(2001) 04 NCDRC CK 0057

In the National Consumer Disputes Redressal Commission

GOPAL JI AMBICA PRASAD APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY RESPONDENT

Date of Decision : 16-04-2001

Acts Referred:

Citation : 2002 3 CPJ 120

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal against the judgment and order dated 29.7.1992 passed by District Consumer Forum, Gorakhpur in Complaint Case No. 131/1992.

2. THE facts of the case stated in brief are that the complainant is running a firm under the name of M/s. Gopal Ji Ambica Prasad. He had obtained an insurance policy from New India Assurance Company for keeping money in safe and for transit policy. This policy was effective from 30.7.1987 to 29.7.1987. During this period, the employee of the firm Jawahar Lal Gupta used to realise amount from different shopkeepers. On 3.9.1988 he had collected a sum of Rs. 29,391.40 and after keeping the same in the brief-case was coming by bus. This brief-case was stolen by somebody, the information of which was given to the New India Assurance Company. An F.I.R. was also lodged with the Police Station but nothing has been done even now by the Insurance Company. THE complainant has claimed the above mentioned amount along with Rs. 1,000/- as cost. The opposite party was served notice but they did not file any written statement. The learned District Consumer Forum on the basis of cover-note held that as the cover-note was issued for 15 days only, therefore, claim against the Insurance Company cannot be decreed. It also held that the claim was barred by limitation. With these findings, the learned District Consumer Forum dismissed the complaint.

Aggrieved against this order, the complainant has come in appeal and has challenged the correctness of the order passed by the learned District Consumer Forum.

3. WE have heard the learned Counsel for the parties. Learned Counsel for the appellant has argued that the complainant has deposited the premium for the entire year and the policy was to run for the entire year with effect from 30.7.1987. According to the learned Counsel, the cover-note even if it was issued for 15 days will not bar the present case. The learned Counsel for the opposite party has not contested on this point. When the premium has been paid for once the entire year and a cover-note was issued thereafter the policy was effective. It means that the Insurance Company has accepted the premium and also accepting the insurance done by the complainant. Non-issue of policy in such a case to the complainant will not mean anything and the risk will stand covered. The cover-note is only issued till the policy is issued and reaches the complainant, thereafter the cover-note becomes ineffective. The learned Counsel for the opposite party has raised a preliminary objection that the claim was barred by limitation. Acccording to the learned Counsel the loss was occasioned on 3.9.1988 while the complaint has been filed on 5.5.1992 after the lapse of about three years from the date of loss. The learned Counsel for the appellant/ complainant has argued that in the present case the claim was not repudiated by the Insurance Company, hence the period of limitation will not start. According to the learned Counsel the period of limitation will start only when the case is repudiated by the Insurance Company. It is an admitted fact that the claim has not been repudiated till the filing of the complaint. Learned Counsel for the appellant/complainant has placed reliance on certain cases. The first case in the series is Tanawala Synthetic Textile Limited v. Oriental Insurance Company Limited, III (1996) CPJ 99 (NC)=1997 CCJ 1473. The National Commission in para 18 has stated that there has been inordinate delay of more than three years on the part of the Insurance Company in deciding the claim petition. There was a long correspondence between the parties and even after furnishing the survey report the claim was not repudiated. The complainant filed the claim petition and during the proceedings the claim was repudiated by the Insurance Company. On these facts the Hon''ble National Commission has held that the letter of repudiation sent after a long delay of over three years and during the pendency of the complaint does not set out the valid grounds for not accepting the loss. The case was not treated to be barred by limitation by the National Commission. The same view was taken by the West Bengal State Commission in the case of Lallacherra Tea Co Ltd. v. United India Insurance Company Limited & Anr., II (1996) CPJ 243=1997 CCJ 895. In this case also a plea was taken that the complaint is barred by limitation. In that case also the claim was not repudiated by the Insurance Company. The State Commission on the basis of the facts on record came to the conclusion that the limitation starts from the date of repudiation. In the case of Dawood Umar Taj & 80 Ors. v. Oriental Insurance Company Limited, II (1994) CPJ 14, the Maharashtra State Consumer Disputes Redressal Commission has also held that as the claim was not repudiated by the Insurance Company it is not barred by time.

