(1993) 01 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

BUNDURAM — APPELLANT

Vs

MANAGER, THE PRIMARY COOPERATIVE AGRICULTURAL DEVELOPMENT BANK LTD. — RESPONDENT

Date of Decision : 07-01-1993

Acts Referred:

Citation : 1993 3 CPJ 1232

Hon'ble Judges : S.S.Sandhawalia , S.Kulwant Singh J.

Final Decision : Appeal allowed

Judgement

1. FOR the limited purpose of remanding this case, for its trial on merits, it is unnecessary to delve deeply into the facts and merits.

2. IT suffices to mention that the appellant had preferred the complaint against the two respondents alleging that after obtaining a loan for the purchase of two buffaloes from the respondent bank, he had secured an insurance cover, therefor as required from the respondent Insurance Company as well. One of these buffaloes died on the 25th of July, 1987 and he consequently lodged an insurance claim with regard thereto. IT was his case that the insurnace premium had been duly tendered to the bank for transmission to the Insurance Company, but some dispute on this score is raised inter-se betwixt the bank and the Insurance Company. The District Forum on an appraisal of pleadings and the documents seems to have arrived at some findings of fact in favour of the appellant. However, it took the view that the insurance claim of the appellant was filed as ''no claim'' by them on 30th of November, 1987 and consequently the complaint preferred on the 11th of March, 1992 was barred by time. On the issue of limitation, the same was dismissed without entering into the merits of the case.

It would be manifest from the above that the primal and the solitary issue herein is whether under the law of limiation the claim of the appellant had become barred. Now it is common ground that from the pleadings itself the stand taken on behalf of the respondent company was that they had merely filed the appellant''s claim as a "no claim" one on their own. It was not even pleaded that there had been a formal repudiation communicated either to the bank or to the complainant. However, to be doubly sure, on the point, the matter was pointedly put to the learned Counsel for the United India Insurance Company Mr. S.S. Aulakh. With great fairness, it was conceded that the Insurance Company had never expressly denied or repudiated the claim of the insurer earlier than disputing the same in the complaint before the District Forum. The short question, therefore, is whether in the absence of any earlier repudiation the terminus for the limitation would run from the arising of the cause of action or from the date of denial or repudiation.

3. HEREIN, the matter is concluded in favour of the appellant by the decision of this Commission in II (1992) CPJ 930 ''Sneh Lata Aggarwal v. Life Insurance Corporation of India, by way of direct analogy. Therein what had fallen for interruption was the true import of Clause (a) of Article 44 of the Limitation Act. After a detailed consideration of the matter both on the language of the statute and the obvious intendment of the legislature it was concluded as under: "In the light of the aforesaid discussion, it is somewhat plain that the true import of Article 44(a) is that it expressly provides two alternative starting points for limitation. These are either the date of the death of the deceased or the date of denial of the claim by the Insurance Company. The insured is entitled to take advantage of the alternative date, and his right to sue is not barred by mere delay and dithering of the insurer to finalise the claim."

In view of the above, it is somewhat plain that the identical rule would apply in cases of insurance other than that of life insurance as well. The langugage of Clause (b) of Article 44 is virtually in pari-materia with Clause (a) thereof. Consequently, it has to be held that Article 44(b) also expressly provides two alternative starting points for limitation. These are either the date of the occurrence causing the loss or the date of the denial either wholly or partly by the Insurance Company. The insured is entitled to take advantage of the alternative date as well. His right to sue is not barred by mere delay of the insurer to finalise the claim or filing the same without any express repudiation or denial thereof.

4. ONCE it is found as above, it is plain that the dismissal of the complaint by the District Forum on the threshold ground of limitation cannot be sustained. Herein it is now conceded that the appellant''s claim was at no stage in terms denied or repudiated by the respondent Insurance Company. Therefore, limitation would have to now run from the date when the Insurance Company denied its liability to pay the claim before the District Forum. In that situation the plea of the appellant would be plainly within limitation. For the fore-going reasons, this appeal is allowed. We are constrained to set aside the order of the District Forum and remand the case for its trial on merits, after affording adequate opportunity to both the parties for any further evidence, they may wish to adduce on the record. In view of the somewhat ticklish question involved, we would leave the

parties to bear their own costs. Appeal allowed.

