

(2012) 10 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

A.P. Jos

APPELLANT

Vs

ICICI Lombard General Insurance Company Ltd.

RESPONDENT

Date of Decision : 31-10-2012

Acts Referred:

Citation : 2013 2 CPJ 386

Hon'ble Judges : V.B.GUPTA J.

Judgement

1. PETITIONER by way of an affidavit sent by post, has challenged order dated 21.1.2011, passed by State Consumer Disputes Redressal Commission, Chennai (for short, "State Commission") in FA No. 45 of 2009. This affidavit has been treated as a revision petition by the Registry. Brief facts are that petitioner/complainant had taken house insurance with the respondent/opposite party for one year from 11.8.2005 to 10.8.2006. Due to heavy rain on 27/28.10.2005 and 5/6.11.2005, the flood water entered into the house, causing severe damage, not only to the building, but also to the household articles, for which, a claim for Rs. 38,050 was lodged, before the respondent. The respondent instead of paying the amount, as claimed, paid only a sum of Rs. 17,844 and obtained a discharge voucher on 11.4.2006, as if, the petitioner has failed to prove the damages. Premium was collected on the basis of the accepted value and having collected the premium, the respondent is not entitled to reject the claim, when the value of the goods is claimed, based upon damage. Since, respondent has failed to pay the amount, it had committed deficiency. Therefore, petitioner is entitled to difference of amount namely Rs. 20,206 with interest thereon, in addition to a sum of Rs. 50,000 as compensation for mental agony.

2. THE respondent admitting the Home Insurance Policy taken by the petitioner, as well as admitting the damage caused to the house, as well as to the articles to some extent, opposed the claim of the petitioner, inter alia alleging that the claim is barred by limitation, Further, the claim of the petitioner at Rs. 38,050 is not based upon correct assessment. As per conditions of the policy assessing the damage at Rs. 17,844, when respondent offered the amount, the same was

accepted by the petitioner in full and final settlement, for which he had issued receipt also. Since, the settlement had already taken place, petitioner is estopped from claiming the amount. Moreover, the claim being already settled, no question of negligence and deficiency, warranting any compensation. The District Consumer Disputes Redressal Forum, Chennai (for short "District Forum") dismissed the complaint vide its order dated 21.10.2008.

3. AGGRIEVED by the order of the District Forum, petitioner filed an appeal before the State Commission, which dismissed the same, vide impugned order.

4. THIS is how the matter has reached before this Commission. Petitioner himself has appeared in person and argued his case.

5. THE grievance of petitioner is that due to heavy rains he has suffered a loss of Rs. 38,050 and has claimed this amount as per the policy issued by the respondent. However, petitioner had been forced to settle for a lesser amount i.e. Rs. 17,844. Under these circumstances, respondent should pay him the balance claim of Rs. 20,206 with interest as well as damages and cost of the complaint.

6. IT is an admitted fact that petitioner has already received a sum of Rs. 17,844 in full and final settlement of his claim made with the respondent. Petitioner's grievance is that he was forced to accept this amount and respondent is liable to pay the balance amount of Rs. 20,206. District Forum in its order has held: The O.P. would contend the claim made by the complainant assisted by as assessor as per the terms and conditions and only after the complainant had agreed to the assessment settle the claim for a sum of Rs. 17,844 and on the due discharge given by the complainant in full and final settlement issued the cheque and receipts sent acknowledged by the complainant. Now the complainant is estopped for making further claim on the same cause of action when himself agreed to the assessment and settlement. The cheque was received without interest at the time of settlement. In fact complainant by his letter dated 30.3.2006 approved but settlement and requested the O.P. to make payment list Ex.B1 We feel that the complainant is estopped from making further claim from the O.P.

