
(1998) 06 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

ANAND SALES PVT. REGD.

APPELLANT

Vs

Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 03-06-1998

Acts Referred:

Citation : 1998 2 CLT 214 : 1998 2 CPC 168 : 1998 2 CPJ 475 : 1998 2 CPR 238

Hon'ble Judges : A.L.Bahri , Jasbir Singh , Davinder Kaur Bhamrahs J.

Final Decision : Order set aside

Judgement

1. THIS appeal is by the complainant against order of District Forum. Gurdaspur dated July 12, 1996 dismissing the complaint as barred by time having filed beyond 2 years and 9 months. An application for reviewing the aforesaid order was filed, which was dismissed on August 21, 1996. Copy of both the orders have been filed with the appeal.

2. THE approach of the District Forum in dealing with the question of limitation for filing the complaint before the District Forum is not sustainable in law. During the subsistence of the insurance policy taken by the complainant Anand Sales Pvt. Regd. from Oriental Insurance Company, on account of floods, damages to the goods of the complainant was caused on July 12, 1993. Claim was made before the Insurance Company. Since it was not settled. District Forum was approached on April 16, 1996. THE District Forum came to the conclusion that the period of 2 years as provided under Section 24-A of the Consumer Protection Act has expired after the date of alleged loss/ the complaint was barred by time. The question for consideration is as to whether when the cause of action accrued to approach the District Forum. No doubt, such cause of action accrues from the date damage was caused to the stocks but it also is a continuing cause of action till the Insurance Company denies or repudiates the claim. Reply was filed by the insurance complaint to the complaint inter alia admitting therein that Surveyor was appointed, who assessed the loss at Rs. 52,100/-, which the Insurance Company is still willing to pay. There is no assertion in the written statement that at any stage the claim was repudiated by the Insurance Company. Thus, it

cannot be said that the complaint filed on April 16,1996 was barred by time. Learned Counsel has shown letter of the Insurance Company dated February 9, 1995, willingness of the Insurance Company to pay the assessed amount on completion of certain formalities. The fresh cause of action should have accrued to the complainant on repudiation of the claim by the Insurance Company. Since, it was never repudiated, it can be said that the cause of action has not yet accrued. The complaint is held to be within time. The order of the District Forum is set aside. Case is remanded to the District Forum for decision on merits according to law. Records of the case alongwith copy of this order be sent there immediately. Parties through their Counsel are directed to appear before the District Forum on July 20,1998. Order set aside.