**(2002) 03 NCDRC CK 0002**

**In the National Consumer Disputes Redressal Commission**

ARORA KNITTING INDUSTRIES PVT. LTD. — APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD. — RESPONDENT

**Date of Decision :** 13-03-2002

**Acts Referred:**

**Citation :** 2002 0 NCDRC 37 : 2002 3 CPJ 205

**Hon'ble Judges :** B.K.TAIMNI , D.P.WADHWA , J.K.MEHRA , RAJYALAKSHMI RAO J.

**Advocate :** G.S.ARORA

# Judgement

1. THIS complaint has been filed by the complainant M/s. Arora Knitting Industries against the respondent United India Insurance Company alleging deficiency in service on the part of latter by not accepting the claim amount in full and settling the claim for that amount.

2. THE complainant company is a textile manufacturing unit i.e. knitted fabrics and had three Insurance Policies for an amount of Rs. 73,20,000/- [Fire Policy "C" for Rs. 41,50,000/- and Rs. 11,70,000/- for the period 16.11.1999 to 15.11.2000 and a Standard Fire and Special Perils Policy (Material Damage) for Rs. 20 lakhs covering period 11.5.2000 to 10.5.2001]. On account of heavy rains on 12 and 13.7.2000, there was flooding in the factory causing extensive loss estimated at Rs. 60 lakhs which was communicated to the respondent on 14.7.2000. A Surveyor was appointed by the respondent company on 15.7.2000 and after collecting records and other material after protracted correspondence, the claim was settled for Rs. 18,81,714/- on 15.2.2001. This amount was accepted on 22.2.2001 and a cheque of this amount sent to the Bank (banker of the complainant) on 28.2.2001. It is the complainant''s case that they were not satisfied with this amount and accepted it under protest and got into correspondence and meetings with the respondent company. It is the complainant''s prayer that the Commission be pleased to direct the respondent company to pay compensation of Rs. 38,67,286/-. Rationale for this amount appears to be : Amount claimed 34,48,961/- Add : 140 days loss 25,19,860/-

59,68,821/- Amount Received 18,79,335/- Value of salvage 4,22,200/- 23,01,535/- Balance amount 36,67,286/- Plus : Rs. 2 lakh for mental agony = 38,67,286/-

It is argued by Mr. Arora, the Director of the company that even though they carried an insurance cover of over Rs. 73 lakhs, but their genuine claim was for Rs. 34,48,961/-. By their faulty calculations, offer by the respondent company was made for Rs. 18,79,335/- only, which he had to accept under duress as he was suffering losses everyday and interest amount was also mounting. Immediately after accepting this amount, the matter was taken up with the company. When these efforts did not bear any fruit, legal notice was given on 21.8.2001 to which they got only a negative reply. It is after this that this complaint was filed.

3. ON being asked to clarify as to why did he take almost as year to file a complaint, reply of the complainant was that he was corresponding with the company and also that issue of legal notice proves his bonafides. We have seen the material on record and on direction, the Disbursement (Claims) voucher produced before us on the date of hearing.

4. BASIC facts are not disputed. What is in question is the status of the claim in view of the fact of a certain amount having been accepted and then making an issue to get more after a lapse of six months if not one year ? It is admitted position that Disbursement (Claims) Voucher was prepared by the respondent company on 15.2.2001. It was accepted by the complainant and only after that a cheque for that amount (Rs. 18,81,714/-) was sent by the respondent to the complainant''s Bank on 28.2.2001. We find no other material on record other than a legal notice dated 21.8.2001. Interesting point to be noted is that there is not even a whisper in this notice on the point, that the amount of over Rs. 18 lakhs was accepted under protest. In fact there is no reference to it in the body of the four page letter except a mention of it in the calculations Amount Received - 18,79,335/-. To the legal notice, there is a reply from the respondent company clearly stating : "On 15.2.2001, the Disbursement (Claims) voucher for Rs. 18,81,714/- was sent by us to be signed by the joint insured : Greater Bombay Co-op. Bank Ltd. and your clients. This was unconditionally signed by them in full and final settlement for the claim and was returned to us on 22.2.2001 and we remitted a cheque for the said amount to the Bank on 28.2.2001. It is surprising and mystifying that your clients have woken up 6 months after the settlement of the claim and are now making the unwarranted demands and allegations contained in your letter under reference."

5. COMPLAINT is filed on 21st January, 2002. No explanation is forthcoming based on record or any Documentary evidence as to what was the complainant doing for six months after receiving the amount and then again complaint is filed still after five months of the legal notice served on respondent company. Person who need money do not go in hibernation only to resurface after 6 months followed by another long period. We do see on record the Disbursement (Claims)

 

Form and do see the words ''without prejudice we reserve our rights'' above the signatures of the complainant but it also carries the signatures and seal of the Bank with ''Received payment'' written. Not a word in protest by the Bank. The Bank says that the acceptance was unqualified. We are aware of the facts, the Insurance Companies do not settle or let the money pass hands unless it is a clear and unequivocal acceptance of the settlement of the claim by the insured. Be that as it may, sleeping over for six months after accepting money from the respondent leaves us with no other thought than to arrive at a conclusion that it was an after-thought. Six months cannot be stretched to be a reasonable time for any company to seek relief against his claim. In the final analysis it amounts to a ''Quantum'' dispute. His claim having been settled, he does not fall within the definition of a consumer any more. The complaint stand dismissed. The complainant will be free to seek remedy in any appropriate Forum under the law. No order on costs.