(1992) 01 NCDRC CK 0045

In the National Consumer Disputes Redressal Commission

JAIN JEWELLERS — APPELLANT

Vs

Oriental Insurance Co.Ltd — RESPONDENT

Date of Decision : 13-01-1992

Acts Referred:

Citation : 1992 0 CPC 170 : 1992 1 CPR 187 : 1992 3 CPJ 567 : 1994 1 CLT 281

Hon'ble Judges : S.S.Dewan , Laxmi Kanta Chawla J.

Final Decision : Complaint dismissed

Judgement

1. THIS is a complaint under Section 12 read with Section 17(a)(i) of the Consumer Protection Act, 1986 (for short, ''the Act'') against the opposite parties, which will for the sake of brevity, will hereinafter to be referred as the ''insurer''. Facts as stated in the complaint are these :-

2. THE complainant (insured) is a partnership firm. Mr. Vijay Kumar Jain is one of the partners of the firm. THE complainant took a theft/burglary Policy No. 23144/46/90/002/00105/00016 from the insurer which was for the period from 11.4.1989 to 10.4.1990. THE sum insured was Rs. 5,55,000/- . It is alleged that during the period between 7.30 P.M. on 11.11.1989 to 8.00 A.M. on 13.11.1989, a theft through burglary occurred in the jewellery shop of the complainant. THE complainant lodged F.I.R. No. 109 with Police Station, Mohali on 13.11.1989 for investigation and on 27.11.1989 he filed a claim to the tune of Rs. 4,63,733/- to the insurer (Annexure P.3). M/s. N.K. Chhabra & Company, Surveyor and Loss Accessors duly appointed by the insurer, assessed the loss to the tune of Rs. 4,17,000/- . Capt. A.N. Chopra, an Investigator appointed by the insurer had also confirmed the assessment of loss as Rs. 4,17,000/- It was further alleged in the complaint that due to some extraneous reasons M/s. N.K. Chhabra & Co. submitted a second survey report regarding the loss suffered by the complainant, curtailing the loss assessment from Rs. 4,17,000/- to about Rs. 2,98,000/- without affording any opportunity or representation in the matter to the complainant. It was pleaded by the complainant that the total loss was to the tune of Rs. 4,17,000/- for the insured items where as the insurer had paid about

Rs. 2,98,000/- to the insured THE complainant filed the complaint on 26.8.1991 praying that the balance amount of the loss i.e. Rs. 1,19,189/- with interest @ 24% per annum may be awarded to the insured. He also claimed Rs. 1,50,000/- as compensation for the heavy losses suffered due to the diminished business activities due to theft etc. The opposite party submitted the version of the case on 30.9.1991 opposing the complaint on various grounds. Six preliminary objections were also raised regarding the maintainability of the complaint. It is not necessary to produce all the preliminary objections. However, the third objection was to the effect that the claim of the claimants had been paid and satisfied under the terms and conditions of the policy and the complainant in token of the acceptance of the same had given a discharge receipt in full and final settlement of his claim and therefore, the complaint was liable to be dismissed on this ground alone.

The aforesaid preliminary objection was strenuously pressed by the opposite party by their learned Counsel It was contended both on principle and recent precedent that once, the amount has been received in full and final settlement of his claim, by the complainant, he is debarred from filing the complaint before this Commission. It was the stand of the opposite party that in this context, the only remedy of the insured lies in his approaching the ordinary Civil Courts and no relief can be granted under the Act. Inevitably, this position has been forcefully controverted on behalf of the complainant both in the replication and in the submissions of their learned Counsel. To buttress his arguments, Mr. Dharampal Gupta Advocate on behalf of the opposite party has placed primary reliance on an unreported decision of the National Commission in Jiyajeerao Cotton Mills Ltd. v. New India Assurance Co. Ltd. (Original Petition No. 52 of 1991, decided on November 28,1991)=I (1992) CPJ 292 (NC).

3. ON the other hand, Mr. Bahadur Singh, learned Counsel for the complainant has urged that the insurance company had coerced the complainant into accepting the settlement willingly and voluntarily and therefore, he was not bound by the same. We do not find any substance in this contention. Somewhat surprisingly, it is neither in the pleadings nor in the course of documents was it anybody''s case that any fraud has been practised upon the complainant in obtaining his signatures on the discharge voucher. The insurance company on the other hand, apart from other evidence had placed on record Annexure R.1, the discharge certificate admittedly signed and issued by the complainant. In this state of affairs, the complainant cannot be allowed to approbate and reprobate and he is bound by his deeds. The question that arises for consideration by this Commission is whether the complaint is maintainable if the claim has already been settled by the insurer It is not disputed that an amount of Rs. 2,97,811/- had been paid by the insurance company to the complainant vide payment voucher (Anex. R.1) dated 10.1.1991. a receipt was also obtained by the insurer from the complainant. In the receipt it has been stated that the amount has been received by the complainant without any protest in full and final settlement of the claim. After having received the amount in full and final settlement, the

complainant is debarred from filing the complaint before this Commission. In similar circumstances, the National Commission in Jiyajeerao Cotton Mills Ltd.''s (supra) set at rest all the doubts in this context by holding as under :- "In this case, the complainant has brought a claim against the insurance company on the ground that there, has been an illegal deduction of a sum of Rs. 15 lakhs and odd while settling his claim in respect of a certain policy insurance against fire risks. The records disclose that the insurance company had settled the claim long ago and that the dispute now is as to whether the deduction of certain amounts by the insurance company while settling the claim was proper in law. This is a matter in respect of which the petitioner should seek his redress before a Civil Court in-as-much as there has been no deficiency in service on the part of the insurance company. The receipt passed to the insurance company by the petitioner does not indicate that the payment was received by the petitioner under protest. It is, however, alleged by the petitioner that the amount was received by the company under protest. This is a matter which the petitioner company may agitate before the Civil Court for a proper adjudication after taking evidence. This petition is hereby dismissed. It is made clear that the dismissal of this petition will not operate to the prejudice of the petitioner in the matter of pursuing any other remedy that may be open to it in law."

4. FOR the reasons aforesaid, we decline to exercise our jurisdiction and it will be open to the complainant to pursue his remedy by way of suit. It is, however, clarified that whatever has been said in the order will not come in the way of the complainant in subsequent proceedings which the complainant may be advised to initiate against the insurer and it will not adversely or prejudicially affect them. The complaint shall stand dismissed on the limited grounds stated hereinabove. There will be no order, as to costs. Complaint dismissed.

