(2009) 02 NCDRC CK 0040

In the National Consumer Disputes Redressal Commission

Dineshchandra Chhotalal Patel APPELLANT

Vs

NATIONAL INSURANCE CO. LTD. RESPONDENT

Date of Decision : 27-02-2009

Acts Referred:

Citation : 2009 2 CPJ 201

Hon'ble Judges : R.C.JAIN , S.K.NAIK J.

Final Decision : Appeal dismissed

Judgement

1. THE appellant is the unsuccessful complainant who had earlier filed the complaint before this Commission (National Consumer Disputes Redressal Commission) seeking compensation of Rs. 23,57,500 which complaint was withdrawn by him with liberty to file the same before the Gujarat State Consumer Disputes Redressal Commission (in short, the State Commission) after reducing the claim to Rs. 19,75,000. The consumer dispute raised by the complainant related to the non -settlement of his claim in respect of the loss/ damage to 400 insured cotton bales which were damaged in a fire which broke out on 25.4.91 at the factory premises. The claim was repudiated by the Insurance Company on the ground that the cotton bales in question were neither owned nor possessed by the complainant and rather belonged to certain other persons who had not taken insurance coverage for the said bales. The State Commission on a consideration of the respective pleas put forth on behalf of the parties and the material brought on record dismissed the complaint holding that there was no deficiency in service on the part of the respondent insurance company in regard to settlement of the insurance claim. Aggrieved by the said order, the complainant has filed the present appeal.

2. WE have heard Mr. A.V. Modi, learned Counsel appearing for the appellant and Mr. Vishnu Mehra, learned Counsel representing the respondent and have given our thoughtful consideration to their submissions. Going by the grounds on which the claim was earlier repudiated and the pleas on which the complaint was resisted by the Insurance Company, the important questions which arose for

consideration were, (i) whether the complaint was filed within the prescribed period of limitation and (ii) the complaint was barred by estoppel in view of the earlier complaint having been filed by the complainant before this Commission. However, the crucial question, was whether on the facts and circumstances of the case and the material brought on record, the Insurance Company was justified in repudiating the claim on the ground it had done.

3. IN regard to the first and second question, the State Commission has repelled the pleas of the Insurance Company and held that the complaint filed before the State Commission, after excluding the time taken in the proceeding before the National Commission, was within limitation. It also held that in view of the specific leave granted by the National Commission to the complainant to withdraw the complaint and re -file it, there was no question of un -suiting the complainant on the basis of principle of estoppel. However, in regard to the crucial question, the State Commission held that there was no deficiency in service on the part of the Insurance Company. The finding of the State Commission on this issue is largely based on the facts and circumstances which were established from the evidence consisting of the depositions of the so -called sellers of the stock of cotton bales, namely, Kanubhai Haribhai Shah, Manager, Ambica Vijay Cotton Ginning and Pressing Factory, Chhanabhai Chhotalal, Viran Traders as also the affidavit on behalf of Ravi Irrigation Agency. The State Commission also closely examined the stock register maintained at Ambica Vijay Cotton Ginning and Pressing Factory the site of fire accident as also the certificate issued by the Bank with whom the complainant had certain cash and credit hypothecation facility. On consideration of entire material, the State Commission observed the following circumstances on the basis of which it came to the above conclusion. The circumstances noted down by the State Commission are as under: "Although there is a bulk of evidence as noted hereinabove, following circumstances which have been brought to light would clinch the issue against the complainant.

