(2013) 07 NCDRC CK 0056

In the National Consumer Disputes Redressal Commission

K.K.Jewels Impex APPELLANT

Vs

ORIENTAL INSURANCE COMPANY LTD. RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Citation : 2013 0 NCDRC 503 : 2013 3 CPJ 559

Hon'ble Judges : AJIT BHARIHOKE , SURESH CHANDRA J.

Advocate : S.C.DHANDA , SAGARI DHANDA , KISHORE RAWAT

Judgement

1. THE complainant - firm is engaged in the business of import and export of jewellery. The complainant carried jewellery worth US $ 632691.08 to USA for participating in exhibition and sale of jewellery organized at New York. Before leaving India with the jewellery, the complainant got the jewellery insured with the OP for Rs.2,96,09,942.67/- vide cover note number 945271. The insurance cover was for ''all risks ''. The complainant had carried said jewellery in packed steel containers to USA and the jewellery was declared to the custom authorities at New Delhi. The complainant participated in the exhibition at New York on 16th and 17th June 2001. He sold some items of jewellery on both days. On the conclusion of exhibition, the jewellery was packed in suitcases and put in two cars. While on the way, the complainant decided to pick up some food at Taco Bell Restaurant. The car was stopped and Mr. Komal Jain who was driving one of the car came out of the car. In the meanwhile one person aged 25/30 year opened the driver side of the car which was driven by Mr.Komal. Mr.Komal yelled at him. However, said man managed to pull the internal liver to unlock the boot of the car and escaped with two suitcases containing jewellery in another car waiting for him. The matter was immediately reported to the police. It was even witnessed by a woman Ms. Keecha Patrick who had informed the police on phone no.911. The Nassau Country Police department registered a robbery case. The theft was also brought to the notice of Indian Consulate in USA. The jewellery could not be recovered. The complainant lodged a claim of US $ 315,445/- with the OP for the loss of jewellery. The opposite party was supplied with all the information. It made inquiries directly from the police and Indian Consulate and

even engaged M/s Webster and Co. USA who appointed M/s MRC Investigators. The investigator after making inquiry reported that incident of robbery was genuine. The OP not being satisfied engaged another surveyor M/s Omniscent Detectives (P) Ltd, who also opined that robbery could not be disputed. Thereafter M/s Alka Gupta and Associates were appointed to assess the loss who assessed the loss at Rs.1,47,62,838/-.

2. THE OP failed to settle the claim. This prompted the complainant to serve the OP with a legal notice dated 16.03.2008. The OP vide letter dated 14.08.2009 offered to settle the claim at 50% of the claim amount i.e. Rs.73,81,419/- provided the discharge voucher was signed by the complainant. The complainant accepted the aforesaid amount and signed the discharge voucher. According to the complainant, the aforesaid discharge voucher has been signed by him under duress and because of the circumstances created by the OP in not settling the claim. It is alleged that the complainant is not a big jeweller and loss of capital of Rs.1,47,62,838/- has adversely affected the business of the complainant and as a result because of pressure of non settlement of the claim by the OP, he was compelled to accept the offer and signed the settlement voucher. Claim for the aforesaid settlement is not binding. The complainant has filed this complaint claiming Rs.2,83,79,458/- including the balance due from the surveryor assessment report plus interest. The OP has contested the claim by filing the reply. The complaint is also resisted on the ground that after having settled the matter by receiving a sum of Rs.73,81,419/-, the complainant is estopped from reagitating the matter by filing a fresh complaint.

3. UNDISPUTEDLY , the complainant has received a sum of Rs.73,81,419/- in full and final settlement of the claim by executing a discharge voucher which clearly records that the aforesaid amount has been received by the complainant in full and final settlement of all his claim. Now the question is after executing such a discharge voucher, whether the insured complainant could still pursue the claim for any further amount?

4. THIS question came up for the consideration of the Supreme Court in the case of United India InsuranceAjmer Singh Cotton and General Mills and Ors. II (1999) CPJ 10 (SC) = (1996) 6 SCC 400, wherein the Supreme Court observed as under: "The mere execution of 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, undue influence or the like, coercive bargaining compelled by circumstances, the authority before whom the complaint is made would be

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justified in granting appropriate relief ".

The above position was reiterated by the Supreme Court in the later decisions in National Insurance Company Limited Vs. Sehtia Shoes (2008) 5 SCC 400

5. ON reading of the above judgments, the legal position which emerges is that the mere execution of the discharge voucher would not always deprive the consumer for preferring the claim with respect to deficiency in service despite of execution of discharge voucher. The consumer can successfully press his claim provided the consumer is able to establish that the discharge voucher or receipt was obtained from him by fraud, misrepresentation, undue influence or coercive bargaining.

