
(2017) 01 NCDRC CK 0075

In the National Consumer Disputes Redressal Commission

Case No : 1179 of 2016

ICICI LOMBARD GENERAL INSURANCE COMPANY LIMITED

APPELLANT

Vs

NIHAL CHAND MANOCHA

RESPONDENT

Date of Decision : 25-01-2017

Acts Referred:

Consumer Protection Act, 1986, Section 19, Section 21(a)(2) - Appeals - Jurisdiction of the National Commission

Citation : (2017) 01 NCDRC CK 0075

Hon'ble Judges : B.C. Gupta

Advocate : Anuj Chauhan, Navdeep Singh

Final Decision : Appeal Allowed

Judgement

1. This first appeal has been filed under section 19 read with Section 21(a)(ii) of the Consumer Protection Act, 1986, against the impugned order dated 26.02.2016, passed by the Delhi State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission"), vide which, the right of the appellant/opposite party (OP) to file written version to the consumer complaint filed by the respondent/complainant Nihal Chand Manocha was closed and the complainant was asked to file ex-parte evidence by way of affidavit. A notice of the appeal was issued to the respondent/complainant, who put in appearance through counsel.

2. The learned counsel for the parties were heard in detail. The learned counsel for the appellant has produced copy of the interlocutory orders passed by the State Commission from time to time. These orders are reproduced as below:-

" 17/07/2015

C-361/15

Present: None for the Complainant.

Re-notify the matter for hearing on admission on 12/8/2015.

Member (Judicial)

Member"

" 12/8/2015

C-361/15

Present: None for the Complainant.

Re-notify the matter for hearing on admission on 25/2/2016.

Member (Judicial)

Member"

" 18/9/2015

C-361/15

Present: Sh. Navdeep Singh, Counsel for the complainant.

Sh. Sidharth Shankar, Counsel for the OP-filed his memo of appearance on behalf of the OP.

Heard.

Admitted.

Copy of the complaint book supplied to the counsel for the OP.

Re-notify the matter for filing written statement by the OP on 26/2/2016.

Member (Judicial)

Member"

" 26/02/2016

C-361/15

Present: Proxy Counsel for Complainant.

None for OP.

OP failed to file written version despite the fact that he was supplied the copy of complaint on 18.09.2015. The right of OP to file written version stands closed.

Complainant to file exparte evidence by way of affidavit within eight weeks.

Re-notify on 25.07.2016.

Member (Judicial)

3. The learned counsel stated that none was present for the complainant on 17.07.2015 and 12.08.2015. On 12.08.2015, the matter was fixed for admission

hearing on 18.09.2015, but due to typographical error, the next date of hearing has been written as 25.02.2016. When the matter was heard on 18.09.2015, Sh. Navdeep Singh, learned counsel for the complainant was present. One Sh. Sidharth Shankar, Advocate has been stated to have filed memo of appearance on behalf of the appellant/OP. It is also stated that copy of the complaint book was supplied to the said counsel for OP. The learned counsel stated that Sh. Sidharth Shankar, Advocate was not connected in any manner with the appellant/OP. In fact, no notice had been issued to the OP. The said Sh. Sidharth Shankar never apprised the appellant/OP about the proceedings before the State Commission or about the supply of paperbook to him. Evidently a fraud had been played upon them for which the appellant/OP should not be allowed to suffer. Even on the next dates of hearing i.e. on 26.02.2016 and 25.07.2016, none appeared for the appellant/OP.

4. The learned counsel for the respondent stated that the appellant/OP should have filed some complaint etc. against the said counsel, who appeared before the State Commission on 18.09.2015 purportedly on their behalf. The learned counsel, however, confirmed that notice had not been issued by the State Commission in the case.

5. From the facts brought on record, it is made out that there is no order of the State Commission on record, by which notice was ordered to be issued to the appellant/OP. Moreover, the order dated 18.09.2015 reveals that the complaint was admitted and the copy of the complaint book was supplied to Sh. Sidharth Shankar, the learned counsel for the OP, who filed his memo of appearance on behalf of the OP. It is clear, therefore, that no power of attorney has been filed by anybody on behalf of the appellant/OP. The contention of the appellant/OP that they never received notice of the proceedings in the consumer complaint is not without basis.

6. In view of this situation, the appeal is allowed. The order dated 26.02.2016 passed by the State Commission is set aside. The parties are directed to appear before the State Commission on 30.01.2017 when the said Commission shall hear the parties and take further steps in accordance with law. In case the State Commission decides to issue notice to the respondent, a copy of the consumer complaint shall be served upon the respondent, who shall then be at liberty to file his written version etc. in accordance with law.