7. THE State Commission while affirming the order of District Forum, observed: The complainant estimating the loss at Rs. 38,050, lodged a claim before the opposite party, as seen from the letter dated 24.3.2006 -Ex.A3. After several communications, though the complainant had claimed a sum of Rs. 38,050, the opposite party offered to pay only a sum of Rs. 17,844 as evidenced by Ex.B1 dated 30.3.2006. The complainant had agreed to receive the sum of Rs. 17,844 towards full and final settlement of the claim, registered by him, in Claim No. 631549 that is the claim lodged by the complainant. As agreed under this communication, amount was paid, even as admitted by the complainant, and this being the position, for the entire amount claimed, settled towards full and final settlement and thereafter nothing remains. It is not the case of the complainant, that without prejudice to his right to claim the further amount, due to some

unavoidable reasons, reserving the right to claim further amount, at later point of time, he accepted the amount. Therefore, as rightly recorded by the District Forum and rightly urged on behalf of the opposite party, the entire claim based upon the policy was settled, once for all and therefore, he is estopped from claiming any more amount.

8. THE short question which arises for consideration is as to whether petitioner accepted the sum of Rs. 17,844 on it own or he accepted this amount under any coercion or undue pressure. Law on this subject has been clearly laid down by Hon"ble Supreme Court of India in United India Insurance v. Ajmer Singh Cotton & General Mills and Others, II : (1999) CPJ 10 (SC) : VI : (1999) SLT 590 : : (1999) 6 Supreme Court Cases 400, in which it was held that, discharge voucher though signed as "full and final" may not be treated as final if the consumer can satisfy the Court that it was obtained through undue influence, fraud or misrepresentation. Hon"ble Court has observed: The mere execution of the discharge voucher would not always deprive the consumer from preferring claim with respect to the deficiency in service or consequential benefits arising out of the amount paid in default of the service rendered. Despite execution of the discharge voucher, the consumer may be in a position to satisfy the Tribunal or the Commission under the Act that such discharge voucher or receipt had been obtained from him under the circumstances which can be termed as fraudulent or exercise of undue influence or by misrepresentation or the like. If in a given case the consumer satisfies the authority under the Act that the discharge voucher was obtained by fraud, misrepresentation, undue influence or the like, coercive bargaining compelled by circumstances, the authority before whom the complaint is made would be justified in granting appropriate relief. However (sic so), where such discharge voucher is proved to have been obtained under any of the suspicious circumstances noted hereinabove, the Tribunal or the Commission would be justified in granting the appropriate relief under the circumstances of each case. There mere execution of discharge voucher and acceptance of the insurance would not estop the insured from making further claim from the insurer but only under the circumstances as noticed earlier. The Consumer Disputes Redressal Forums and Commissions constituted under the Act shall also have the power to fasten liability against the insurance companies notwithstanding the issuance of the discharge voucher. Such a claim cannot be termed to be fastening the liability against the insurance companies over and above the liabilities payable under the contract of insurance envisaged in the policy of insurance. The claim preferred regarding the deficiency of service shall be deemed to be based upon the insurance policy, being covered by the provisions of Section 14 of the Act.

In the instant cases the discharge vouchers were admittedly executed voluntarily and the complainants had not alleged their execution under fraud, undue influence, misrepresentation or the like. In the absence of pleadings and evidence the State Commission was justified in dismissing their complaints.

9. IN Bhagwati Prasad Pazvan Kumar v. Union of India, III : (2006) ACC 1 (SC) : IV : (2006) SLT 771 : : (2006) 5 Supreme Court Cases 311, Apex Court has observed: 18. Section 8 of the Contract Act provides for acceptance by performing conditions of a proposal. In the instant case, the Railway made an offer to the appellant laying down the conditions that if the offer was not acceptable the cheque should be returned forthwith, failing which it would be deemed that the appellant accepted the offer in full and final satisfaction of its claim. This was further clarified by providing that the retention of the cheque and/or encashment thereof will automatically amount to satisfaction in full and final settlement of the claim. Thus, if the appellant accepted the cheques and encashed them without anything more, it would amount to an acceptance of the offer made in the letters of the Railways dated 7.4.1993. The offer prescribed the mode of acceptance, and by conduct the appellant must be held to have accepted the offer and, therefore, could not make a claim later. However, if the appellant had not encashed the cheques and protested to the Railways calling upon them to pay the balance amount, and expressed its inability to accept the cheques remitted to it, the controversy would have acquired a differed complexion. In that event, in view of the express non -acceptance of the offer, the appellant could not be presumed to have accepted the offer. What, however, is significant is that the protest and cheques are encashed without protest, then it must be held that the offer stood unequivocally accepted. An "offeree" cannot be permitted to change his mind after the unequivocal acceptance of the offer.

