

(2014) 11 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

Case No : NO 348 of 2002

KALYANPUR COLD STORAGE

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. & ORS.

RESPONDENT

Date of Decision : 03-11-2014

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 2 Rule 2](#)

Citation : 2015 2 CPJ 117

Hon'ble Judges : J.M. Malik, S.M. Kantikar

Advocate : Nikhil Jain, Sanjiv Sharma

Judgement

1. The above said complaint for compensation was filed by Kalyanpur Cold Storage, the complainant, against the New India Assurance Co. Ltd., Bombay, OP1, Regional Manager, New India Assurance Co. Ltd., Kanpur, OP2 and Branch Manager, New India Assurance Co. Ltd., Kanpur, OP3, before this Commission, on 28.09.1998. However, the Registry registered the case as OP No. 348 in the year 2002. It is surprising to note that the Registry took four years" in registering this case. Registry is warned and is directed to be careful and not to give more than 30 days" time, in removing the defects, if any, or within such period, as the Hon"ble President of this Commission has permitted.

2. The main question which swirls around the controversy is, whether, this case is maintainable in the Consumer Redressal Commission or not?. Before embarking upon on this issue, few facts are necessary to be detailed.

3. The complainant is a partnership firm. It purchased a refrigeration plant, machinery, building, etc., along with other necessary equipment, for the purposes and intent of carrying on the business of cold storage. It got the above said articles insured with the New India Assurance Co. Ltd. & Ors., the OPs.

4. On 12.04.1996, the motor of the capacity of 80 H.P. developed serious snags and because of which, the armature of the motor got burnt and thus bringing to a standstill the complete working of the plant and thereby seriously damaging

the stocks lying with the complainant. The insurance company was informed of the said incident, vide letter on 12.04.1996. On 14.04.1996, the 90 H.P. (960 RPM) motor got burnt which was duly informed by the complainant to the OP3, vide letter dated 14.04.1996. On 15.04.1996, the 7x7 Ammonia Compressor got seized and the armature of the accompanying motor of the capacity of 60 H.P. also got burnt along with it, and the same was informed to the OP2, vide complainant's letter dated 15.04.1996. No Surveyor was appointed. On 06.05.21996, a 8x8 Budge make Ammonia Compressor got seized which was duly informed to the opposite party No.2, vide its letter dated 06.05.1996. On 08.05.1996, at around 9.00 PM, the plant had to be shut down due to leakage of condenser pipe and the same was intimated to the OP2, by the complainant, vide its letter dated 09.05.1996. The Surveyor was ultimately appointed and the claim was yet to be accepted/ repudiated when the above said complaint was filed with the following prayers: "a) pass an order directing opposite parties to pay an amount of Rs.1,80,85,000/- along with interest @ 20% p.a., towards the cost of repairing the machinery and loss suffered due to damage of stocks, which was duly insured with the opposite parties.

b) award a sum of Rs.10,00,000/- (Rupees Ten lacs only) towards loss of business and goodwill in favour of the complainant and against the opposite party Nos. 1 & 2.

c) award a sum of Rs.10,00,000/- (Rupees Ten lacs only) towards the mental agony and torture suffered by the complainant and its partners/ officers due to deficiency in service committed by the opposite parties.

award the costs of the present complaint in favour of the complainant and against the opposite parties.

e) pass any such other order (s) as this Hon"ble Commission may deem fit and proper in the facts and circumstances of the case".

5. This case was contested by the OPs. The main objection raised by the OPs is that the complainant had also filed a Civil Suit O.S. No.802 of 1999, before the Civil Judge (Senior Division), Kanpur Nagar for mandatory injunction and to direct the OPs to compensate the complainant for the damage caused to the machinery and loss and damaged caused to 50,000 quintals of potatoes @ 60/- per quintal, together with interest @ 20% p.a., as per the cover note No.79/0189 and Policy No. 4442010336294 and 444201033295, are concerned. The copies of plaint, in the above said Civil Suit, Annexure R-1, and the written statement, Annexure R-2, filed by the OPs have been annexed with the complaint. It was also pointed out that the case was fixed for framing of issues when the case was dismissed in default, vide order dated 10.01.2003, copy of which has been placed on record as Annexure R-3.

6. However, in the rejoinder, the complainant explained that that the said Suit has been restored and is still pending before the Civil Court. Moreover, the complaint filed here is barred under principles of Order II, Rule 2 of the CPC. It is

explained that no intimation was given to the OPs, of the said loss. The OPs did not receive the above said letter. The OPs came to the know of the same, vide notice dated 03.01.1998. It is also mentioned that the stocks were never covered in the policies and the complainants are not entitled to recover any amount for the potatoes.

