(2004) 10 NCDRC CK 0095

In the National Consumer Disputes Redressal Commission

Kamleshwari Prasad Singh APPELLANT

Vs

National Insurance Co. Ltd. RESPONDENT

Date of Decision : 14-10-2004

Acts Referred:

Citation : 2005 1 CPJ 107 : 2005 2 CLT 37

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

Final Decision : Revision allowed

Judgement

1. QUESTION involved in this revision application is whether Consumer Fora has jurisdiction to decide a matter which has already been decided by ''Ombudsman'' appointed under the Redressal of Public Grievances Rules, 1998 framed under Sub-section (1) of Section 114 of the Insurance Act, 1938.

2. THE aforesaid question requires to be decided in the light of the complaint filed by the petitioner to recover the loss suffered by him because of the insured vehicle, a bus, which fell into the river and swept away on 22.7.1997 when it was on its way from Giridh to Dumka because of tyre burst and steering failed on a bridge over river Ushri in State of Bihar. In that complaint a preliminary contention was raised by the Insurance Company that against the repudiation of the claim the complainant filed Complaint No. 49/8/NL/2000-2001 before the Insurance Ombudsman and the same was rejected after considering the evidence in detail, hence the complaint before the District Forum under Consumer Protection Act was not maintainable. The contention raised by the Insurance Company was rejected by the District Forum by its order dated 2.9.2003.

Against that order Insurance Company preferred the Revision No. 7/2003 before the State Consumer Disputes Redressal Commission, Jharkhand, Ranchi. By order dated 11.12.2003 the revision application was allowed by the State Commission by holding that the statutory authority namely Ombudsman had decided/adjudicated the dispute between the parties and therefore complaint was not maintainable. It was contended that the Ombudsman appointed under the rules was the statutory authority.

3. AGAINST that order this revision application is filed by the complainant. It would be difficult to accept the contention of the Insurance Company that Ombudsman who is appointed for redressal of the grievance of the assured against the Insurance Company is exercising any quasi-judicial function. At the outset it is required to be stated that the role of Ombudsman is altogether different. Role is to find out misuse of administrative power by the public bodies and to direct the public bodies to act in accordance with rules and regulations. Further role of the Ombudsman is to receive the complaints in implementation of the scheme and to resolve the disputes, if possible, and to protect the citizens'' interest. The dictionary meaning of the ''Ombudsman'' is as under: "Concise Oxford Dictionary, Tenth Edition: ''Ombudsman'' means ''an official to investigate individuals'' complaints against mal-administration, especially that of public authorities."

4. FURTHER information derived from the internet with regard to the Ombudsman is as under: "The Swedish Parliment first used the word "Ombudsman" in its modern sense when in 1809 it established the office of Justitie-Ombudsman, who was to function as a defender of the people in their dealings with Government. Since then, similar offices have been established in over 100 countries worldwide, most of which are affiliated with the International Ombudsman Institute. In Australia, there is a Commonwealth Ombudsman as well as State and territory Ombudsman. The present Commonwealth Ombudsman is Professor John McMillan-who was appointed in 2003. An increasing concern with service quality and customer satisfaction in a range of industries has led to the introduction of a wide variety of dispute resolution and complaint schemes, which assist consumers to settle their differences with suppliers of goods and services informally and quickly. In addition, a number of industry Ombudsmen have been appointed, whose responsibility it is to protect citizens'' interests in their dealings with a variety of service provides, especially in industries previously owned or regulated by Government, for example telecommunications, energy, banking and insurance."

Apart from the aforesaid general principles, the rules framed by the Central Government no where provide that the decision of the Ombudsman would be a binding on the assured if he does not agree to the said decision. The agreement by the assured is the basis of passing award and that the recommendation/award made by the Ombudsman is binding on the Insurance Company and the Insurance Company is required to carry out the same. The learned Counsel for the Insurance Company submitted that: (a) award passed by the Ombudsman is not subject to challenge and cannot be challenged before the Forums constituted under the Consumer Protection Act and therefore complaint is not maintainable; (b) complainant has not disclosed that the order was passed by the Ombudsman and therefore he has approached the Forum with uncleaned hands; (c) in any case if the complainant was aggrieved by order passed by the Ombudsman then he ought to have challenged before the competitive Court. In our view, the aforesaid submissions are without any substance. As stated above the whole purpose of appointing Ombudsman is to have control over misuse of the power by statutory bodies and to see that disputes are settled. Further, Ombudsman is not discharging judicial or quasi-judicial functions. This is apparent from the Redressal of Public Grievances Rules, 1998. (1) Short title-These rules may be called the Redressal of Public Grievances Rules, 1998. (2) Application-These rules shall apply to all the Insurance Companies operating in general insurance business and in life insurance business. (3) The objects of these rules are to resolve all complaints relating to settlement of claim on the part of Insurance Companies in cost-effective, efficient and impartial manner.

