(2008) 02 NCDRC CK 0081

In the National Consumer Disputes Redressal Commission

HARISH CHADHA , New India Assurance Co. Ltd — APPELLANT

Vs

New India Assurance Co. Ltd , Harish Chadha — RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:

Citation : 2008 0 NCDRC 107

Hon'ble Judges : M.B.Shah , Rajyalakshmi Rao , Anupam Dasgupta J.

Final Decision : Petitions are disposed of

Judgement

1. IN revision petition No. 2525 of 2006, the petitioner/ complainant impugns the order dated 07.08.2006 of the State Consumer Disputes Redressal Commission, Delhi (hereafter, State Commission) in complaint case no. 153 of 1998. This order of the State Commissions is based on an application dated 02.07.2005 (for some reason, numbered in the State Commissions order as EX 153 of 1998) of the complainant. IN this application, the complainant claimed interest @ 12% per annum on the sum of Rs.3.60 lakh for the period April 1997 to February 2005. This application was, in turn, based on the order dated 06.09.2004 of the State Commission in complaint case No. 153 of 1998 filed by the said petitioner. IN its order dated 6.09.2004, the State Commission awarded the following reliefs to the complainant (petitioner herein): IN view of the foregoing reasons we allow the complaint and direct OP No. 1 to pay to the complainant a sum of Rs.3,60,000/- as per settlement with the surveyor together with interest @ 12% per annum and compensation of Rs.50,000/- for having caused mental agony and harassment to the complainant by repudiating his rightful claim and forcing him to approach this Commission.

2. THE order of the State Commission quoted above does not, on the face of it, specify the period over which interest as ordered would accrue. Taking advantage of this position, the complainant claimed interest on Rs. 3.60 lakh for April 1997-February 2005. In disposing of the said application dated 02.07.2005 (without any reference thereto), the State Commission passed the impugned order dated 07.08.2006. It is worth reproducing the entire order, which is as under:

Respondent no. 1 has stated that they have paid the principal amount of Rs. 3,60,000/- as compensation as per order dated 06.09.2004 passed by the Commission in complaint case no. C-153/98. We have also awarded interest @ 12%. THE counsel for the respondent states that period of interest is not in the aforesaid order. In view of the latest judgment of the Supreme Court in Life Insurance Corporation of India & Anr. vs. S. Sindhu [II (2006) CLT 18 (SC)] in such like (sic) cases the consumer is entitled for (sic) interest, if at all awarded, from the date of filing of the claim with the insurance company till the date of filing of the case. In the instant case from the date of accident, i.e., in January 1997 till filing of the complaint (sic). Parties shall calculate the interest @ 12% on the amount of Rs. 3,60,000/- w.e.f. February 1997 till April 1998 i.e. till the date of filing the complaint. Re-list on 29.09.2006 (emphasis supplied). In the cross revision petition no. 4019 of 2006, filed by the New India Assurance Co. Ltd., the petitioner (hereafter, the Insurance Company) has impugned the order dated 06.08.2006 of the State Commission, allowing interest @ 12% per annum from the date of accident till the filing of the complaint by the respondent (Harish Chadha).

As the issues involved are identical, both these revision petitions are being disposed of by this common order.

3. THE undisputed facts are that the original complainant, a truck operator, purchased a light motor vehicle and got it insured for Rs.4.25 lakh with the Insurance Company for the period 06.09.1996 to 05.09.1997. This vehicle met with an accident on 20.01.1997, i.e., during the said period. THE surveyor appointed by the Insurance Company obtained a written consent of the complainant for full and final settlement at Rs.3.60 lakh on total loss basis. THE Insurance Company repudiated the assessed and accepted claim of the complainant on the ground that at the time of the accident, the driver of the vehicle did not hold a valid and effective licence. THE State Commission settled this issue by holding that the licence of the driver of the insured vehicle was valid at the relevant time and that repudiation by the Insurance Company of the complainants claim for Rs.3.60 lakh (as settled after assessment by the surveyor appointed by the Insurance Company) was illegal. THE State Commission accordingly awarded to the complainant the reliefs already noted above. (A) THE State Commissions order dated 06.09.2004 was challenged by the Insurance Company in appeal no. 383 of 2004 before this Commission. By its order dated 22.11.2004, this Commission upheld the impugned order dated 06.09.2004 and dismissed the appeal at the stage of admission itself. Clearly, therefore, the State Commissions order dated 06.09.2004 attained finality.

