(2008) 02 NCDRC CK 0082

In the National Consumer Disputes Redressal Commission

Case No : 710 of 2007

Devender Malhotra APPELLANT

Vs

United India Insurance Company Ltd., & Anr. RESPONDENT

Date of Decision : 20-02-2008

Acts Referred:

Consumer Protection Act, 1986, Section 17 - Jurisdiction of the State Commission

Citation : (2008) 02 NCDRC CK 0082

Hon'ble Judges : R. C. Jain, Anupam Dasgupta

Judgement

1. The challenge in this appeal is to the order dated 24.10.2007, passed by the State Commission, Delhi in Complaint Case No. 07/183.

2. Very briefly, the facts leading to the present appeal are that the appellant herein filed a complaint under Section 17 of the Consumer Protection Act, 1986 (for short, ''the Act'') before the State Consumer Disputes Redressal Commission. Delhi (for short, ''the State Commission'' with the averments that he is running business of printing of various packaging and related works under the name and style of M/s. Balaji Industries. The said industry was insured with respondent No. 1, insurance company under the ''Standard Fire and Special Perils Policy'' vide Policy No. 041703/11/ 06/11/00000094 which was valid from 11.25 hrs. of 4.5.2006 to midnight of 3.5.2007 for the sum of Rs. 25,00,000 (Rupees twenty five lakh only). The industry had cash credit facility from the respondent No. 2, Bank against the stocks. Unfortunately, on 30.9.2006 at about 9.00 p.m. a fire broke out in the business premises of the appellant and all the stocks, official records, etc. lying at the premises were burnt resulting in loss of more than Rs. 20,00,000 for which a claim was lodged with the insurance company. The insurance company proposed to settle the claim of the appellant for a sum of Rs. 4,50,344 which was not acceptable to the appellant. The appellant, therefore, filed the abovementioned complaint before the State Commission with the following prayers : In view of the abovementioned submissions this State Commission may please to :

1. Direct the opposite party No. 1 to pay the amount of Rs. 22,13,000 towards the insurance.

2. Direct the opposite party No. 1 to pay Rs. 2,00,000 per year towards the interest charged by the opposite party No. 2.

3. Direct to pay compensation of Rs. 2,00,000 towards the loss in the business.

4. Compensation of Rs. 3,00,000 towards the mental agony.

5. Cost of litigation.

3. It would appear that the complaint filed by the appellant, came up for admission hearing before the State Commission on 24.10.2007 and State Commission passed the following order :

"1. Complaint is being taken up at admission stage.

2. Complainant insured its goods with the O.P. for a sum of Rs. 25,00,000 against risk of fire. On 30.9.2006 fire took place in the premises of the complainant, as a result he filed claim of Rs. 22,13,000. Surveyor assessed the loss to the tune of Rs. 4,45,000. The complainant refused to accept the said amount and consequently filed the instant complaint before this Commission.

3. As is apparent from the facts, the complainant claimed Rs. 22,13,000 out of which Rs. 4,50,000 have been offered by the O.P.

4. For the purpose of pecuniary jurisdiction the complaint is transferred to the concerned District Forum for consideration with the direction to the complainant to accept the amount of Rs. 4,50,000 offered by the O.P. without prejudice to his rights and contentions made in the complaint. However, if the District Forum at the final stage deems that complainant is entitled for higher compensation, the District Forum may remit the complaint to this Commission for final adjudication.

5. The complainant shall appear before the concerned District Forum on 26.11.2007.

6. A copy of this order as per the statutory requirements be forwarded to the parties free of charge and also to the concerned District Forum and thereafter the file be consigned to Record Room.

Announced on 24th day of October, 2007."

4. We have heard Mr. Umesh Sharma, advocate representing the appellant and Mr. Lalit M. Jha, advocate representing the respondent No. 2 Bank, there being no representation on behalf of respondent No. 1, insurance company despite notice. Learned counsel for the appellant has submitted that the impugned order passed by the State Commission is patently illegal because the State Commission has failed to exercise its jurisdiction and has also acted illegally in exercise of its jurisdiction. Learned counsel representing respondent No. 2, Bank fairly stated that he was also unable to support the impugned order. We have given our

