
(1995) 05 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

LAL CHAND POKHARNA

APPELLANT

Vs

United India Insurance Co. Ltd

RESPONDENT

Date of Decision : 18-05-1995

Acts Referred:

Citation : 1995 2 CLT 641 : 1995 2 CPC 227 : 1995 2 CPJ 87 : 1995 2 CPR 410

Hon'ble Judges : N.C.Sharma , J.P.Mathur , Firoza Bano J.

Final Decision : Application dismissed

Judgement

1. THIS order will decide on application filed on behalf of the opposite parties on 5.3.94 for setting aside the order by the State Commission on 25.5.94 deciding the above Complaint Case No. 98 of 1992.

2. FACTS in brief are that the complainant Lal Chand Pokhama filed the complaint case No. 98 of 1992 before the State Commission of 1st July, 1992 praying that the opposite parties may be directed to pay an amount of Rs. 5,71,365.00 as loss suffered by the complainant on account of negligence and non-performance of the service by the opposite parties and also interest @ 24% p.a. as damages. The above compensation was claimed by the complainant on the ground that Eicher Canter Truck No. RJ- 01 G-0229 was insured with the opposite parties and on account of an accident of the truck on 8th January, 1991, the truck was completely destroyed and there was a total loss. Notice of the complaint was sent to the opposite parties. Appeals were made on behalf of the opposite parties by Mr. Anil Bhatia, Advocate on 17th April, 1993. Opposite parties filed their version on 15th May, 1993. The rejoinder was filed by the complainant. The complainant filed affidavits in evidence enclosed as evidence. Opposite parties have directed to file affidavits in evidence within two weeks of 26th July, 1993. The complaint was ordered to be listed on 2nd November, 1993. On this date the complainants' Counsel was present but none appeared on behalf of opposite parties. The complaint was called in two rounds but there was no appearance on behalf of the opposite parties. The complaint was therefore to be listed for arguments on 25th November, 1994. This date also the complainant Counsel was

present but none was present for opposite parties. Argument there was held and the complaint was decided on that very day. The State Commission held that the complainant was only entitled to Rs. 2,70,705.00/- as compensation from opposite party No. 1. Opposite Party No. 1 was to pay the amount within two months alongwith interest @ 16% p.a. with effective from 16.5.91. After the complaint was decided by the above order on 25.2.94, the present application was filed on behalf of the opposite parties on 5.3.94 for setting aside the order dated 25.2.94.

In the application, it has been mentioned that on 25.2.94, Shri Ratan Fakral, Advocate has appeared before the State Commission and he had mentioned that Shri Ashok Mehta, Counsel for opposite parties had gone to Khetri to attend a marriage of his Junior Advocate Shri Satish Modi and requested for adjournment. However, it is stated that the request was not accepted and after hearing ex-parte arguments, the complaint was decided. It was also stated that the opposite parties had filed affidavits by Shri. M.L. Bhatia on 6.11.93 and copy of the affidavit has been sent to the complainant's Counsel by registered post on 11.9.93. It was therefore, prayed that the order passed by the State Commission on 25.2.94 may be satisfied.

3. THE first question that arises for recognition is that whether an application for setting aside the order passed by the State Commission on a complaint filed under Section 17(a)(i) of the Consumer Protection Act, 1986 is maintainable. It is clear from the provisions contained instruction 18 of the Act that the provisions of Sections 12, 13 and 14 and rules made therein for the disposal of the complaint by the District Forum, with such modifications as may be necessary, are applicable to the disposal of disputes by the State Commission. Section 13(2) of the Act inter-alia provides that the State Commission (District Forum) shall refer a copy of the complainant to the opposite party directing him to give his version. When the opposite party disputes the allegation contained in the complaint, or omits or fail to take any action to represent his case within the time given, the State Commission (District Forum) shall proceed to settle the consumer dispute on the basis of evidence brought to its notice by the complainant and the opposite parties or on the basis of evidence brought to its notice by the complainant whether the opposite party omits or fails to take any action to represent his case within the time given. Section 13(3) provides no proceedings complying with the procedure laid down in Sub-section (1)(2) shall be called in question in any Court on the ground that the principle of natural justice have not been complied with. Section 14 of the Act provides it after the proceeding conducted under Section 13, the State Commission (District Forum) is satisfied that any of the allegation contained in the complaint about the service are proved, it shall issue an order to the opposite party directing him to take one or more of the things mentioned in different clauses of Section 14(1) of the Act. Section 19 of the Act provides that any person aggrieved by an order made by the State Commission in exercise of its powers conferred to Sub-clause (i)(a) of Section 17 may prefer an appeal against such order to the National Commission.

