(1995) 02 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

ARUN KUMAR GUPTA APPELLANT

Vs

EMPLOYEES STATE INSURANCE CORPORATION RESPONDENT

Date of Decision : 09-02-1995

Acts Referred:

Citation : 1998 2 CLT 636 : 1998 2 CPC 456 : 1998 3 CPJ 11 : 1998 3 CPR 13

Hon'ble Judges : C.L.Chaudhry , R.Thamarajakshi , S.P.Bagla , J.K.Mehra J.

Final Decision : Appeal dismissed

Judgement

1. THIS Revision Petition is directed against the order of the State Consumer Disputes Redressal Commission, Delhi dated 27th March, 1996 dismissing the complaint of the revision petitioner. The facts of the case given rise to this revision petition are: That the complainant, Arun Kumar Gupta, submitted medical bills amounting to Rs. 39,170/- to the Director of Employees State Insurance Scheme. The complainant failed to get reimbursement which resulted in filing a complaint before the District Forum, Delhi. None appeared on behalf of the Employees State Insurance Corporation before the District Forum and the matter was heard and decided ex-parte. The District Forum directed the opposite party to pay the balance of amount of Rs. 15,806/- with interest at the rate of 24% per annum and a sum of Rs. 5,000/- was also awarded as compensation.

2. AGGRIEVED by the order of the District Forum, the Employees State Insurance Corporation preferred an appeal before the State Consumer Disputes Redressal Commission, Delhi, assailing the order of the District Forum. None appeared for the complainant. After hearing the Authorised Representative of the appellant, the State Commission allowed the appeal and dismissed the complaint. The State Commission returned the finding that Employees State Insurance Act was a special Act, governing, amongst other things, dispute regarding the benefits available to the employees covered by the Act. The ESI Court could award suitable costs in addition to the amount of reimbursement, if the same was found to be due according to the relevant provisions of the Act and the Regulations framed thereunder. Reliance was also placed by the State Commission'' on a

judgment of the Supreme Court in the case of Thiruvalluvar Transport Corporation v. Consumer Protection Council, JT (1995) 2 SC 441. Being dissatisfied with the order of the State Commission the complainant approached this Commission by filing this revision petition.

We have heard the learned Counsel for the parties. It is contended on behalf of the petitioner that the finding of the State Commission was wrong and contrary to law. The State Commission failed to appreciate that the appellant was a consumer and had every right to seek remedy under the provisions of the Consumer Protection Act in addition to the remedies available to the appellant under the provisions of ESI Act. There was no provision incorporated in the ESI Act which excluded or prohibited the appellant to seek remedy under the Consumer Protection Act.

3. ON behalf of the respondent, it is urged that the order of the State Commission is legal and in conformity with law. Section 75 of the ESI Act bars the jurisdiction of the FORA constituted under the Consumer Protection Act, 1986, to entertain the complaint. The ESI Act is a complete Code by itself and it provides the remedy to enforce the rights complained of by the complainant. We have considered the matter carefully.

4. THE ESI Act is the outcome of welfare policy of State to provide for certain benefits to employees in the case of sickness, maternity and employment, injury and to make provision for certain other matters in relation thereto. THE object of the ESI Act is to secure benefits like sickness benefit, maternity benefit, disablement benefit and medical benefits to the employees covered under the provisions of the Act. It is a complete Code by itself. Section 74 of the ESI Act provides that "the State Government shall, by notification in the official Gazette, constitute an Employees'' Insurance Court of such local area as may be specified in the notification". THEre is no dispute that the State Government has issued such notification and the ESI Court has been constituted and it is functioning in Delhi. Section 75 of the Act provides that, if any question or dispute arises as to : (a) .... (b) .... (c) .... (d) .... (e) the right of any person to any benefit and as to the amount and duration thereof. such question or dispute shall be decided by the Employees'' Insurance Court in accordance with the provisions of the Act. Sub-section (2) of Section 75 provides that the following claims shall be decided by the Employees'' Insurance Court, namely, (a) .... (b) .... (c) .... (d) .... (e) .... (f) any claim for the recovery of any benefit admissible under this Act. Sub-section (3) of Section 75 of the ESI Act lays down : "No Civil Court shall have jurisdiction to decide ordeal with any question or dispute as aforesaid to adjudicate on any liability which by or under this Act is to be decided by (a Medical Board, or by a medical appeal, Tribunal or by the Employees'' Insurance Court). We have examined the provisions of the Act. We find that the claim of the claimants falls within the purview of Section 57 of the ESI Act, which reads as under: Section 57. Scale of medical benefit-(1) An insured person and (where such medical