thoughtful consideration to the submissions of learned counsel for the appellant. Keeping in view the various provisions of the Act which lay down the jurisdiction of the three Consumer Fora constituted under the said Act as also the settled legal principles about the exercise of jurisdiction by Courts, judicial and quasi-judicial authorities and Tribunals, we are also of the opinion that the impugned order cannot be legally sustained on the strength of any known legal principles or even otherwise. In the case in hand, as is manifest from the above narration of facts, the complainant has prayed for a sum of Rs. 22,13,000 towards the damages under insurance, compensation of Rs. 5,00,000, i.e., Rs. 2,00,000 towards loss in business and Rs. 3,00,000 towards mental agony, besides claiming interest of Rs. 2,00,000 per annum. This would clearly show that the claim of the appellant in his complaint was for a sum exceeding Rs. 27,00,000. Needless to mention that by virtue of the Consumer Protection (Amendment) Act, 2002 (62 of 2002) effective from 15.3.2003, Section 17 was amended and the pecuniary jurisdiction of a State Commission to entertain the complaints based on the floor value of the goods or services and compensation, was enhanced, from more than Rs. 5,00,000 to more than Rs. 20,00,000. Going by the said provision, the complainant was right in invoking the jurisdiction of the State Commission by filing the complaint before it, with the legitimate expectation that his complaint would be dealt with and disposed of in accordance with the law.

5. However, at the threshold itself, the impugned order came as a rude shock to him inasmuch as, firstly, his complaint was remitted to the District Forum for consideration and secondly, a direction was given to him to accept the amount of Rs. 4,50,000 offered by the opposite party without prejudice to his rights and contentions made in the complaint. We are at a loss to find out as to for what reasons the State Commission was prompted to take such a wholly illegal and erroneous view. The observation for the purpose of pecuniary jurisdiction the complaint is transferred to the concerned District Forum for consideration does not bring out the mind of the Commission in any way. The error was further compounded by the subsequent observations, i.e., "However, if the District Forum at the final stage deems that complainant is entitled for higher compensation, the District Forum may remit the complaint to this Commission for final adjudication." Which would mean that the complaint was first to be tried by the District Forum uptil the final stage and if at that stage the District Forum found that compensation higher than the pecuniary jurisdiction and competence of the District Forum was to be awarded, then the complaint was to be remitted to the State Commission for final adjudication. The Act neither envisages nor prescribes such a procedure for the trial of a complaint by two Consumer Fora. It appears to us that while passing the impugned order and giving directions as above, the State Commission has totally overlooked the provisions of the Act and was perhaps harbouring under the provisions of some other law or other statute where perhaps such a course might have been provided.

6. In the face of clear cut averments and allegations made and the extent of

relief sought by the complainant in his complaint, the only option resting with the State Commission was to admit or dismiss the complaint at the admission stage in its judicious discretion or having admitted the complaint, to proceed with the trial of the complaint to take it to the logical conclusion. The law as contained in the Act does not empower a State Commission to remit or transfer a complaint which itself has the jurisdiction to entertain and deal with, having regard to the jurisdictional value put by the complainant. No forum constituted under the Act will be within its rights to put its own value either by reducing or enhancing the value put by a complainant under the assumption that ultimately the complainant may not be able to sustain his claim beyond a particular amount. Doing so would amount to prejudging the complaint. A complainant is entitled to place such value on his complaint and to claim such compensation as he deems proper and the valuation so put by the complainant, shall decide the jurisdiction of the Consumer Fora constituted under the Act, rather than the value substituted by a forum. It is altogether a different matter that ultimately the complainant may succeed in his complaint partly and he is granted a lower compensation or no compensation at all or the complaint is dismissed. Throwing away a complaint over which it has the jurisdiction to try and decide under the Act, in the lap of a District Forum or shuttling the complaint from one forum to another on the whims and fancies of any forum tantamount to the failure of such forum to exercise the jurisdiction vested in the said forum as also exercising of its jurisdiction illegally or with material irregularity. This Commission must deprecate and disapprove of such procedure.

7. From the above discussion, it is manifest that the impugned order suffers from the vice of jurisdictional error because firstly, the State Commission has failed to exercise the jurisdiction vested in it by not entertaining and disposing of the complaint filed by the appellant which it was under a statutory obligation to do and secondly, the State Commission has acted in exercise of its jurisdiction illegally by directing the complainant to accept the amount of Rs. 4,50,000 offered by the opposite party as against the claim more than Rs. 27,00,000. The impugned order, therefore, is liable to be set aside.

8. In the result, we allow the present appeal and set aside the impugned order. The complaint filed by the appellant is remitted to the board of the State Commission at its original number and shall be disposed of by the State Commission in accordance with law. Parties are left to bear there own cost because they have been unnecessarily forced to approach this Commission without any fault on the part of any one of them.

9. Parties are directed to appear before the State Commission, Delhi on 25.3.2008 for receiving directions in the matter.