(1) Admittedly the complainant had availed of cash credit limit against hypothecation of stock of cotton bales from Bank of Baroda. The cash credit limit was to the extent of Rs. 8,50,000. Admittedly, the Bank''s dues were cleared up and stock of cotton bales as asserted by opponent Insurance Company was sold off. The purchase of 400 bales of cotton in question is alleged to have been made in the month of April, 1991 soon before the date of incident in question. Now no advance has been taken against hypothecation of these bales, yet it has been alleged that stock statement with regard to 350 out of 400 cotton bales was submitted to Bank of Baroda. This is clearly against and counter to the usual course of banking practice. Besides, the complainant has failed to examine concerned Bank personnel in spite of giving sufficient opportunity by issuing and re -issuing summons as requested by the complainant. Certificate issue by the Bank way back in October 1992 as aforesaid has therefore been not exhibited as not proved. If the witness from the bank had been examined, he would have been cross -examined and the aforesaid banking practice would have come to

light. That apart, the very fact that there was no advance taken against the aforesaid alleged purchases would throw doubt about the genuineness of the transactions in question.

(2) None of the purchases is witnessed by payment of any kind as stated hereinabove. A faint effort was made by one of the traders to say that payment was received. That was belied by cross -examination of other witness to which we will soon take ourselves. The parties from whom the alleged purchases were made, admittedly did not have any insurance for the cotton bales in question. (3) Even as on the date of evidence after passage of nearly 9 years, payments have not been effected. That is highly suspicious circumstance about the transactions being genuine. (4) The transactions in question have been entered into with the aforesaid traders/parties for the first time.

Learned Counsel for the appellant has made vain attempt to assail the said finding of the State Commission primarily on the ground that the State Commission has erred in not relying and acting upon the evidence of the sellers of the cotton bales produced by the complainant and in any case it is argued that even if the consideration of the goods purchased by the complainant from the said seller, had not passed, the complainant had the liability to pay the price of said cotton bales to the sellers of the said goods. We have noted this submission only to reject it because to succeed on his claim for damages, the insured must prove by cogent evidence that he had the insurable interest in the goods which were damaged and must satisfy the Surveyor and the Insurance Company that he has actually suffered loss. On going through the totality of the facts and circumstances of the case, it appears to us that the stand of the complainant in regard to purchase of said stock of cotton bales was not consistent and he has been blowing hot and cold. Not only this, the testimony of the witnesses was itself destructive rather than supporting the cause of the complainant. In this connection, the State Commission has noted as under: "A very important fact to be noticed from the affidavits which have been read before this Commission is that all the payments of the alleged purchases are outstanding except the payment in respect of 100 bales alleged to have been sold by Ravi Irrigation Agency on 16.4.91. Mr.Bikhabhai Kanjibhai Patel, Proprietor of Ravi Irrigation Agency has filed affidavit stating that the amount of 100 bales did not remain outstanding on the date on which he filed affidavit (25.6.2002). Now, in para 3 of the affidavit, the first version was that the amount remained outstanding and the relevant word in Gujarati is scored off and replaced by the words indicating that the amount did not remain outstanding. At this very stage, the cross -examination of the said witness might be referred to. He has deposed in the cross -examination Ex.33 that the amount of alleged transaction was paid by cheque. However, no evidence was produced to substantiate this version given out in the cross -examination for the first time.

4. SURPRISING LY , the Complainant did not hesitate in taking up the plea that the payment of 150 cotton bales was not made in cash but was given in

exchange of goods, i.e., so -called barter system. Not only this, certain interpolations were found in the stock register of Ambica Vijay Cotton Ginning and Pressing Factory where it is claimed that damaged cotton bales were stocked. The State Commission has also extensively referred to the recital in the report of the Surveyor which would show that the complainant was not the owner of the cotton bales in question which were damaged in the fire. The State Commission has also taken note of the finding of this Commission in all earlier case arising out of the same fire incident where this Commission has made certain observations disentitling the complainant for certain quantity of cotton bales in support of which the claim was made in the said complaint.

5. HAVING considered the matter on its entirety, we are of the view that the findings of the State Commission are based on the correct and proper appreciation of the evidence and the material brought on record. We have no reason to differ with the said finding and the detailed reasons given by the State Commission for reaching the said finding. We, therefore, see no merit in the present appeal. In the result, the appeal fails and is hereby dismissed. However, in the circumstances of the case, we leave the parties to bear their own costs. Appeal dismissed.

