

(2006) 01 NCDRC CK 0076

In the National Consumer Disputes Redressal Commission

BANARSI DASS MAHESH KUMAR

APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LTD

RESPONDENT

Date of Decision : 10-01-2006

Acts Referred:

Citation : 2005 3 CPR 59 : 2006 1 CLT 545 : 2006 1 CPC 402 : 2006 1 CPJ 110

Hon'ble Judges : Onkar Chand Thakur , Senior , Prem Chauhan J.

Final Decision : Appeal dismissed

Judgement

1. DERIVING authority from Section 22-D read with Sections 29A and 2(jj) of the Consumer Protection Act, 1986, as amended up-to-date, the President of the State Commission having retired on 19.4.2005 and no one having been appointed in his place till today and also in exercise of the powers vested in us as a Bench of the Commission constituted by the outgoing President on 18.4.2005 under Section 16(1B) of the Act, we hereby proceed to decide this application on merits.

2. THE present application has been moved on behalf of the complainant with the prayer that the Original Complaint No. 16 of 2000 titled M/s. Banarsi Dass Mahesh Kumar v. New India Assurance Company, disposed of in terms of the order passed by this Commission dated 1.9.2003 be revived and decided afresh in accordance with law. "THE above stand taken by the opposite parties in their reply indicates that the claim for indemnification of the complainant was still under consideration by them, but he appear to have rushed to the Consumer Court by filing the complaint prematurely. In view of this state of affairs, in our considered view, no final adjudication can be made on the merits of the case at this stage. We, therefore, direct the opposite parties to settle the claim of the complainant within three months from today positively. Liberty is reserved to him to approach the concerned Forum/Court in the matter afresh subject to the decision of the opposite parties regarding settlement of his claim. THE present complaint is disposed of accordingly."

The learned Counsel for the applicant/complainant has vehemently argued that

the order dated 1.9.2003 passed by the Commission does not amount to final disposal of the complainant. It contains only a direction to the opposite party-Insurance Company to settle the claim of the complainant within three months from the date of the said order. Hence, the present application for revival. The application was further stated to be perfectly in order under the provisions of Section 151, C.P.C.

The learned Counsel for the non-applicants-Insurance Company has strongly deprecated the stand of the applicant/complainant by arguing that the provisions of Section 151 are not applicable to the proceedings under the Consumer Protection Act, 1986, as amended up-to-date, hereinafter to be referred to as the "Act" unless specifically prescribed to be followed under a statute. Also, since the matter stands finally disposed of, the same cannot be opened for re-hearing as there is no provision of review under the Act.

3. SINCE the merits of the present application need to be gone into minutely so as to determine its maintainability in the facts and circumstances of the case, we may first advert to the order of this Commission, the operative part of which has been reproduced above. It is clear from the above that the complaint has finally be disposed of, where liberty has been reserved to the applicant/complainant to approach the concerned Forum/Court in the matter afresh subject to the decision of the opposite party-Insurance Company that they may take in settlement of his claim. SINCE the position on the front of settlement of his claim was nothing short of denial over its acceptance on the ground of the driving licence of the driver being invalid and ineffective as conveyed vide letter dated 9.12.2003, Annexure R.1, with the present application, the applicant/complainant has no remedy or option except to approach the concerned Forum/Court afresh having jurisdiction in the matter. The said concerned Court/Forum can never be the State Commission as presumed to have been taken by the applicant/complainant. The applicant/complainant has completely forgotten to read and take notice of the order of this Commission to the effect that liberty had been reserved to him to approach the concerned Forum/Court in the matter afresh subject to the decision of the opposite parties regarding settlement of his claim. In reply to the present application, the Insurance Company in paras 5 and 9 thereof have clearly stated that the said order of the State Commission dated 1.9.2003 has been complied with and the claim has been repudiated within the time specified in the said order. Now, in terms of liberty reserved to him as per operative part of the same, the applicant/complainant has to knock at the door of appropriate Court/Forum afresh, if so advised. Had the aforesaid order of this Commission contained only a direction to the opposite party-Insurance Company to settle the claim within three months after the verification of the driving licence, without finally disposing of the complaint, even in that eventuality or for that matter the said direction being an interim direction, could not have been competently passed by the Commission pending disposal of the original complaint filed before it. However, the complaint has since been decided finally long back in the year 2003, duly drawn up, passed and entered, the scope and

principle encompassing the maxim of *actus curiae neminem gravabit*-the act of Court shall prejudice no man -would not operate in the instant case even on an application of the party concerned having been made as the present one before us. On this score also, the application is not maintainable. Moreover, there is no provision in the Act or the rules made thereunder to review its own decisions by the Consumer Fora. The revival of the complaint as sought to be done by the applicant/complainant itself constitutes review of the decision already taken in the complaint. We are further fortified in taking this view from a recent decision of the Andhra Pradesh High Court in the case of *Sureka Estates Pvt. Ltd. v. A.P. State Consumer Disputes Redressal Commission and Others*, 2005 CTJ 231, Andhra Pradesh High Court (CP), whereby the Hon"ble High Court in paras 22 and 23 thereof has held that Consumer Fora are not entitled to exercise review jurisdiction as envisaged under the provisions of Code of Civil Procedure. The paras (supra) thereof are reproduced below: "(22) It is thus clear that a reading of conspectus of provisions of the Act and the rules framed thereunder makes it clear that the provisions of Code of Civil Procedure, 1908, as such, are not applicable to the proceedings before the District Forum or State Commission, as the case may be except to the extent indicated in Sub-section (4) of Section 13 of the Act. The Consumer Disputes Redressal Agencies, which are not vested with the powers of Civil Court, are not entitled to exercise the review jurisdiction as envisaged under Section 114 of the Code of Civil Procedure.

