. Their grievance is that the Insurance Companies have been negligent in the rendering of services.

6. IT is not disputed that the service of insurance falls within the ambit of the Act. Deficiency in the rendering of service has been defined under the Act in Section (2) Clause (1)(g) as follows : "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service." Therefore, if the Insurance Companies in question committed deficiency in the rendering of service, then they certainly fall under the purview of the Act. We are of the opinion that after the report of surveyor had been received, the Insurance Companies should not have taken such a long-time in ascertaining if the policies had been ante-dated or in scrutinising the materials. The Insurance Companies should have realised that the firm carries on its business after borrowing money from the bank and has to pay interest on such borrowings and that the bank fixes a limit while allowing the credit facilities. In the present case, as noticed earlier, the complainant is enjoying the credit facility of Rs. 12 lacs while the loss due to fire was more than Rs. 15 lacs. Therefore, when the Insurance Companies have taken so much time in making payments after the receipt of the surveyor's report, it will amount to deficiency in service. It is further to be noted that one of the Opposite Parties made the payment on 22nd March, 1991 while the other

Opposite Party made the payment on 6th June, 1991. Two months time can be taken as reasonable time even for the scrutinising of the report of the surveyor. It is not the case of the Insurance Companies that after the surveyor had submitted its report, any of the Insurance Companies required any further information from the insured. 9. As noticed earlier, the claimant has of course given full and final discharge receipts of the claims. The discharge can only be considered under the policies but the present claim does not arise under the insurance policies and therefore, it is difficult to hold that the full and final discharge receipts issued by the complainant would cover the present claim under the Act also.

7. IT is also to be noted that in the present case no question of fact requires determination as none is disputed. The claim is based solely on the question of delay in the settlement of the claims under the policies. The dates of payments made under the claims after the receipt of the surveyor's report are also not in dispute. Hence it will be unnecessary to ask the Firm to go to Civil Court for the settlement of their claim. It is also doubtful if the claim of the present nature can be entertained by the Civil Court. The remedy about compensation for negligence in the rendering of services towards the hirer of services has been provided under the Act.

8. IN the light of the above discussions, we accept the present appeal, set aside the impugned order and in lieu of compensation we order that the claimant would be entitled to interest at the rate of 18% p.a. on the amount of Rs. 4,25,484/- from the Oriental Fire and General Insurance Co. and also interest at the same on the amount of Rs. 10,47,583 from the United India Insurance Co., after the expiry of two months from 13th July, 1990, (which is the date of surveyor's report) till the date the respective Insurance Companies paid the amounts. On the amounts so calculated, the claimants are further entitled to interest at the rate of 18% p.a. from 22nd March, 1991 and 6th June, 1991 till payment from the respective Insurance Company. The complainant is also allowed Rs. 1,000/- as costs against each of the Insurance Companies.