It is also an undisputed fact that the foregoing position notwithstanding, the State Commission passed, for some inexplicable reasons, another order dated 25.04.2005 on the same complaint (no. 153 of 1998) treating the matter de novo and granted the following reliefs to the same complainant: In view of the foregoing reasons we allow the complaint by directing the OP No. 1 to pay

Rs.3,60,000/- and Rs.50,000/- towards interest compensation on account of mental agony and harassment the complainant suffered. This will include the cost of the proceedings also. The aforesaid payment shall be made within one month. (A) Clearly, there is glaring discrepancy between the order dated 06.09.2004 and that dated 25.04.2005 on the same complaint case no. C 153 of 1998, particularly in respect of award of interest. (B) It is also an undisputed fact that the Insurance Company paid a sum of Rs. 4,14,310/- to the petitioner/ complainant in February 2005, by way of compliance of the State Commissions order of 06.09.2004, treating the period of interest as that from the date of the said order to February 2005.

4. IT is the contention of the petitioner/complainant that one of his applications (date or other details not mentioned) to the State Commission praying for early payment of the amounts already awarded to him (by the order dated 06.09.2004) came up for consideration of the State Commission on 25.04.2005 and it was decided on the same date by the said order dated 25.04.2005. The complainants main ground in the present revision petition is that he should be paid interest @ 12% per annum on the agreed amount of the insurance claim (Rs. 3.60 lakh) from the date of the accident to his transport vehicle to the date of receipt of the partial payment from the Insurance Company, i.e., 28.02.2005 and he cites the Apex Courts order (supra) in support of his contention. (A) The Insurance Company, on the other hand, bases its revision petition before us on the following grounds: (i) Section 17 of the Consumer Protection Act, 1986 (the Act) does not empower a State Commission to review or recall its own final order on a complaint. (ii) The State Commission, therefore exceeded its jurisdiction in recalling/ reviewing its own order dated 06.09.2004 which had attained finality in view of this Commissions order dated 22.11.2004 in First Appeal No. 383 of 2004. (iii) Given the fact as at (i) above, the State Commission had no jurisdiction at all to pass the impugned order dated 07.08. 2006. (iv) The State Commission granting interest @ 12% per annum from the date of the accident to the date of filing of the complaint was based on a completely wrong interpretation of the ratio of the decision of the Apex Court in the case of LIC of India and Anr. vs. S Sindhu (supra)

It is abundantly clear that the State Commissions order dated 06.09.2004 in Complaint Case No. 153 of 1998 attained finality after this Commission upheld it in First Appeal No. 383 of 2004. It is not necessary to go into the circumstances under which the State Commission passed its second order dated 25.04.2005 on the same complaint. Suffice it to observe, however, that this second order was based, as admitted by the complainant himself, on an application (no details of which have been disclosed in the memo of his revision petition) that he claims to have filed before the State Commission alleging delay in payment by the Insurance Company in accordance with the State Commissions order dated 06.09.2004. We also note that this application of the complainant came up for consideration on 25.04.2005 on which day itself the State Commission passed its above-mentioned second order, in considerable variance from its own order dated 06.09.2004 in terms of the relief granted to the complainant. Now, it cannot be reasonably argued by any one that the State Commission (or, its Registry) was unaware of its own order dated 06.09.2004 or of this Commissions order dated 22.11.2004 in First Appeal No. 383 of 2004, confirming the State Commissions order dated 06.09.2004 for, if it is indeed a case of such amnesia, the less said the better. We are content with holding that this second order dated 25.04.2005 is simply bad in law for want of legal jurisdiction. (A) The third order dated 07.08.2006 is also bad in law because even if the application dated 02.07.2005 of the petitioner/complainant is treated as an Execution Application under section 27 of the Act, the order in question can simply not go beyond the scope of the order dated 06.09.2004, which had become final and was the only legally valid order on the complaint case no. 153 of 1998. The reference to the Apex Courts judgment (supra) is also grossly misplaced even a cursory look at the Apex Courts judgment would settle the issue of its non-applicability to this case. It would appear that the State Commission did not perhaps avail itself of the opportunity of perusing the said judgment and order of the Apex Court.

In conclusion, we set aside the orders dated 25.04.2005 and 07.08. 2006 of the State Commission and order that the Insurance Company need make no further payment to the petitioner/complainant beyond what it has done in February 2005. The revision petitions are disposed of accordingly.

