(1994) 01 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

FACTORY MANAGER, OM NEELKANTH CHEMICALS INDIA (P) LTD.	APPELLANT
Vs	
GENERAL MANAGER, NEW INDIA ASSURANCE CO. LTD.	RESPONDENT

Date of Decision : 31-01-1994

Acts Referred:

Citation : 1994 2 CPJ 208

Hon'ble Judges : S.A.Shah , R.K.Shah J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant has admittedly taken a fire policy from the opponent, New India Assurance Company Ltd. insuring the block of properties inclusive of building, structure, factory premises vehicles and other properties. THE complainant had installed machinery as mentioned in para 4 of the complaint which was also included in the policy of insurance. Subsequently also he has included various types of machineries for which there was insurance.

2. ACCORDING to the complainant on 23.8.88 at 7.15 a.m. the watchman of the factory noticed that the entire tank went down suddenly and broken and as a result the hydrochloric acid was spilled and said tank fell down due to explosion. The complainant has also informed the opponent immediately by letter dated 24.8.88 thereby he has suffered various losses and has filed a claim which was not settled and hence has filed this complaint which has been registered on 16.10.91. The complainant has claimed Rs. 1,29,000/- with interest and cost. The Insurance Company has also filed the survey report dated 21.2.89 in which the surveyor has assessed the damages at Rs. 16,900/-. In the written statement filed by the Insurance Company, the company has stated that they have repudiated the claim on 4.4.89 as shown in Annexure-A informing the complainant that the loss was due to heavy loading of hydrochloric acid and due to the age of the tank. Therefore, the company was treating the claim as "no claim" which was to be noted by the complainant. The company has raised the contention in para 3 of the written statement that the claim was not legally

maintainable since the same was not filed within 12 months of the date of the disclaimer by the opponent and hence the subject matter has become abandoned for all the purpose and claim is not recoverable after twelve months. The company has relied upon Clause 6(ii) of the policy and the judgment of this Commission decided on 8.1.92 and thereafter another judgment decided on 14.2.92. The policy condition No. 6(ii) reads as under : "In no case whatsoever shall the Company be liable for any loss or damage after the expiration of 12 months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration, it being expressly agreed and declared that if the Company shall disclaim liability for any claim hereunder and such claim shall not within 12 calendar months from the date of the disclaimer have been made the subject matter of a suit in a Court of law, then the claim shall for all purposes be deemed to have been abandoned and shall not, thereafter, be recoverable hereunder."

This clause of the New India Assurance Company has been interpreted by us in two cases viz. M/s. Saheen Screen Printers v. United India Insurance Co. Ltd. in Complaint No. 112/ 91 decided on 8.1.92 and M/s. Paras Textiles v. New India Assurance Company Ltd. in Complaint No. 276/91 decided on 14.2.92, the latter being reported in I (1993) CPJ 126 (NC)=1992 (1) CPR 749. We, after considering several decisions including the decision of the honorable Supreme Court, have observed as under : "In view of aforesaid decisions, some of which are binding to us, we reluctantly come to the conclusion that the complainant having abandoned his rights by not filing the suit or taking any action (complaint) within 12 months from the date of repudiation his right having been extinguished, the pro visions of Section 28 of the Contract Act are not attracted, and, therefore, the complaint is not maintainable before us since the right to file a suit having been lost on account of Clause 4(iii) of the Policy."

In this case the policy was different but the clause was of same type. Paras Textile case has been taken before the honourable National Commission and the honourable National Commission has confirmed the decision as observed in para 8 of the judgment which reads as under : "In view of the aforesaid decisions and the decisions relied upon by the State Commission we hold that the Clause 19 of the policy is not void either under the Law of Limitation or Law of Contract and the appellant having abandoned their right by not filing a suit or taking any action within 12 months from the date of the repudiation of their claim by the insured, the Company is not under any liability to pay the claim to the insurer under the policy."

This decision has been reported in I (1993) CPJ 126 (NC). We are bound by the judgment of the honorable National Commission and we have no alternative except to dismiss the complaint without entering into the merits of other contentions of the complainant. We, therefore, decide this complaint only on preliminary legal issue. ORDER The complaint is dismissed. In the circumstances there will be no order as to costs. Complaint dismissed.