"(23) In the absence of any specific provision conferred upon them by the Act and the rules framed thereunder, the power of substantive review does not exist in the District Forum or the State Commission. The power of review is not an incidental one but a substantive power unless specifically conferred, does not inhere in quasi-judicial bodies constituted and created under the statute".

4. THE learned Counsel for the applicant/complainant has relied upon the decision of this very Commission in *M/s. Eicher Motors Ltd. and Others v. Sukhdev Sharma and Others*, III (1997) CPJ 346, whereby it has been held by this Commission that though the remedy of review is not provided under the Act and the rules made thereunder, but in the event of miscarriage of justice, the Commission has inherent powers to recall its own orders. THE facts of that case are quite at variance with that of the present case. In that case, the appeal of the appellant had been decided in the absence of its learned Counsel and on the application of the said learned Counsel for recalling the said order on sound grounds, being unopposed and uncountered from the other side, involving miscarriage of justice, the order was set aside and the case was ordered to be reheard on merits. In the instant case, the complaint has been finally disposed of in the presence of both the Counsel of the parties. THEREfore, the case cited by the learned Counsel for the applicant/complainant is distinguishable and is not applicable to the facts of the present case. The liberty reserved to the applicant/complainant to approach the concerned Forum/Court in the matter afresh subject to the decision of the opposite parties regarding settlement of his claim squarely establishes that whatever decision of the opposite parties be, he will have to

approach the concerned Court/Forum other than the State Commission whose jurisdiction can never thus be invoked by the applicant/complainant on the same and similar grounds. It could either be the National Commission by way of appeal or revision, as the case may be, or other Forum or Court of competent jurisdiction-pecuniary, territorial or otherwise, where the applicant/complainant now has the remedy to seek relief(s) of the sorts set forth in the complaint by him. Viewed from another angle, we may further dwell upon the maintainability of the present application under the provisions it has been sought to be maintained by the applicant/complainant i.e., Section 13(4) of the Act and so also Section 151 of the Code of Civil Procedure. The cases before the Consumer Fora are to be decided in a summary manner taking into consideration the spirit underlying the provisions of the Act and for that purpose the subtleties of civil law have to be avoided and to translate such an intent and purpose into reality the Act in Section 13 thereof has spelt out the particular matters/aspects/areas where powers as a Civil Court while trying a suit, are exercisable by the Consumer Court in respect of the following: "(i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath; (ii) the discovery and production of any document or other material object producible as evidence; (iii) the reception of evidence on affidavits; (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source; (v) issuing of any commission for the examination of any witness; and (vi) any other matter which may be prescribed."

5. NONE of the matters, referred to above, are the subject matter in dispute before us for intervention, the provision of Section 151, C.P.C., therefore, are not at all attracted in any manner, whatsoever, in the facts and circumstances of the instant case. Even the last one i.e., Sr. No. (vi) above being-any other matter which may be prescribed - does not cover the aspect of maintainability of the present application, as the Act and the Rules made thereunder do not prescribe to proceed that way in invoking the provisions of Section 151, C.P.C. Since Section 13(4) specifically prescribes the matters where powers vest with the District Forum as that of a Civil Court, that too of a very limited nature in comparison to vastness and general scope of Section 151 of Code of Civil Procedure, there is no question of applicability of Section 151, C.P.C. in the instant case. The Hon"ble High Court of Andhra Pradesh in Sureka Estates (supra) has also held that the provisions of C.P.C. are not applicable to the proceedings before the District Forum or the State Commission, as the case may be, except to the extent enumerated in Sub-section (4) of Section 13 of the Act. The application is not maintainable on this score also.

6. IT will not be out of place to mention here that by virtue of the pecuniary limit in terms of the relief(s) sought for in the complaint enhanced from Rs. 20.00 lacs to Rs. 1.00 crore in respect of the State Commission in view of the amendment in the Act effective from 15.3.2003, it is still a matter to be taken up before the concerned Forum/Court as ordered in terms of the order of this Commission

dated 1.9.2003. In view of what has been discussed above, the application is dismissed as being not maintainable. However, in fairness to the applicant/complainant, who has first prosecuted the proceedings in complaint and thereafter by way of the present application, though wrongly but rightly so in his own opinion, we direct that the time taken by him in prosecuting the present application shall not be computed for the purpose of limitation for filing his complaint afresh before the concerned Forum/Court in terms of our order dated 1.9.2003. Appeal dismissed.