
(2000) 05 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

MALAPRABHA COOP. SUGAR FACTORY LTD.

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD.

RESPONDENT

Date of Decision : 22-05-2000

Acts Referred:

Citation : 2000 2 CPJ 6 : 2000 3 CLJ 353 : 2000 3 CPR 17 : 2001 1 CLT 149 :
2001 1 CPC 138

Hon'ble Judges : S.C.Sen , C.L.Chaudhry , J.K.Mehra , Rajyalakshmi Rao ,
B.K.Taimni J.

Final Decision : Appeal dismissed

Judgement

1. DELAY condoned. This appeal is directed against an order dated 25th July, 1997 passed by the Karnataka State Consumer Disputes Redressal Commission, Bangalore in Complaint No. 24 of 1994 whereby a complaint filed by the appellant was dismissed on the ground of non-maintainability. The complainant is a sugar factory. It had taken an insurance cover under Machinery Insurance Policy for the period 24.11.1987 to 24.11.1988. One Horizontal Single Cylinder Drop Valve Reversible Steam Engine got completely destroyed on 17.12.1987. The complainant's claim for compensation in respect of that machine was repudiated by the Insurance Company on 4.9.1991. The present complaint was filed on 30th March, 1994 before the State Commission. The complaint after the repudiation by the Insurance Company by their letter dated 4.9.1991 wrote several letters to the Insurance Company for reconsideration of the repudiation. But the insurer did not respond to those letters. The complainant ultimately issued a legal notice dated 24.6.1993. The respondent replied to that legal notice by an Advocate's letter dated 31.7.1993. The complaint was filed on 30th March, 1994. It was held to be not maintainable in view of Clause 12 of the Policy by the State Commission. The relevant portion of Clause 12 is as under : "12. Arbitration : It is also hereby further expressly agreed and declared that if the Company shall disclaim liability to the insured for any claim hereunder and such claim shall not, within three calendar months from the date of such disclaimer have been made the subject

matter of a suit in a Court of law, then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder."

2. ON behalf of the appellant it has been contended that the State Commission wrongly construed Clause 12 and should have held that in view of Section 28 of the Contract Act a petitioner's right to lodge the complaint could not be "curtailed". From the facts set out as above it is clear that a complaint was lodged only on 30th March, 1994. The period of limitation for lodging the complaint under Section 24A of the Consumer Protection Act, 1986 is 2 years from the date on which the cause of action arises. In this case, the complaint has been lodged more than 2 years after the date when the cause of action arose. However, we need not decide this case on this point because it was not gone into by the State Commission. The petitioner's case before the State Commission failed because the State Commission was of the view that by virtue of Clause 12 of the insurance policy, the petitioner's right to claim compensation stood extinguished after a period of 3 months from the date of repudiation.

The petitioner's contention is that Clause 12 was wrongly construed by the State Commission. The State Commission has failed to appreciate the facts of this case. We are of the view that the controversy now stands concluded by the judgment of the Supreme Court in the case of National Insurance Co. Ltd v. Sujir Ganesh Nayak and Co. & Another, 1986-99 (NC & SC on Consumer Cases, Part-III), 4946 in Civil Appeal No. 2136 of 1997 decided on 21st March, 1997. In that case Condition No. 19 of the policy provided: "Condition No. 19-In no case whatever shall the company be liable for any loss or damage after the expiration of 12 months from the happening of loss or the damage unless the claim is subject of pending action or arbitration."

The Supreme Court rejected the contention that Condition No. 19 was violative of Section 28 of the Contract Act and held that this clause was not in conflict with Section 28 of the Contract Act because this clause extinguished the contractual right of the insurer under the policy conditions. Such clauses are generally found in the insurance contracts for the reason that undue delay in preferring a claim may open up possibilities of false claims which may be difficult of verification with reasonable exactitude since memories may have faded by then and even ground situation may have changed. Lapse of time in such cases may prove to be quite costly to the insurer and therefore it would not be suprising that the insurer would insist that if the claim is not made within a stipulated period, the right itself would stand extinguished. Such a clause would not be hit by Section 28 of the Contract Act. One of the decisions cited with approval by the Supreme Court was the case of The Baroda Spinning & Weaving Co. Ltd. v. The Satyanarayan Marine & Fire Insurance Co. Ltd., 1913 (15) Bombay Law Reporter 948 in which Clause 12 read thus: "12. Forfeiture-If the claim be made rejected and an action or suit be not commenced within three months after such rejection..all benefits under this policy shall be forfeited."

After referring to this clause the Supreme Court observed:- "The clause meant

nothing more than this, namely, if the suit is not filed within three months of rejection of the claim the rights under the policy will be forfeited. The Bombay High Court following certain English decisions held that the contract was not hit by Section 28 of the Contract Act as the clause did not restrict the limitation but merely extinguished the right."

In the facts of the case before us it is very difficult to distinguish the judgment of the Supreme Court. A complaint was not lodged within 3 months from the repudiation of the claim by the Insurance Company on 4.9.1991. It was lodged only on 30th March, 1994 nearly eight months after the reply sent by the Advocate on behalf of the Insurance Company on 31.7.1993 disclaiming any liability to pay. Clause 12 of the insurance policy in the present case had the effect of extinguishing the right of the complainant to claim any benefit under the insurance policy on 5.9.1991 i.e. three months after the date of repudiation. We are in agreement with decision taken by the State Commission. The complaint is not maintainable. The appeal is dismissed. No order as to costs. Appeal dismissed.