19. It is well settled that an offer may be accepted by conduct. But conduct would only amount to acceptance if it is clear that the offeree did the act with the intention (actual or apparent) of accepting the offer. The decisions which we have noticed above also proceed on this principle. Each case must rest on its own facts. The Courts must examine the evidence to find out whether in the facts and circumstances of the case the conduct of the "offeree" was such as amounted to an unequivocal acceptance of the offer made. If the fact of the case discloses that there was no reservation in signifying acceptance by conduct, it must follow that the offer has been accepted by the conduct. On the other hand, if the evidence discloses that the "offeree" had reservation in accepting the offer, his conduct may not amount to acceptance of the offer in terms of Section 8 of the Contract Act.

10. AS is apparent from the record, petitioner vide its letter dated 30.3.2006 has accepted the sum of Rs. 17,844 on his own and without any coercion or undue pressure. Relevant portion of this letter read as under: I had received your assessment letter sent to me, after inspection and I fully agree to the assessment made by yourselves, which is as per the terms and conditions of the policy availed by me. I hereby agree to receive a sum of Rs. 17,844 (Rupees seventeen thousand eight hundred and forty four only) towards full and final settlement of the claim No. 631549 registered by me. Since we are not reinstating we agree to have the claim settlement on market values and agree for deducting the same from our total sum insured. In the case of any affected

items that are claimed by us we agree to remove the coverage for the claimed items from the policy cover.

This letter also bears an endorsement of the petitioner of the even date, asking the respondent to recalculate the amount. Thus, petitioner is blowing hot and cold at the same time. On the one hand, petitioner is willing to accept a sum of Rs. 17,844 and at the same time, he is asking the respondent to recalculate the amount. If petitioner was not satisfied with the sum of Rs. 17,844, then why at the first instance he accepted this amount. There is no explanation to this effect at all. Moreover, there is nothing on record to show that petitioner was compelled by the respondent at any stage to settle the claim at lesser amount than the claim made by him. There is also not an iota of evidence on record to show that any official of the respondent compelled the petitioner to settle the claim at lesser amount. Interestingly, petitioner after having received the cheque and having encashed the same, as far as back in the year 2006 has been enjoying the aforesaid money for more than six years. Now petitioner wants to repudiate his own letter requesting for settlement. This clearly shows mala fide intention on the part of the petitioner in filing the present complaint. Once petitioner has received the amount unconditionally and has also got the cheque encashed, under these circumstances petitioner ceases to be "Consumer" as per the Consumer Protection Act, 1986. The privity of contract or relationship of consumer and service provider between the parties if any, came to an end the moment petitioner accepted the refund unconditionally and also got the cheque encashed.

11. UNDER Section 21(b) of the Act, this Commission can interfere with the order of the State Commission where such State Commission has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

12. HON "ble Supreme Court in *Mrs. Rubi (Chandra) Dutta v. M/s. United India Insurance Co. Ltd.*, : II (2011) CPJ 19 (SC) : IV (2011) SLT 303 : 2011 (3) Scale 654, has observed: Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21(b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice; which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora.

In view of the concurrent findings of facts given by Fora below, no jurisdiction or legal error has been shown to call for interference in the exercise of power under Section 21(b) of the Act. Both the Fora have given cogent reasons in their orders which do not call for any interference nor do they suffer from any infirmity or revisional exercise of jurisdiction. It is not that every order passed by the Fora below is to be challenged by a litigant even when the same is based on sound reasonings.

13. THE present petition being meritless, is hereby dismissed. There shall be no order as to cost.