(2002) 04 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

KANDIMALLA RAGAVAIAH — APPELLANT

Vs

New India Assurance Company Ltd. — RESPONDENT

Date of Decision : 17-04-2002

Acts Referred:

Citation : 2002 3 CPJ 259 : 2003 1 CLT 549 : 2003 1 CPR 13 : 2003 2 CPC 275

Hon'ble Judges : D.P.Wadhwa , J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Complaints dismissed

Judgement

1. THESE two complaints have been filed by the same complainant against two different Insurance Companies for the same cause of action-alleging deficiency on the part of the opposite parties by not settling their claims under insurance policies taken by the complainants to cover their tobacco stocks against the risk of fire.

2. BRIEF facts of the case are that in O.P. 97/96, the complainant had taken a Fire Policy "C" for Rs. 22.22 lakhs covering the period from 11.3.1998 to 10.3.1989 while in the case of complaint filed under O.P. No. 248/97 insurance policy covered the period 4.12.1987 to 3.4.1988 for a sum of Rs. 1.35 crores, covering the risk of fire for tobacco stocks stored in the godown and hypothecated with the 5th opposite party the Bank. On the night of 22nd 23rd, March, 1998 fire broken out and entire stock of tobacco was gutted. Complainants reported the matter to the opposite parties i.e. both the insurance companies and the Bank. A Surveyor was appointed by an opposite party-Insurance Company and a claim was preferred by the 5th opposite party with the Insurance Company. In the year 1988, the 5th opposite party filed a criminal case against the complainant under Sections 420, 484, 457, 380, 423, 436 read with Section 120(B) of IPC whereafter regular trial, the complainants were acquitted by the Court of Additional Asstt. Sessions Judge by order dated 22.8.1991 and on an appeal filed by the 5th opposite party, the High Court dismissed the appeal on 5.9.1992. Complainant''s case is that they asked for the ''Claim Form'' on 6.11.1992 from the Insurance Company which was not given. A

legal notice was also issued by the complainant to Insurance Company on 26.10.1995, on 16.8.1995, the 6th opposite party admitted that they have preferred a claim with the Insurance Company on 14.7.1988. On 4.1.1996. complainant again asked for a ''Claim Form'' for filing insurance claim but again no reply was received. It is only on 21.3.1996, the Insurance Company replied to the legal notice denying the factum of fire and refused to send the ''Claim Form'' on the ground that claim is now time-barred. In these circumstances, the complainant filed these complaints on 10.5.1996 and 21.10.1997 respectively. Notice were issued to the opposite parties. Both the opposite parties i.e. the Insurance Company and the Bank replied that the claim is time-barred and also replied on merits. We heard the parties on the question of limitation. The learned Counsel for the complainant argues that the ''Bank'' who was a ''co-insured'', had lodged a claim with the Insurance Company on 14.7.1988 with regard to claim under O.P. 248/97. Since they were pursuing their remedy and continuously reminding the Insurance Company to settle the claim including issuing of a legal notice, reply of which was received only on 21.3.1996, the time-limit should start from this date. With regard to O.P. No. 97/96, the complaint was filed in May, 1996 which is also within the time-limit as cause of action to initiate action should be deemed to start from the denial of the claim by the Insurance Company, on 21.3.1996.

Both the opposite parties vehemently argued that the fire broke out on 22/23.3.1988, the complaints are filed in 1996 and 1997, they are clearly barred by limitation.

3. UNDER CPA before June, 1993, no time-limit was prescribed within which to file a complaint with relation to cause of action. It was held that in the absence of any specific period prescribed under this Special Act, the time-limit prescribed under Limitation Act shall apply i.e. a period of 3 years from the cause of action. After the amendment of the Act in June, 1993, prescribed time-limit for filing a complaint is two years from the cause of action. In the instant case cause of action i.e. the incident of fire occurred on the night of 22/23.3.1988 and the complaints have been filed in 1996 and 1997 which is hit by bar of limitation. In the case of complaint No. 97/96, no action seems to have been taken before issue of legal notice in May, 1995 i.e. for a period of about 7 years. In the case of Complaint No. 248/97, the first ostensible action is in November, 1992 i.e. after a gap of four and a half years when the complainant writes to the opposite party Nos. 1 to 4 to send them a ''claim-form''. There is nothing on record that any action was taken earlier than November, 1992 with regard to getting money aginst the insurance policy. In either of the cases, both the complaints are barred by limitation. Plea taken by the complainant that Bank had preferred a claim in 1988 itself does not help him. It is his goods which were insured. The policy was in his name, the bank was to be a beneficiary in case of loss. The claim had to be preferred within the time-limit which was not done in either of the cases. In the case of Complaint No. O.P. 248/97, first effort to get a ''Claim Form'' itself is in November, 1992, which itself barred by limitation. In the other complaint even

this does not seem to have been done, as per record. Cause of action cannot be assumed to continue till the date of denial of the claim. The complainant was silent in one case between the date of fire 22/23.3.1988 and November, 1992 writing to the opposite party to send a claim form and in the other case was silent from the date of incident of fire upto the date of issue of legal notice in May, 1995. The delay in filing the complaints is obvious in both the cases and there is not even a prayer or any application for condonation of delay. In our view both the complaints are barred by limitation, hence cannot be entertained and are dismissed. No costs. Complaints dismissed.