It may be noted that the provisions of Code of Civil Procedure, 1908 only applies in relation to limited matters mentioned in clause (12)(6) of Sub-section 4 of Section 13 of the Act. This clearly a provision of Order 9 Rule 13 CP that do not at all applied. In the case of a complaint under Consumer Protection Act, 1986, the State Commission has already passed an order under Section 14 of the Act after following procedure provided in Section 13 of the Act and the Consumer Protection (Rajasthan Rules), 1987. If the opposite parties are aggrieved in any way by the order of the State Commission dated 25.2.94, the only remedy available to them is by way of appeal to the National Commission under Section 19 of the Act and not by way of an application for setting aside the order by the application moved by them or even by the review of the order. The procedure adopted by the State Commission was in accordance with Section 13(2) of the Act. As already stated the opposite parties had their version and disputes allegation contained in the complaint. The complainant had at his evidence by affidavit. The opposite parties was given opportunity to produce evidence by filing affidavits. The opposite parties omitted and failed to take any action to represent their case on 2nd November, 1993 and on 25.2.94. The State Commission therefore, according to Sections 13(2)(b)(ii) of the Act settle the consumer disputes on the basis of evidence brought to its notice, by the complainant. No proceeding compliance that the above procedure can be called in questioning any Court on the ground that the principle of natural justice have not been complied with under Section 14(1), the State Commission had the power and jurisdiction to issue an order for payment of compensation. Such order of the State Commission is only appealable to the National Commission under Section 19 and can not be satisfy otherwise by the State Commission or by any Court.

4. IT may also be observed that Rule 4(9) of the Consumer Protection (Rajasthan Rules), 1987 provides that whether the opposite parties or its authorised agents fails to appear on the date of hearing the complaint can be decided ex-parte. The same thing is provided by Rule 7(9) of the State Rules that regard to the State Commission. In the application filed by the opposite parties, it has been mentioned that Shri Ratan Takhral, Advocate had appeared on behalf of Shri Ashok Mehta on 25.2.95. No such appearance is recorded in the proceeding date 25.2.94. Apart from that, it may also be mentioned that there is no power of Shri Ratan Takral, Advocate in the complaint on behalf of the opposite parties. Even there is no immediate appearance of Shri Ratan Takkra, Advocate on the file. It cannot therefore decide that there was any appearance on behalf of the opposite parties on 25.2.94. It may also be noted that even on 2.11.93, none had appeared on behalf of the opposite parties. On 26.7.93 the opposite parties were allowed to file affidavits within two weeks of the said date. No affidavit whatsoever was filed on behalf of the opposite parties within two weeks of 26.7.93. As a matter of fact there is no affidavit from the side of opposite parties on the record. Even on 2.11.93, which was the next day after 26.7.93 it is nowhere mentioned that any affidavit was filed on behalf of the opposite parties.

On the other hand it was represented by the complainant Counsel that no affidavit has been filed on behalf of the opposite parties. Even according to the opposite parties, as is clear from their application, no affidavit had been filed on 3.11.93. Thus there was even no valuation whatsoever of the principle of natural justice in this case which could even justify setting aside of the order. It may also be mentioned that when this complaint was decided on 25.2.94 by the State Commission, there existed vacancy amongst other two members of the State Commission. The State Govt. only appointed President of the State Commission and there existed vacancies amongst other two members.

5. SECTION 29A of the Consumer Protection Act, 1986 clearly provides no act of proceeding of the State Commission shall be invalid by reason only of the existing of any vacancy amongst its members. The only object of instruction SECTION 29A in the Act was that even if there existed any vacancy amongst the members or any defect in the Constitution of the State Commission would be regarded as invalid by reason only of existence of any vacancy amongst its members. There can be no other purpose of the defects in the insertion of the SECTION 29A in the Act. We are of the opinion that the present application moved by the complainant was not maintained. The application therefore dismissed. Application dismissed.