7. The Surveyor, Sh. Kamal Kumar Asrani, submitted his report, dated 26.08.1996, which reads, as under :- " Sub : Your claim on the New India Assurance Co. Ltd.- Kanpur, in respect of damage to Electric Motor - 10 HP capacity . Sir, Pursuant to telephonic instructions from your Insurers on 18.08.96, I visited your Machine Room on 19.08.96 and found the motor in dismantled & Coils of its Stator had been removed, please clarify following points :- 1. The Motor of one condenser Pump was damaged & you have got another set of Condenser Pump & Motor which was in Operational Condition, hence, why did you remove the coils from stator of damaged motor before its survey by Insurers; 2. As per your intimation letter to Insurers, the capacity of damaged motor should be 10 H.P., whereas as per my observations and as per quantity of copper wire in coils of stator - the damaged motor must be of higher capacity. 3. The Log Sheet No. B/83447 reflects date & time of loss as 17.08.96 at 08.15 AM, whereas you had informed insurers on 16.08.96 telephonically that the motor had been damaged. Please confirm about installation of motor after completion of repair for necessary verification of re-installment. Please reply on your earliest. Without prejudice. Sd/- (KAMAL KUMAR ASRANI)".

8. We have heard the parties at length, scrutinized and perused the Complaint of the said Suit, marked as Annexure R-1, which shows that same relief has been claimed in that Suit. The said Suit was valued at 1,80,85,000/- along with interest @ 20% p.a. The relief claimed in the complaint before this Commission is for 1,80,85,000/-, with interest and a sum of 10 + 1 Lakhs, towards loss and mental agony, respectively.

9. The attention of the counsel for the complainant was invited by this Commission, to the fact that he was pursuing two remedies simultaneously, seeking identical reliefs, i.e., payment towards alleged loss. His attention was also invited by this Commission, towards the fact that two remedies cannot go together, simultaneously. However, he did not show any willingness to withdraw any of the two remedies.

10. In Hanuman Prasad Vs. The New India Assurance Co. Ltd., I (1994) CPJ 1 (NC) , it was held that " when a case is pending in a court in which full evidence is to be recorded, the Forums constituted under the Consumer Protection Act, 1986, should not entertain the complaint with respect to the same cause of action ".

11. In Oswal Fine Arts Vs. HMT, I (1991) CPJ 330, it was held that "another formidable objection to the maintainability of the claim was that the matter was sub judice before the High Court on its original side where the complainant has

instituted a suit for damages against the respondent, based on the identical cause of action. There was also a cross suit filed by the respondent-company in the City Civil Court claiming reliefs against the complainant in respect of the same transaction. When the matter was thus, sub judice before the ordinary Civil Courts of the land, the Commission cannot and will not entertain any claim for compensation in respect of the identical subject matter".

12. In V.P. Somashekar Vs. The Secretary, APMC Yard, 2000 (1) CLT 124 and in Haryana State Electricity Board Vs. Jai Dev Aggarwal, 1999 (1)M CLT 111 (Haryana) , it was held that "proceedings before the Forum under the Act cannot be equated to proceedings before regular civil court and litigants cannot take a chance by initiating parallel proceedings".

13. We took the view in Consumer Case Nos. 171, 172, 173 and 174 of 2010, of this Commission, titled as B.L. Joshi Vs. Bank of India & Ors., decided by this Bench, on 01.04.2013 , wherein it was held as under :- "27..... Consequently, this Commission has no jurisdiction to entertain these complaints. These are barred by principles of res judicata. Following authorities go to fortify the case of OPs.

28. In S.James Vincent Vs. Greater Cochin Development Authority, 1994 (1) CPJ 174 (NC) , this Commission held that " a complaint filed by the complainant suppressing the fact that the matter was already sub judice in the Sub-Court, Ernakulam, was dismissed by the State Commission as the case was already sub judice before a Civil Court. In appeal, the National Commission upheld the order of the State Commission holding that the complaint was gross abuse of the Consumer Protection Act".

29. In Oswal Fine Arts Vs. H.M.T., 1991 CPC 43: (1991) 1 CPJ 330: 1991 (1) CPR 386 (NC) , this Commission upheld the important principle that when a matter is sub judice before the ordinary Civil Courts of the land, the Consumer Commission cannot and will not entertain any claim for compensation in respect of the same subject matter".

14. Against the above said order of this Commission, dated 01.04.2013, a Special Leave to Civil Appeal No. 7380 of 2013 was filed by the complainant, before the Hon"ble Apex Court , which was dismissed and the Review Petition (C) No. 266 of 2014 was also dismissed by the Hon"ble Apex Court vide its order dated 08.07.2014.

15. Under these circumstances, we are of the considered view that this Commission has got no jurisdiction to try this case. We refrain from deciding other issues, so as to avoid the plea of duplicity of judgments on the same relief, by two different Fora/Civil Court. The complaint is, therefore, dismissed. No order as to costs.