(2000) 06 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

KATEEL SRI DURGA HOTELS PVT. LTD. APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 22-06-2000

Acts Referred:

Citation : 2000 3 CPJ 145 : 2000 3 CPR 187

Hon'ble Judges : T.Jayarama Chouta , B.H.Kamalamma , Abdul Perwads J.

Advocate : K.Rama Bhat , O.Mahesh

Judgement

1. THIS is an appeal filed by the complainant whose Complaint No. 114/94 was dismissed by the District Forum, Mangalore, by an order dated 23.5.1997. The necessary facts, for the purpose of disposal of this appeal are as follows : 1. The complainant is running a hotel under the name and style of Hotel Cauveri International at Kulur, Mangalore in D.K. District. He had insured the said hotel building alongwith its fittings, fixtures, furnitures, land, machinery and electrical installations with the opposite party, United India Insurance Co. Ltd., for a sum of Rs. 66,60,000/- as per the policy for the period from 20.5.1993 to 19.5.1994. On the night of 19.9.1993, a fire broke out in the air-conditioned Bar and Restaurant premises of the hotel causing extensive damage to the building and fixtures and plant and machinery causing a total loss of Rs. 6.40 lakhs. The complainant brought this fact to the notice of the opposite party, one Sri Srinivas, the Surveyor of the opposite party visited the spot and after a detailed enquiry, he made a report recommending for payment of Rs. 3,14,090/-, for which the complainant agreed to receive, as he was in need of money to repair the building to run the hotel. However, the opposite party latter offered to pay Rs. 1,31,759/- towards the damages caused to the building and Rs. 71,800/- towards the fixtures. Again the opposite party changed its mind and offered to pay a total sum of Rs. 1,33,525/- by applying the clause of under valuation of insurance. Finally, the said amount of Rs. 1,33,525/- was paid to the complainant on 11.2.1994 and the complainant received the said amount without prejudice to his rights to claim the balance amount by a separate proceedings, as he was in need of money at that time to effect repairs so as to make the hotel to run the

business to sustain himself.

2. AFTER accepting the said amount he has filed the complaint on 21.2.1994 to direct the Insurance Company to settle his claim as per the Surveyor''s report and also pay him an adequate compensation for the delay in settlement of his claim in full. On issue of notice to the opposite party by the District Forum, the opposite party filed its written version, in which it contended that there was absolutely no deficiency of service or unfair trade practice by the opposite party. It has further submitted the complainant had accepted Rs. 1,33,525/- in full satisfaction of the claim as per the voucher signed by him on 11.2.1994, and hence, he is not entitled at law, to make any further claim and he is estopped from making any further claim or filing the complaint. According to the opposite party, it had fully paid their liability to the complainant in accordance with law of insurance and contract and as per the terms and conditions of the insurance policy. On these grounds, the opposite party requested the District Forum to dismiss the complaint.

The complainant got himself examined as C.W. 1 and produced Exs. C1 to C9. The opposite party has not led any oral evidence but produced the receipt dated 15.2.1994, marked as Ex. R1.

3. ON the basis of the materials placed by the parties and in the light of the arguments advanced by the learned Advocates before the District Forum, the District Forum has dismissed the complaint on the ground that it was barred by the principles of estoppel since the settlement entered into between the complainant and the opposite party must have been full and final settlement of all the claims arising under the policy and the present complaint was filed raising supplementary claim which is barred. In this appeal, we heard the learned Advocates appearing on behalf of both the sides. They took us through the order of the District Forum, relevant documents and material evidence in the case.

4. MR. K. Rama Bhat appearing for the appellant contended that the District Forum was not justified in dismissing the complaint on the ground that the claim was barred by the principles of estoppel. He further submitted that the District Forum erred in holding that the complainant had received the compensation without protest and hence he is estopped from lodging a complaint. According to the learned Advocate, Ex. R1 is the receipt produced by the respondent which shows that the amount was received under protest. We heard the learned Advocate, Mr. O. Mahesh, on these points, on behalf of the respondent. He submitted that the order of the District Forum is correct and it does not suffer from any legal infirmity. He pointed out that the complainant had received the amount without any protest or without prejudice to his rights, and that being so, it is not open to him to contend that he has received the said amount under protest and without prejudice to his right to claim the balance amount. There was no dispute and even before us, it is not disputed that the complainant had insured his hotel as per fire policy dated 19.5.1993 for a sum of Rs. 66,60,000/-, and the above premises got damaged by fire accident and the complainant had

submitted a claim application for a sum of Rs. 6.40 lakhs on 27.9.1993. The Surveyor appointed by the opposite party fixed the quantum of loss at Rs. 3,14,090/-.

