(2002) 10 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Golden Gate Clothing Pvt Ltd APPELLANT

Vs

UNITED INDIA INSURANCE CO LTD RESPONDENT

Date of Decision : 07-10-2002

Acts Referred:

Citation : 2002 3 CPJ 356

Hon'ble Judges : D.P.WADHWA , J.K.MEHRA , RAJYALAKSHMI RAO , B.K.TAIMNI J.

Judgement

1. THIS complaint pertains of insurance claim. There are three complainants. First complainant is limited Company and the other two are its directors. The claim is over Rs. 1.00 crores and is as under : ''Therefore, the complainant is entitled to be paid for the following sum by the respondent : Rupees (a) Insured amount towards loss sustained by the insured complainant (Burglary Insurance Policy) 20,43,827.17 (b) Insured amount towards loss sustained by the insured complainant (Marine Insurance Policy) 50,00,000.00 (c) Interest on the above said amount from the date of presentation of the claim till the date of filing of this complaint 22% compounded quarterly till January 31, 2000. 22,14,976.00 (d) Expenses incurred of pursuing the claim 45,000.00 (e) Damage for mental agony 5,00,000.00 (f) Damage @ 15,000/ - per month from October, 1998 till date of the complaint, i.e. 31.1.2000 2,40,803.00 Total Rs. 1,00,43,803.00

2. COMPLAINANTS are also doing the business of import/export of garments. In November -December, 1995 they imported certain garments from USA of the value of US $ 244683.26. The goods arrived at the Indira Gandhi International Airport on 2.2.1996. Complainants say that goods were not of the required specifications and for the reasons they approached the Commissioner of Customs for re -export of the garments. During that period the garments were stored in the warehouse of the Airport Authority of India. Complainants say that they got insurance cover against burglary, etc. from the opposite party - Insurance Company, firstly from 23.3.1996 to 2.4.1996 which was renewed from time -to - time and the last policy of burglary and house breaking was for the period from 17.11.1998 to 16.11.1999. Complainants claim that during the currency of these

policies there was a theft in the warehouse and various quantities of garments were burgled. The matter was taken up before the Custom Authorities who assessed the value after looking into the bill of entry at US $ 36,702.52. The claim was made to the Insurance Company who appointed a Surveyor. Meanwhile, permission was granted to the complainant to re -export the garments to USA. That was on 18.3.1998. It is stated that the goods to be re - exported were properly packed and were kept at the Hanger for being air lifted to New York by Saudi Airlines. Again insurance cover was taken covering the risk of the transport of the consignment of the value of Rs. 50.00 lakhs. The consignment when arrived at New York was found to be damaged. Custom Authorities in the USA declared the consignment to be total loss and was destroyed. Again the claim was made to the opposite party -Insurance Company for the loss sustained. Both the claims regarding burglary and transportation loss was denied by the opposite party on the ground that there was no burglary under the terms of the policy and further loss of the goods was on account of deterioration and that risk was not covered under the marine policy. This complaint was filed on 22.3.2000. Notice was issued to the Insurance Company who have filed written version repudiating the claim of the complainants altogether. Stage of evidence has not come. We have examined the pleadings and we find that the complaint raises complex questions of law and facts which cannot be decided in our summary jurisdiction. In the case of Synco Industries v. State Bank of Bikaner and Jaipur & Ors., I (2002) CPJ 16 (SC)=I =(2002) 2 SCC 1, a three -Judge Bench of the Supreme Court observed as under: ''Given the nature of the claim in the complaint and the prayer for damages in the sum of rupees fifteen crores and for an additional sum of rupees sixty lakhs for covering the cost of travelling and other expenses incurred by the appellant, it is obvious that very detailed evidence would have to be led, both to prove the claim and thereafter to prove the damages and appellant. It is, therefore, in any event, not an appropriate case to be heard and disposed of in a summary fashion. The National Commission was right in giving to the appellant liberty to move the Civil Court. This is an appropriate claim for a Civil Court to decide and, obviously, was not filed before a Civil Court to start with because, before the Consumer Forum, any figure in damages can be claimed without having to pay Court -fees. This, in that sense, is an abuse of the process of the Consumer Forum.''

3. HOWEVER , our attention was drawn to another decision of the Supreme Court in the case of Dr. J.J. Merchant & Ors. v. Shrinath Chaturvedi, IV =JT 2002 (6) SC 1, where Supreme Court said that National Commission can decide complex questions of law and facts. There cannot be dispute about that. Fact remains that the Supreme Court in the case of Dr. J.J. Merchant also said that it is for the National Commission to see if the matter is to be decided by it or parties are to be relegated to Civil Court. In the case relating to medical negligence it was contended by the respondent -doctors therein that since complex questions of law and facts were involved, National Commission was not competent to decide the issues involved and the matter should be referred to Civil Court. The matter

had gone to Supreme Court after the National Commission rejected the applications of the respondent -doctors for stay of the proceedings before the National Commission on account of criminal case pending against them and arising out of same transaction. It was in this context the Supreme Court said the National Commission is headed by the retired Judge of the Supreme Court and certainly it was competent to decide complex questions arising in the case before it. In the present case before us it requires detailed evidence. As a matter of fact Commissioner of Customs was also impleaded as opposite party on the request of the complainant but later on it was stated that Commissioner of Custom is not necessary party. Be that as it may, it may not be possible to decide this matter in our summary jurisdiction.

4. WE , therefore, reject the complaint and relegate the parties to Civil Court or to any other Forum. Our rejection will, however, not debar the complainants from pursuing their remedy in any other Forum. Complainants can also seek exclusion of time spent in pursuing this complaint as provided in Section 14 of Limitation Act in view of the judgment of the Supreme Court in the case of Laxmi Engineering Works v. PSG Industrial Institute, II (1995) CPJ 1 (SC)=(1995) 3 SCC 583. Complaint dismissed.