(2015) 05 NCDRC CK 0132

In the National Consumer Disputes Redressal Commission

Case No : 1014-1015 of 2014

M/S. NAVEEN KIRYANA STORE Vs THE ORIENTAL INSURANCE COMPANY LTD. &?2 ORS

Date of Decision : 28-05-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21, Section 19, Section 15, Section 17 - Jurisdiction of the National Commission - Appeals - Appeal - Jurisdiction

Citation : (2015) 05 NCDRC CK 0132

Hon'ble Judges : K.S. Chaudhari

Advocate : SANJEEV KUMAR VARMA, AMREETA SWARUP

Judgement

1. These revision petitions have been filed by the petitioner against order dated 30-10-2013 passed by the learned State Consumer Disputes Redressal Commission, Haryana (in short, ''the State

Commission'') in First Appeal No. 632/2013 - Oriental Insurance Co. Ltd. Vs. Naveen Karyana Store and First Appeal No. 638/2013 - Naveen Karyana Store Vs. Oriental Insurance Co. Ltd., by which while allowing appeal of opposite party, order of District Forum allowing complaint was set aside and appeal of complaint for enhancement of compensation was dismissed.

2. Brief facts of the case are that complainant/petitioner - proprietor of M/s Naveen Kiryana Store obtained insurance policy for his shop from opposite party/ respondent on 07-04-2008 at 1.15 P.M. for insuring his shop for a period of one year from 08-04-2008 to 07-04-2009. Goods in the insured shop were damaged due to fire at 5.30 P.M. on 07-04-2008 which caused loss of Rs. 8 to 9 lakhs. Intimation was given to police as well opposite party. Complainant submitted claim which was repudiated by opposite party on the ground that insurance policy was to commence from 08-04-2008. Alleging deficiency on the part of opposite party, complainant filed complaint before District Forum. Opposite party resisted complaint and submitted that there was no insurance coverage for 07-04-2008 and claim was rightly repudiated and prayed for dismissal of

complaint. Learned District Forum after hearing both the parties allowed complaint partly and directed opposite party to pay Rs.1,50,000/- and further directed to pay Rs.1,500/- as cost of litigation. Both parties filed appeal before State Commission and learned State Commission vide impugned order dismissed appeal of complainant but allowed appeal of opposite party and dismissed complaint, against which these revision petitions have been filed.

3. Heard learned counsel for the parties and perused record.

4. Learned counsel for the petitioner submitted that petitioner paid premium on 07-04-2008 at 1.15 P.M. and fire broke out at 5.30 P.M. and learned District Forum rightly allowed complaint but committed error in reducing compensation and learned State Commission committed error in dismissing complaint, hence revision petitions be allowed and impugned order be set aside and order of District Forum may be restored and compensation be enhanced. On the other hand, learned counsel for the respondent submitted that order passed by learned State Commission is in accordance with law, hence revision petition be dismissed.

5. The core question to be decided in these revision petitions is from which date complainant''s shop stood insured. Perusal of cover note reveals that it was issued on 07-04-2008 at 1.15 P.M. depicting insurance coverage from 08-04-2008 to 07-04-2009. In such circumstances, insurance coverage cannot be treated to have commenced at 1.15 P.M. of 07-04-2008. No doubt proposal form has not been placed on record by opposite party but merely on this basis adverse inference cannot be drawn that insurance coverage was taken from 1.15 P.M. of 07-04-2008 particularly when cover note clearly indicates insurance coverage from 08-04-2008 to 07-04-2009. Complainant in the complaint has nowhere pleaded that he asked concerned officer of opposite party to give insurance coverage from 07-04-2008. In Para 6 of the complaint he has pleaded that he contacted Opposite Party No. 3 - Mr. R.S. Sharma, Officer In charge of Insurance Company on telephone about insurance cover note and Mr. Sharma asked him to collect it from Branch Office. It has further been pleaded that in the evening complainant visited Branch Office of opposite party obtained cover note after putting his signature. Thus it becomes clear that he obtained cover note on 07-04-2008 before close of office of opposite party meaning thereby he must have obtained cover note before alleged fire at 5.30 P.M. and when cover note showing insurance period from 08-04-2008 to 07-04-2009 he cannot be permitted to plead that he obtained insurance coverage from 1.15 P.M. of 07-04-2008.

6. Learned counsel for the petitioner has placed reliance on IV (2011) CPJ 119 (SC) Oriental Insurance Co. Ltd. Vs. Dharam Chand & Ors., in which premium cheque for insurance policy was

received by insurance company on 07-05-1998 at 4 P.M. and cover note was issued at the same time but insurance coverage was shown to commence from 08-05-1998 to 07-05-1999. Accident took place at 8.30 P.M. on 07-05-1998 and during arguments counsel for the insurance company fairly conceded that as cheque was received at 4 P.M. on 07-05-1998, insurance must be deemed to have commenced from 4 P.M. of 07-05-1998 and on that basis appeal of insurance company was dismissed. Learned counsel for the petitioner submitted that in the light of aforesaid judgment, revision petition be allowed. On the other hand, learned counsel for the respondent placed reliance on judgment of Hon''ble Apex Court in (2001) 4 SCC 262 - Kulwant Kaur & Ors. Vs. Gurdial Singh Man (Dead) by LRs & Ors. , (1979) 1 SCC 229 - Lakshmi Shanker Srivastava Vs. State (Delhi Administration) and (2002) 4 SCC 638 - Directorate of Settlements, A.P. & Ors. Vs. M.R. Apparao & Anr. , in which it was observed that if court proceeds on the basis of any concession decision cannot be termed to be a binding precedent. In the case of Dharam Chand (Supra), Hon''ble Apex court dismissed appeal of insurance company on the basis of concession made by counsel for insurance company and in such circumstances that judgment is not binding in the light of aforesaid judgments of Hon''ble Apex Court.

7. Learned counsel for the respondent has also placed reliance on (2000) 7 SCC 50 - National Insurance Co. Ltd. Vs. Chinto Devi , in which it was held that insurance policy could be effective only from the time from which it was issued. Same principle was laid down by Hon''ble Apex Court in (2007) 7 SCC 786 - National Insurance Co. Ltd. Vs. Sobina Iakai & Ors., in which after considering number of cases it was held that insurance policy would start from the time and date indicated in the policy.

8. In the light of aforesaid judgments it becomes clear that complainant''s insurance coverage commenced from 08-04-2008 and there was no insurance coverage on 07-04-2008 at 5.30 P.M. and learned State Commission has not committed any error in allowing appeal and dismissing complaint and revision petitions are liable to be dismissed.

9. Consequently revision petitions filed by the petitioner are dismissed at admission stage with no order as to costs.

