**(2003) 04 NCDRC CK 0030**

**In the National Consumer Disputes Redressal Commission**

ANAND AUTO CORPORATION (INDIA) APPELLANT

Vs

National Insurance Co. Ltd. RESPONDENT

**Date of Decision :** 17-04-2003

**Acts Referred:**

**Citation :** 2003 3 CPJ 63

**Hon'ble Judges :** Lokeshwar Prasad , Rumnita Mittal J.

**Final Decision :** Complaint disposed of

## Judgement

1. THE complainant Messrs. Anand Auto Corporation (India), through its attorney, Shri Tarlok Singh Anand have filed the present complaint under Section 17 of the Consumer Protection Act, 1986 (hereinafter referred to as ''the Act'') averring that the complainant is a partnership firm, duly registered with the Registrar of Firms. It is stated that Shri Tarlok Singh Anand has been appointed as attorney of the complainant to sign, verify and institute the present complaint and to pursue the same on behalf of the complainant before this Commission. It is stated that the complainant is having an account with the Punjab and Sind Bank, Kashmere Gate, Delhi (opposite party No. 2). It is stated that the complainant was availing of credit facility from opposite party No. 2 (for short ''O.P. No. 2'') against the pledge of the stock in trade. It is stated that as per the requirements of O.P. No. 2 the complainant had taken a policy in the sum of Rs. 10,00,000/- from O.P. No. 1 and since the inception of the policy, premium of that policy was being paid by O.P. 2 on behalf of the complainant, regularly.

2. IT is stated that on 1st August, 1996, a theft occurred in the godown bearing premises No. 1326, Sultan Singh Building, Kashmere Gate, Delhi, belonging to the complainant. IT is stated that a report about the above theft was lodged with the police authorities and an intimation was also given by the complainant and O.P. No. 2 to O.P. 1. IT is stated that claim under the policy was preferred by the complainant and O.P. No. 2 and the complainant and O.P. No. 2 thereafter have also complied with all the requirements and have fulfilled all the requisite formalities. The grievance of the complainant in the present complaint, in

nutshell, is that despite completing all the formalities and furnishing the requisite information, the claim of the complainant, preferred by the complainant and O.P. No. 2 under the Policy, is not being settled by O.P. No. 1. Alleging ''deficiency in service'' on the part of O.P. No. 1, it has been prayed by the complainant that O.P. No. 1 be directed to pay to the complainant a sum of Rs. 9,09,218/-, with future interest from the date of complaint till realization, as detailed in paragraph 8 of the complaint. The complainant has also claimed damages to the extent of Rs. 50,000/- from O.P. No. 1. O.P. No. 2 has been arrayed in the present proceedings as a proforma party and no relief has been claimed by the complainant from O.P. No. 2. A notice of the complaint was given to the O.Ps. O.P. No. 1 has entered appearance through its Advocate and has contested the claim of the complainant in the present complaint. In the reply/written version filed on behalf of O.P. No. 1, the above said O.P. has taken certain preliminary objections to the effect that the complaint, filed by the complainant, does not disclose any cause of action against O.P. No. 1; that the complainant has concealed certain material facts; that the complaint, filed by the complainant, is liable to be dismissed for lack of jurisdiction; that O.P. No. 1 has settled the claim after due diligence and as such the complainant has got no case against O.P. No. 1; that the complaint has no merits as full amount under the policy, amounting to Rs. 6,40,216/-, has already been paid to the complainant. On merits while denying each and every allegation, it is stated that the complaint is devoid of merit and deserves to be dismissed with heavy costs.

The complainant has filed a rejoinder to the reply/written version filed on behalf of O.P. No. 1, controverting the pleas taken in the reply/written version filed on behalf of O.P. No. 1 and reiterating the averments made in the complaint.

3. BOTH the parties have adduced evidence in support of their respective case by means of affidavits. The complainant, in support of its case, has filed the affidavit of Shri Manmeet Singh Anand, partner of the complainant-firm. On behalf of O.P. No. 1, affidavit of Shri D.P. Ghosh, Manager, National Insurance Company Ltd., Jeevan Bharti, Connaught Place, New Delhi, dated 13th August, 2001, has been filed. We have heard the learned Counsel for the parties at length and have also gone through the documents/material on record. On 7th February, 2003, the learned Counsel for the complainant, Mr. Raja Harpal Singh, Advocate, made a statement to the effect that the surviving controversy in the present complaint between the parties is with regard to payment of interest only. It was stated by him that the complainant be allowed interest at the rate of 18% per annum from the date of filing the complaint, i.e. 30th January, 1998, till actual payment. On the other hand, the learned Counsel for O.P. No. 1 has stated that the complainant is not entitled to any interest whatsoever. It was further stated by him that even otherwise the interest now being claimed by the complainant is on the higher side and in the given facts the complainant cannot be allowed interest @ 18% per annum.