5. MR. Rama Bhat, learned Counsel for the appellant has invited our attention to a decision of the Supreme Court reported in II (1999) CPJ 10 (SC)=1999 (3) CPR 53 (SC), United India Insurance v. Ajmer Singh Cotton and General Mills & Ors., and placed reliance on the following passage found at para 4 as follows : "Held : The mere execution of the discharge voucher would not always deprive the consumer from preferring claim with respect to the deficiency in service or consequential benefits arising out of the amount paid in default of the service rendered. Despite execution of the discharge voucher, the consumer may be in a position to satisfy the Tribunal or the Commission under the Act, that such discharge voucher or receipt had been obtained from him under the circumstances, which can be termed as fraudulent or exercise of undue influence or by misrepresentation or the like. If in a given case the consumer satisfies the Authority under the Act that the discharge voucher was obtained by fraud, misrepresentation, under influence or the like, coercive bargaining compelled by circumstances, the Authority before whom the complaint is made would be justified in granting appropriate relief. However, where such discharge voucher is proved to have been obtained under any of the suspicious circumstances noted hereinabove, the Tribunal or the Commission would be justified in granting the appropriate relief under the circumstances of each case. In the instant case the respondent consumer was general, insurance policy holder. The respondent suffered losses on account of fire regarding which the Surveyors are appointed and upon submission of their reports the payments were made which were accepted by the insured with declaration of receipt of the "sum in full and final discharge of claims upon them". After the payments were made, the responants filed complaint petitions before the State Consumer Disputes Redressal Commission, Punjab at Chandigarh claiming inter alia interest at the rate of 18 per cent per annum against the appellant. The State Commission dismissed the claims but the National Commission accepted the appeal of the respondent No. 1 and directed the appellant to pay the interest at the rate of 18 per cent. Held : The mere execution of the discharge voucher and acceptance of the insurance claim would not estop the insured from making further claim from the insurer but only under the circumstances as noticed earlier. The Consumer Disputes Redressal Forums and Commissions constituted under the Act shall also have the power to fasten liability against the Insurance Companies notwithstanding the issuance of the discharge voucher. Such a claim cannot be termed to be fastening the liability against the Insurance Companies over and above the liabilities payable under the contract of insurance envisaged in the policy of insurance. The claim preferred regarding the deficiency of service shall be deemed to be based upon the insurance policy, being covered by the provisions of Section 14 of the Act."

6. MR. O. Mahesh, learned Counsel, appearing on behalf of the respondent,

however, placed reliance on the decision of the National Commission, reported in I (1992) CPJ 41 (NC), Kilaru Jogendru Narayana Prasad v. The Divisional Manager, Oriental Life Insurance Co. Ltd. & Anr., and invited our attention to the following passages found at paragraph Nos. 4 and 5 : "Para 4 : .... There is no evidence to establish that the complainant had not given valid discharge to the insurer or that the Insurance Company had coerced the complainant into accepting the settlement unwillingly and involuntarily. Not only the undated note written by the complainant in his own handwriting stated that he agreed to the assessment of loss at Rs. 5,88,108/- after due discussion and in full and final settlement but his letter dated 10.8.1989 to the Divisional Manager of the Insurance Company leaves no room for doubt that he had, after discussion, freely and voluntarily agreed to accept the sum of Rs. 6.50 lakhs (the amount actually paid was Rs. 5.78 lakhs. The difference is, however not relevant for the purpose of this complaint). In fact this letter speaks of an amount of Rs. 6.50 lakhs settled and agreed to by both the parties on 5.5.1989. Para 5 : Even if it is assumed that the complainant was coerced into giving his consent, then will not be a mere case of deficiency in service by the opposite party but also a case of fraud for which the complainant can seek redress from the appropriate Court."

Let us consider the present case, in the light of the principles laid down in the above two cases.

