(2012) 11 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

K.B. Sport Wear Goods World Wide APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 08-11-2012

Acts Referred:

Citation : 2012 0 NCDRC 892 : 2013 1 CPJ 73

Hon'ble Judges : K.S.CHAUDHARI , SURESH CHANDRA J.

Final Decision : Appeal dismissed

Judgement

1. THE challenge in this appeal is to the order dated 5.3.1992 passed by the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal, (in short, ''the State Commission '') in complaint case No. 27 of 2011.

2. BRIEFLY stated, the factory of the appellant/complainant was gutted in a fire in respect of which he made a claim for a total sum of Rs. 45 lakh with the respondent/opposite party. During the pendency of its complaint before the State Commission, there was a settlement in which the respondent Insurance Company paid Rs. 18,92,900 on the explicit condition in writing by the appellant/ complainant that it was in full and final settlement of its claim. Later on, the appellant/complainant filed an application under Order 6 Rule 17 of the CPC and Section 151 thereof praying for amendment of the claim to the effect that the amount paid in full and final settlement is less than the amount claimed in the complaint, therefore, the Insurance Company be directed to pay the total amount of Rs. 45 lakh as claimed in the complaint. It was submitted by the appellant that it was trying to amend the complaint because he was starving but earlier it had become imperative for him to accept the amount of Rs. 18,92,900 and hence, the balance amount be paid to him with interest. The State Commission after hearing the parties did not agree with the prayer of the petitioner for amending the complaint and dismissed the application for amendment and also the complaint vide its impugned order.

3. WE have heard Mr. Garvesh Kabra, learned Counsel for the appellant and perused the record.

4. WHILE dismissing the amendment application and the complaint, the State Commission recorded the following reasons, which read as under: "It is not the case of the complainant that it was on account of any coercion or fraud or misrepresentation that he was made to write that the amount was being accepted in full and final settlement. The learned Counsel for the complainant has invited our attention to the judgment of the Supreme Court in United India Insurance v. Ajmer Singh Cotton and General Mills and Ors., II 1999 CPJ 10 (SC), to the effect that execution of discharge in acceptance of insurance claim does not estop from making further claim on account of mere execution of discharge voucher, consumer is not deprived from preferring claim with respect to deficiency in service or consequential benefits arising out of amount paid in default of service rendered. Consumer has however, to prove that discharge was obtained by fraud and misrepresentation, undue influence or the like. In the present case the ground urged is that on account of total destruction of the factory in fire, the complainant had no means for his subsistence and therefore, he signed the voucher. This can hardly constitute misrepresentation from the side of the opposite party. "

We agree with the view taken by the State Commission in its impugned order. Learned Counsel for the appellant has not alleged any coercion, fraud or misrepresentation in respect of acceptance of the amount of Rs. 18,92,900 by the appellant, offered by the Insurance Company in full and final settlement. In such a situation, the view taken is in line with the decision of the Apex Court (supra).

5. IN the circumstances, the appeal of the appellant/complainant stands dismissed in limine and the impugned order of the State Commission is confirmed, with no order as to cost. Appeal dismissed.