12. Power of Ombudsman-(1) The Ombudsman may receive and consider- (a) complaints under Rule 13; (b) any partial or total repudiation of claims by an insurer; (c) any dispute in regard to premium paid or payable in terms of the policy; (d) any dispute on the legal construction of the policies insofar as such disputes relate to claims; (e) delay in settlement of claims; (f) non-issue of any insurance documents to customers after receipt of permium. (2) The Ombudsman shall act as consumer and mediator in matters which are within his terms of reference and, if requested to do so in writing by mutual agreement by the insured person and Insurance Company. (3) The Ombudsman''s decision whether the complaint is fit and proper for being considered by it or not, shall be final.

15. Recommendations made by the Ombudsman- (1) When a complaint is settled through mediation of the Ombudsman, undertaken by him in pursuance of request made in writing by complainant and insurer through mutual agreement, the Ombudsman shall make a recommendation which he thinks fair in the circumstances of the case. The copies of the recommendation shall be sent to the complainant and the Insurance Company concerned. Such recommendation shall be made not later than one month from the date of the receipt of the complaint. (2) If a complainant accepts the recommendation of the Ombudsman, he will send a communication in writing within 15 days of the date of receipt of the recommendation. He will confirm his acceptance to Ombudsman and state clearly that the settlement reached is acceptable to him, in totality, in terms of recommendations made by the Ombudsman in full and final settlement of complaint. (3) The Ombudsman shall send to the Insurance Company a copy of the recommendation along with the acceptance letter received from the complainant. The insurer shall thereupon comply with the terms of the recommendations immediately not later than 15 days of the receipt of such recommendation and the insurer shall inform the Ombudsman of its compliance.

16. Award: (1) Where the complaint is not settled by agreement under Rule 15, the Ombudsman shall pass an award which he thinks fair in the facts and circumstances of a claim. (2) An award shall be in writing and shall state the amount awarded to the complainant. (3) The Ombudsman shall pass an award within a period of three months from the receipt of the complaint. (4) A copy of the award shall be sent to the complainant and the insurer named in the

complaint. (5) The complainant shall furnish to the insurer within a period of one month from the date of receipt of the award, a letter of acceptance that the award is in full and final settlement of his claim. (6) The insurer shall complay with the award within 15 days of the receipt of the acceptance letter under Sub-rule (5) and it shall intimate the compliance to the Ombudsman.

17. Consequences of non-acceptance of award- If the complainant does not intimate the acceptance under Sub-rule (5) of Rule 16, the award may not be implemented by the Insurance Company. From the above quoted Rules it can be stated thus: - Firstly, Ombudsman is to act as a counselor and mediator in matters. - Secondly, on the basis of the mediation, recommendations are required to be sent to the complainant and to the Insurance Company. If the complainant accepts the recom-mendation, he has to send a communication in writing confirming his acceptance to the Ombudsman wherein he should state clearly that the settlement reached was acceptable to him in totality and on receiving such acceptance from the complainant, Ombudsman would inform the Insurance Company to act on the basis of the recommendation. - Thirdly, if the complaint is not settled by agreement as provided, the Ombudsman can pass award which he thinks fair in the facts and circumstances of the claim. That award is required to be sent to the insurer and if it is accepted by the unsurer, by writing letter of acceptance that the award is in full and final settlement of his claim, the insurer is required to comply with the said award.

5. IN case, if the award is not accepted by the complainant, then the INsurance Company may not implement the said award.

6. THE Rules quoted above are clear and do not require any further consideration. In view of the above discussion, it is held that the decision of the Ombudsman is not binding on the complainant and the decision of the Insurance Company to repudiate the claim is subject to adjudication by the Fora Constituted under the Consumer Protection Act.

In the result, revision application filed by the complainant is allowed. The impugned order passed by the State Commission is set aside. The order passed by the District Forum is restored. The District Forum is directed to proceed in accordance with law. There shall be no order as to costs. Revision allowed.