Immediately, after the fire accident, on the intimation of the complainant, the opposite party directed its Surveyor, one Sri Srinivas to visit the spot, make enquiry and to submit a report. The said Surveyor submitted a report recommending for the payment of Rs. 3,14,090/- for which the complainant agreed to receive the said amount, as he was in need of money to repair the building, to run the hotel. However, the opposite party later changed its mind and offered to pay a sum of Rs. 1,31,759/- towards the damages caused to the building and Rs. 71,800/- towards the fixtures. Again it has changed its mind and offered to pay a sum of Rs. 1,33,525/- by applying the clause of under-valuation of insurance. Finally, the opposite party paid the said amount of Rs. 1,33,525/-, which the complainant received. According to him, he has received the said amount without prejudice to his rights to claim the balance amount by a separate proceeding was he as in need of money to effect the repairs and to run the hotel business to sustain himself. Of course, in the disbursement (claims) voucher, which is a printed form, which is marked as Ex. R1, it is printed "received from United India Insurance Company Ltd., the aforesaid sum in full and final discharge of claims upon them as per the particulars mentioned below". There is no mention that the said amount of Rs. 1,33,525/- was received under protest or without prejudice to his right. The said voucher is dated 11.2.1994. From the evidence of the complainant, it is seen that the said amount of Rs. 1,33,525/- was received by him only after he filed the complaint, which fact has not been contraverted in his cross-examination. In the complaint lodged on 21.2.1994, the complainant has stated that he was in urgent need of money to pay to the contractors, repairers and suppliers who have threatened legal actions, he was constrained to receive the amounts offered by the opposite party vide its letter dated 14.2.1994 but the same was done under duress and extreme pressure and it does not act as a bar for this complaint as the same amount was being received under protest. In the same complaint, he has also stated that the Surveyor, Sri Srinivas after discussion with him prepared a letter of concurrence on 22.11.1993 signed by him and the Surveyor representing the opposite party fixed the quantum of compensation at Rs. 3,14,090/-. Though the actual loss caused to the complainant was much more than the amount paid by the opposite party, he ageed to the same, as he needed the insurance money urgently to pay to the various contractors who had repaired and replaced various items. He had no option but to agree for the abovesaid amount of Rs. 3,14,000/-.

7. IN his evidence, the complainant has stated that as per the instructions of the opposite party, one Sri Srinivas, Surveyor came to the spot, inspected and estimated the loss at Rs. 3,14,090/-. He prepared a concurrence letter to the said amount to which he signed, since he was in financial problem. Without paying the said amount, later offered to pay Rs. 1,31,759/- towards the damages caused to the building and Rs. 71,800/- towards the fixtures. Again, the opposite party changed its mind and offered to pay a sum of Rs. 1,33,525/- by applying the clause of under-valuation of insurance and finally the said amount was paid. He has stated that he received the said amount after filing the complaint without prejudice to his right, since his hotel was closed, there was great financial strain on him to re-start the said hotel, he received the said amount. In the cross-examination, except suggesting that he received the said amount as mentioned in Ex. R1 towards his full payment which has been denied by the complainant, nothing has been suggested to the complainant. The opposite party has not led any oral evidence nor filed any affidavit but produced a receipt Ex. R1.

8. FROM the above facts, it is seen that the complainant has received the amount under protest and without prejudice to his right to claim the balance amount. We are of the opinion that the said amount of Rs. 1,33,525/- was received by the complainant due to his financial conditions, at that time and also due to coercive bargaining which compelled him to accept the said amount. The very fact that the Company was going on changing its mind regarding the quantum of money makes us to believe that the Company was trying to put the pressure on the complainant and ultimately they succeeded in their attempt to make him to accept the said amount, which they paid. This conduct of the Insurance Company clearly falls within the principles laid down by the Supreme Court in the decision referred above. As could be seen from the documents produced by the complainant and also as per his evidence, the opposite party has obtained through the Surveyor signature of the complainant to concurrence letter Ex. C-6 for a sum of Rs. 3,14,090/- but the opposite party without paying the said amount on 20.1.1994 wrote a letter stating that a sum of Rs. 1,33,759/- towards land and a sum of Rs. 71,800/- towards fixtures will be paid. The complainant had addressed a letter demanding the amount fixed by the Surveyor as per Ex.

C-7 dated 7.2.1994. Inspite of that, the opposite party has not paid the said amount but offered to pay a sum of Rs. 1,33,525/-. Having regard to the attitude of the opposite party and because of the financial condition, the complainant was forced to accept the said amount. Hence, we are of the opinion that the case of the complainant squarely comes within the purview of the Supreme Court''s decision referred above. Hence, we hold that mere execution of discharge voucher would not deprive the complainant from preferring claim with respect to the deficiency in service. We are of the opinion that the complainant has proved that the said discharge voucher was obtained by the Insurance Company under suspicious circumstances. Accordingly, we allow this appeal by setting aside the order of the District Forum. In the complaint, the complainant has prayed for a direction to the opposite party to pay a sum of Rs. 1,08,763/- with interest at 21% per annum from the date of complaint till the said relief is granted by this Commission. However, we are not prepared to grant interest at 21%. The complainant is entitled for a sum of Rs. 1,08,763/- with interest at 12% from the date of complaint till the realiation of the said amount. We also award a compensation of Rs. 25,000/- towards delayed payment, a sum of Rs. 5,000/- towards mental agony, and a cost of Rs. 1,000/-.

9. THE said order of this Commission should be complied by the opposite party within a period of two months from this day. Appeal allowed with costs.