6. SHRI S.C.Dhanda, Advocate, learned counsel for the complainant has submitted that ratio of the above noted judgments of the Supreme Court are squarely applicable to the facts of the case. He has contended that admittedly the claim for loss of jewellery due to robbery was submitted in June 2001. The matter was inquired into by the OP through M/s MRC Investigators as also M/s Omniscent Detectives (P) Ltd who confirmed the robbery incident. Even the surveyor assessed the loss suffered due to robbery at Rs.1,47,62,838/- and despite that OP delayed the settlement of claim which resulted in severe financial constraint on the complainant and because of this coercive approach of the OP, the complainant was compelled to accept the offer of 50% of the loss assessed by the surveyor. It is thus contended that complainant was coerced to sign discharge voucher and as such aforesaid discharge voucher cannot be taken as a circumstance to deprive the complainant from preferring the claim. Learned counsel further contended that the intention of the opposite party to pressurise and coerce the complainant to accept the offer is evident from the office noting dated 21.07.2009 wherein the Chief Manager of the Opposite Party while recommending settlement of the claim on compromise basis at 50% has noted that before releasing the payment a letter of compromise towards full and final payment be obtained by the Regional Office and placed on the file. Learned counsel for the opposite party on the contrary has contended that this is a case of voluntarily full and final settlement of the claim. In support of this contention, learned counsel has drawn our attention to copy of letter dated 14.08.2009 addressed by the OP to the complainant wherein it is clearly mentioned that the cheque of Rs.73,81,419/- is being tendered in full and final settlement of the claim with a clear warning that if the offer is not acceptable, the complainant should return the cheque forthwith. Learned counsel contended that the complainant after having knowledge of the offer given in the letter has accepted the cheque which clearly indicate that the cheque has been accepted voluntarily without any demur or protest. Therefore, the complainant is estopped from filing the complaint.

7. WE have considered the rival submissions and perused the material on record. The question for determination is whether or not the complainant has received the offered amount of Rs.73,81, 419/- and signed the full and final discharge

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voucher voluntarily under coercion, misrepresentation or fraud. To find answer to the question it would be useful to have a look on the content of the letter dated 14.08.2009 vide which the cheque for settlement was sent to the complainant: "Sir / Madam, We are enclosing herewith our cheque no.465772 dated 14.08.2009 for Rs.73,81,419/- (Rupees Seventy Three Lakh Eighty One Thousand Four Hundred Nineteen Only) in full and final settlement of your above claim. Please note in case the above offer is not acceptable to you, the cheque should be returned forthwith to this office, failing which it will be deemed that you have accepted the offer in full and final satisfaction of your claim. The retention of this cheque and / or encashment thereof will automatically amount to acceptance in full and final satisfaction of your above claim without reason and you will be estopped from claiming any further relief on the subject ".

8. ON reading of this letter, it is clear that cheque was offered to the complainant in full and final settlement of his insurance claim with clear instructions that if the offer was not acceptable, the cheque should be returned failing which it shall be deemed that the cheque has been accepted in full and final settlement of claim. Despite that the complainant has encashed the cheque without any demur or protest. If the complainant was coerced to sign the discharge voucher nothing prevented him to record his protest on the discharge voucher, which is not the case. Therefore, we are unable to accept the contention that discharge voucher has been obtained by adopting coercive means. Undisputedly the cheque for full and final settlement was received by the complainant on 14.08.2009. The protest notice, however, was signed after six months on 30.03.2010. From this it can be safely inferred that the complainant accepted the cheque amount in full and final settlement of his claim voluntarily and signed the discharge voucher. If at all there was a pressure on the complainant to sign the discharge voucher, the complainant under ordinary course of circumstances instead of waiting for six months would have protested against the so called coercive measures adopted by the opposite party. From the conduct of the complainant also, it appears that the complaint after entering into the settlement has been filed on after-thought with a view to extract more money from the opposite party. As regards the office noting dated 21.07.2009, much importance cannot be attached to the same because the noting only indicate the anxiety of the Chief Manager of the Opposite Party to protect the rights of the opposite party and this noting by itself cannot be taken as a coercive protest.

9. IN view of the discussion above, we find that the complainant received a sum of Rs.73,81,419/- voluntarily in full and final settlement of his claim and also executed a discharge voucher in this regard. Thus, the complainant having voluntarily entered into the full and final settlement is now estopped from re-agitating the claim by filing a complaint. As such, the complaint is liable to be dismissed as not maintainable.

10. THE complaint is, hereby, dismissed as not maintainable.

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