benefit is extended to his family) his family shall be entitled to receive medical benefit only of such kind and on such scale as may be provided by the State Government or by the Corporation, and an insured person or, where such medical benefit is extended to his family, his family shall not have a right to claim any medical treatment except such as is provided by the dispensary, hospital, clinic or other institution to which he or his family is allotted, or as may be provided by the regulations". Regulation 96. Authority for determining benefits.-THE authority for determining for purposes of Sub-section (2) of Section 70 of the Act, the value of benefits other than cash payment shall be the Medical Commissioner of the Corporation. 96-A. Reimbursement of expenses incurred in respect of Medical treatment-Claims for reimbursement of expenses incurred in respect of medical treatment of insured person and (where such medical benefit is extended to his family) his family may be accepted in circumstances and subject to such conditions as the Corporation may be general or special order specify".

The complainant submitted bills for reimbursement. The Employees State Insurance Corporation paid the amount which was found to be due to the complainant. The complainant could approach the Employees State Insurance Corporation for the recovery of the balance of the amount by resorting to the provisions of Section 75(1)(e) and Section 75(2)(f) of the ESI Act. The right to claim reimbursement is conferred by the ESI Act which also provides efficacions remedy for enforcement of such right. As such, the ESI Act is a special Act in relation to claims regarding reimbursement from the Corporation. Whereas the Consumer Protection Act of 1986, being a law dealing with question of extending protection to consumer in general could, therefore, be said to be a general law in relation to specific provisions concerning the benefits conferred under the provisions of the EST Act, 1940 and the remedy provided there to enforce those benefits. Ordinarily, the general law must yield to the special law.

5. THE Supreme Court in the case of the Chairman, Thiruvalluvar Transport Corporation v. THE Consumer Protection Council, (Civil Appeal No. 7142 of 1993 decided on 9.2.1995) had an occasion to consider the provisions of Motor Vehicle Act vis-a-vis the provisions of the Consumer Protection Act. THE facts of the case were that one K. Kumar was travelling in omni bus which met with an accident and sustained serious head injury and subsequently he succumbed to injury. A Consumer Protection Council on behalf of the L.Rs. of K. Kumar filed a complaint before the National Consumer Disputes Redressal Commission for award of compensation. THE Commission allowed the complaint by awarding a compensation to the extent of Rs. 5.10 lakhs. THE Transport Corporation went in appeal before the Supreme Court. THE Supreme Court of India allowed the appeal, set aside the order of the National Commission. THE Supreme Court ruled that: "THE question which then arises for consideration is whether the National Commission had jurisdiction to entertain the claim application and award compensation in respect of an accident involving the death of Shri K. Kumar caused by the use of a motor vehicle. Clearly the Claims Tribunal

constituted for the area in question, had jurisdiction to entertain any claim for compensation arising out of the fatal accident since such a claim application would clearly fall within the ambit of Section 165 of the 1988 Act. THE 1988 Act can be said to be a Special Act in relation to claims of compensation arising out of the use of motor vehicle. THE 1986 Act being a law dealing with the question of extending protection to consumers in general, could, therefore, be said to be a general law in relation to the specific provisions concerning accidents arising out of the use of motor vehicles found in Chapter XII of the 1988 Act. Ordinarily the general law must yield to the special law".

6. THIS Commission had an occasion to consider the provisions of the Railway Claims Tribunal in the case of Union of India & Anr. v. M. Adaikalam, (R.P. No. 125 of ,1992) under the Railway Claims Tribunal Act, 1987 regarding of bar of jurisdiction to entertain complaints. THIS Commission held as under : "We find that there is merit in the contention of the revision petitioners-Railways. As held by the State Commission, the Consumer Forums have no jurisdiction to entertain complaints on account of deficiency in service arising from loss, destruction, damage, deterioration or non- delivery of the goods etc., entrusted to the Railway Administration for carriage. THIS jurisdiction is now exclusively vested in Railway Claims Tribunal established under the Railway Claims Tribunal Act, 1987. In addition, the Railways have no liability for delay in delivery in terms of the Coaching Tariff".

Relying upon the judgment of the Apex Court as well as this Commission cited above we are of the view that the complaint could not be entertained by the FORA constituted under the provisions of the Consumer Protection Act. The ESI Act being a special Act the remedy available to the complainant was to approach the ESI Court for appropriate relief. It may also be noticed that the jurisdiction of the FORA constituted under the Consumer Protection Act, 1986 to entertain such type of complaint is barred under Section 75(3) of the ESI Act. As a result, we find no merit in this appeal and it is dismissed. However, we leave the parties to bear their own costs. Appeal dismissed.

