(2013) 12 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

Chittiprolu Lokeswara Rao APPELLANT

Vs

Divisional Manager, United India Ins. Co. Ltd RESPONDENT

Date of Decision : 18-12-2013

Acts Referred:

Citation : 2013 0 NCDRC 849 : 2014 1 CPJ 39

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : S.RAVI , ZAHID ALI , A.K.DE

Judgement

1. AS both the revision petitions arise out of the common order of learned State Commission, they are decided by common order. Both these revision petitions have been filed by the petitioner against the order dated 26.03.2013 passed by the A.P. State Consumer Disputes Redressal Commission, Hyderabad (in short, ''the State Commission '') in Appeal No.189/2012 - The Div. Manager, The United India Ins. Co. Ltd. & Anr. Vs. Chittiprolu Lokeswara Rao and in Appeal No.190/2012 - Chittiprolu Lokeswara Rao Vs. The Div. Manager, The United India Ins. Co. Ltd. & Anr. by which, while allowing appeal of OP, appeal of complainant was dismissed and order of District Forum was set aside.

2. BRIEF facts of the case are that complainant/petitioner was engaged in the business of pressing and ginning of cotton. He obtained two insurance policies from OP/respondent for a sum of Rs.20,00,000/ - and Rs.25,00,000/ - respectively covering the risk from 23.11.2008 to 22.11.2009. On 14.5.2009, fire broke out at the Ginning Mill and cotton stock of the complainant was destroyed. Complainant intimated the incident to the Fire Department and surveyor deputed by OP assessed loss of Rs.32,00,000/ -, whereas complainant submitted claim of Rs.44,76,027/ -. OP compelled complainant to agree for claim of Rs.32,00,000/ - otherwise they would be repudiating the claim or postpone paymentfor six months. In such circumstances, complainant agreed for settlement and received a sum of Rs.31,89,872/ -. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP resisted claim and submitted that after consideration of survey report, complainant ''s claim was settled and complainant

received payment towards full and final settlement of the claim and complainant voluntarily consented to receive a claim. Settlement of claim was also in the knowledge of complainant ''s bankers who also signed discharge vouchers and received payment by cheques. It was further submitted that at the time of settlement of the claim or at the time of encashment of cheques, no objection was raised. It was further submitted that Police authorities issued clearance certificate on 22.5.2010 and intimation was received by OP on 2.6.2010 and cheques were given on 25.6.2010 and there was no deficiency on their part and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint and directed OP to pay Rs.7,39,873/ - with 9% p.a. interest and also awarded Rs.2,000/ - towards costs. Both the parties filed appeal before State Commission and learned State Commission vide impugned order allowed appeal of OP and dismissed complaint and appeal of complainant was dismissed against which these revision petitions have been filed. Heard learned Counsel for the parties finally at admission stage and perused record.

3. LEARNED Counsel for the petitioner submitted that as payment was obtained under compelling circumstances, learned District forum rightly allowed complaint, but learned State Commission has committed error in allowing appeal and dismissing complaint on the ground of receipt of payment as full and final satisfaction; hence, revision petition be allowed and impugned order be set aside. On the other hand, leaned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

4. IT is not disputed that complainant obtained two insurance policies for his ginning and pressing unit. It is also not disputed that complainant submitted claim for Rs.44,76,027/ - whereas surveyor appointed by OP assessed loss at Rs.32,00,000/ -. It is also not disputed that complainant received payment of Rs.31,89,872/ - towards compensation for the cotton stock burnt in the fire. Learned Counsel for the petitioner submitted that amount of compensation was obtained under compelling circumstances, as complainant was forced to receive the aforesaid amount. OP threatened to the complainant that in case he does not accept the amount then either the claim would be repudiated or payment will be delayed.

5. COMPLAINANT ''s letter dated 10.5.2010 written to the OP runs as under: ''''Sir, We agree to Rs.32,00,000/ - (Rupees thirty two lakhs only) as final settlement towards compensation for the cotton stock burnt in the fire accident on 14.5.2009. This agreement letter is written and given with our consent. Please settle our claim immediately ''''. which bears signatures of the complainant. After this letter, OP received clearance certificate dated 22.5.2010 issued by the Police authorities on 2.6.2010 and cheques for aforesaid amount were issued by the aforesaid opposite party on 25.6.2010. In such circumstances, it can be inferred that after letter of the complainant for receiving Rs.32,00,000/ - as full and final settlement of the insurance claim, OP proceeded

fast and made payment within a short period and no deficiency can be attributed on the part of OP in delaying payment.

6. LETTER dated 10.5.2010 was given by the complainant and in this letter, nowhere it has been mentioned that he is giving this letter under compulsion on account of financial hardship or under coercion, misrepresentation etc. He received payment after 1 1/2 months and during that period also he has not given any letter to the OP indicating that letter dated 10.5.2010 has been given under compelling circumstances. It appears that just after encashment of cheques, notice dated 29.6.2010 was given by the complainant ''s Counsel mentioning undue influence and threat which cannot be believed. Once the complainant has accepted amount in full and final settlement of the claim, he is not entitled to any further amount under that claim. Learned Counsel for the petitioner has placed reliance on (1999) 6 SCC 400 - United India Insurance Vs. Ajmer Singh Cotton and General Mills and Ors. in which it was held that the mere execution of the discharge voucher would not always deprive the consumer from preferring claim if he is in a position to satisfy that discharge voucher has been obtained under the circumstances which can be termed as fraudulent or exercise of undue influence or by misrepresentation. We agree with the principle laid down in aforesaid judgment, but in the case in hand, we do not find any circumstances proving fraud, undue influence, misrepresentation etc. on the part of OP. Letter dated 10.5.2010, appears to be in the handwriting of complainant himself and no protest was made till encashment of cheques. In such circumstances, aforesaid citation does not help to the petitioner. He has also placed reliance on decision of this Commission in R.P. No. 4275 of 2007 decided on 11.1.2008 in which it was held as under: ''''5. The complainant has submitted in his complaint that after 7 days of receipt of Rs.3,45,968/ -, the complainant had approached the insurance company (O.P.1) and demanded the balance amount which was declined and he was asked to approach O.P. 2. He further submitted that since the entire stock was burnt and the business had come to a standstill and because of financial crisis and heavy loss of interest, the complainant was constrained to sign on the discharge voucher, which was in a printed format. Therefore, he had no option but to file a complaint for the balance amount. This we feel is an act of coercive bargaining indulged in by the insurance company. A distressed insured person, who has lost all means of earning his livelihood in a catastrophic fire, has no other choice but to accept any amount as an initial payment in the first instance ''''.

7. FACTS of aforesaid case are different from the facts of case in hand. In the aforesaid case printed discharge voucher was signed by the complainant under compelling circumstances and complainant approached Insurance Co. just after 7 days of receipt of payment whereas in the present case, complainant has given letter in his own handwriting and notice has been given after 50 days of letter dated 10.5.2010 for final settlement.

8. THUS , it becomes clear that as complainant has accepted amount in full and

final satisfaction of the claim, complaint filed by him was not maintainable and learned District Forum committed error in allowing complaint and learned State Commission rightly allowed appeal and dismissed complaint. We do not find any illegality, irregularity or jurisdictional error in impugned order and revision petition is liable to be dismissed at admission stage with no order as to costs.

