

(2001) 05 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

JAGDEEP KUMAR

APPELLANT

Vs

Divisional Manager, National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 15-05-2001

Acts Referred:

Citation : 2001 2 CLT 300 : 2001 2 CPR 171 : 2002 1 CPJ 123

Hon'ble Judges : Surinder Sarup , Onkar Chand Thakur , Prem Chauhan J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is directed against the order of the District Forum, Shimla, dated 27.10.1999, whereby the complaint of the appellant has been dismissed solely on the ground that it is hopelessly time barred under Section 24A of the Consumer Protection Act, 1986, hereinafter to be called the "Act".

2. WE have heard the learned Counsel for the parties and we have examined the record. On behalf of the appellant, it has been submitted that the finding in the impugned order to the effect that there are no documents which have been brought on record on behalf of the complainant indicating that the complainant had a fresh cause of action after 30.3.1992, is erroneous being contrary to the record. Our pointed attention has been drawn to documents, Annexures C-1 to Annexure C-5 which, according to the learned Counsel would bring the case within limitation insofar as the complainant/appellant is concerned. On the other hand, it has been submitted by the learned Counsel for the respondents-Insurance Company, being the original opposite parties that admittedly an earlier complaint filed on the same cause of action has been dismissed in default and for non-prosecution by the learned Forum below. Therefore, the second complaint giving rise to the present appeal, would be legally barred. He has also submitted that there was no fresh cause of action made out in favour of the complainant so as to enable him to file the present complaint. After giving our thoughtful consideration to the respective contentions of the learned Counsel for both the parties and after going through the record, we are of the view that the complaint has been dismissed as time barred, without the learned Forum below applying its

mind and without considering the evidence on record, namely, the documents Annexures C-1 to C-5, which were produced as evidence on behalf of the appellant as complainant, in order to establish that his present complaint was within time. In this connection, we may advert to the provisions of Section 13(2) (b)(i) of the Act which requires the District Forum to settle the consumer dispute on the basis of evidence (emphasis supplied) brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint. There can be only one interpretation of the above provision of the Act and that is that it is incumbent or mandatory on the District Forum to decide the complaint of the consumer on the basis of the evidence brought before it by both the complainant as well as the opposite party in a given complaint. That is exactly what has not been done in the present case in view of what has been stated above.

For the reasons aforementioned, we set aside the impugned order and remit the case back to the District Forum, Shimla, for a fresh decision in accordance with law, and in the light of the observations contained above. It is made clear that this order of ours shall not be deemed to express any opinion on the merits of the complaint, including the question of limitation or otherwise. The parties through their learned Counsel are directed to appear before the learned Forum below on 1.6.2001. Appeal allowed.