4. ON the basis of documents/material on record, it is not in dispute that the

 

complainant, as per the requirements of O.P. No. 2, had taken a Policy, bearing No. 350300/7500059/96, dated 11th February, 1996, from O.P. No. 1, covering the stock-in-trade, pledged with O.P. No. 2 and stored in premises bearing No. 1326, Sultan Singh Building, Kashmere Gate, Delhi. It is also not in dispute that since the inception of the said policy the premium for the same was being paid by O.P. No. 2 on behalf of the complainant to O.P. No. 1 regularly. It is also not in dispute that on 1st August, 1996 a theft took place in the above said godown where the stock was lying stored and an intimation regarding the same was given to the concerned authorities including the police authorities. It is also not in dispute that a claim under the Policy was preferred by the complainant on 2nd August, 1996. It is also not in dispute that in terms of the Policy, the complainant has received the claim amount, amounting to Rs. 6,40,216/- from O.P. No. 1 on 7th October, 1998. The above fact is evident from document (Ex. C.W. 20), which is at page 36 of the paper book. Now the only question requiring consideration is as to whether in the given facts the complainant is entitled to any interest, and if so at what rate and for which period. As regards the above question as already stated the contention of the learned Counsel for O.P. No. 1 is that the complainant is not entitled to any interest because the claim has been settled finally by O.P. No. 1 and the complainant has received the amount in question in full and final settlement of his claim and has signed a discharge voucher. On the other hand, it is stated by the learned Counsel for the complainant that the amount in question, was received late by the complainant and that too under protest, i.e. without prejudice to its rights and in full and final satisfaction of its claim. As regards the above question, the position is that the contention advanced by the learned Counsel for O.P. No. 1, would have had some weight had the complainant received the payment of the amount in question in full and final satisfaction of its claim, without prejudice to its rights. On a perusal of the documents, it is apparent that the payment of Rs. 6,40,216/- was not received by the complainant without prejudice to its rights. The above fact is evident from letter dated 10.10.1998, which was written by the partner of the complainant to the Divisional Manager of O.P. No. 1, while receiving the payment under the Policy. The operative portion of the above said communication reads as under : "We have received a cheque for Rs. 6,40,216/- only (Rs. six lacs forty thousand two hundred sixteen only) towards our claim and you have not paid the interest in spite of our repeated requests. Kindly make the payment of interest and please note that this cheque have been received by us through our bankers without our prejudice to right."

5. ON a bare perusal of the above said communication, it is apparent that the payment of Rs. 6,40,216/- in settlement of its claim under the policy was received by the complainant not unconditionally but reserving its rights and, therefore, we feel that the claim of the complainant with regard to payment of interest, in the given facts, is fully justified.

6. AS regards the period, the position is that the learned Counsel for the complainant made a statement before this Commission on 7th February, 2003,

 

that interest to the complainant be allowed from the date of filing the complaint, i.e. from 30th January, 1998, till actual payment. In our opinion, the above prayer, made on behalf of the complainant, also appears to be justified because till the date of filing the complaint, the claim had not been settled as is evident from the receipt annexed as Annexure ''A'' with the reply/written version, filed on behalf of O.P. No. 1. Thus, the complainant is entitled to interest from 30th January, 1998 to 7th October, 1998. Now the question is as to at what rate the complainant is entitled to payment of interest by O.P. No. 1. As already stated, the complainant has claimed interest at the rate of 18% per annum. In the prevailing situation interest at the rate of 18% per annum decidedly is on the higher side. Even the Bank rate has been reduced considerably and even on long term deposits Banks are giving interest not more than 9% per annum. In our opinion, if we award interest at the rate of 9% per annum on the above amount for the above said period, the same would meet the ends of justice.

In view of the above discussion, O.P. No. 1 is directed to pay interest at the rate of 9% per annum from 30th January, 1998 to 7th October, 1998 on the amount of Rs. 6,40,216/-. The above interest amount be paid by O.P. No. 1 to the complainant within 45 days from the date of receipt of this order failing which the complainant, for the implementation of this order, would be entitled to file an application under Section 25/27 of the Act against O.P. No. 1 as the complainant may be advised. The above mentioned complaint, filed by the complainant, stands disposed of in above terms. Complaint disposed of.