4. THUS we find that the period of limitation will not start till the repudiation is

made by the Insurance Company. In the present case, the claim petition cannot be said to be barred by limitation. Therefore, the findings of the learned District Forum to the contrary are not correct and are set aside. Now we come to the question of compensation which is to be allowed to the complainant. The policy of the complainant was for taking cash in transit. According to the complainant the cash worth Rs. 29,391.40 was being taken by one Jawahar Lal Gupta, employee of the complainant. This amount was collected from the shopkeepers and he was coming by bus on 3.9.1988 and during the course of transit, the brief-case in which the amount was kept was stolen for which a report was also lodged. The Insurance Company has not disputed the correctness of this amount, therefore, the complainant is entitled to a sum of Rs. 29,391.40. Now the question of rate of interest arises. Learned Counsel for the appellant/complainant has argued that the interest should be fixed at the rate of 18% per annum in view of the decision of the Hon''ble Supreme Court in the case of United India Insurance Company Limited v. Fancy Traders, VII (2000) SLT 365=JT 2000 (10) SC 237. The Hon''ble Supreme Court in this case has held that the interest at the rate of 18% per annum is justifiable. The order of the Hon''ble Supreme Court is very short and is being reproduced below : ORDER "1. Leave is granted. 2. Heard learned Counsel for the parties. 3. The net loss caused to the respondent due to fire was assessed at Rs. 4,72,146/- but the applicant paid only a sum of Rs. 2,75,146/- to the Bank of the respondent. The balance amount together with interest at the rate of 18% was ordered to be paid to the respondent by the State Commission. 4. Having regard to the facts and circumstances of the case, the High Court also did not interfere with the rate of interest awarded by the State Commission. We find no justification for our interference in the matter under Article 136 of the Constitution. 5. The appeal is accordingly dismissed. There shall be no order as to costs."

5. IN a more recent case, National INsurance Company v. Ram Sheo Kumar, Civil Appeal No. 3110/1993, along with Appeal No. 4430/1993 decided on 23rd September, 1999, the Hon''ble Apex Court had also considered the quantum of interest which should be awarded in the case of INsurance Company. IN that case before the Apex Court, it was held that the repudiation of the claim by the INsurance Company was wholly mala fide. It was held that all the risks were covered by the insurance policy. The ship which was carrying the goods was lost on the high seas. Before the Hon''ble Supreme Court it was contended that the Commission was not justified in awarding interest at the rate of 18% per annum to the respondent. The Hon''ble Supreme Court repelled the contention of the INsurance Company about the rate of interest in the following words : "So far as the question of quantum of interest is concerned, we see no infirmity in the order passed by the Commission except that the order of the Commission requires a little alteration so that the date 6.12.1987 is altered to 12.8.1987 in consonance with the judgment of the Commission itself."

6. THUS in view of the latest decision of the Hon''ble Supreme Court, it is now clear that the interest at the rate of 18% per annum is to be paid by the

Insurance Company when it is found that the deficiency is on behalf of the Insurance Company. THUS we find that the appeal is liable to be allowed. ORDER The appeal is allowed and the judgment and order of the learned District Consumer Forum are set aside. The complaint is allowed. The Insurance Company shall pay a sum of Rs. 29,391.40 along with interest at the rate of 18% per annum from the date of three months after the submission of claim till the date of payment to the complainant. The complainant will also get a cost of Rs. 2,000/- of this Commission and Rs. 1,000/- of District Forum. Let compliance of this order be made within a period of two months from the date of this order. Let copy of this order be made available to the parties concerned as per rules. Appeal allowed.