
(2011) 11 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

Nagamma

APPELLANT

Vs

United India Insurance Co Ltd

RESPONDENT

Date of Decision : 03-11-2011

Acts Referred:

Citation : 2012 1 CPJ 374

Hon'ble Judges : Anupam Dasgupta J.

Final Decision : Revision Petition dismissed.

Judgement

1. THE revision petition challenges the order dated 7.8.2008 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore (in short, "the State Commission") in Appeal No. 2095/2007. By this order, the State Commission allowed the appeal filed by the respondent Insurance Company and set aside the order of the District Consumer Disputes Redressal Forum, Uttara Kannada at Karwar (in short, "the District Forum") and dismissed the complaint.

2. THE petitioner had filed a complaint before the District Forum with the allegation of deficiency in service on the part of the Insurance Company in that the latter had repudiated the insurance claim in respect of her fishing boat ("Jayaprakash") which suffered extensive damage on account of fire allegedly caused by accidental short circuit of the heavy battery used in the boat. The complaint was contested by the Insurance Company on the ground that accordingly to the reports of the Surveyor and the Investigator, the fire was not caused because of the alleged short circuiting of the boat's battery but because the boat was deliberately set on fire by making holes in the fuel tank after it returned to shore from fishing during 13-20.5.2003. However, the District Forum held that the opposite party (Insurance Company) had not been able to sustain its contentions that the fire causing damage to the boat was deliberate and hence the insurance claim was fraudulent and that the reports of the Surveyor and the Investigator were based on presumptions and assumptions and went ahead and allowed the complaint and directed the Insurance Company to pay to the complainant Rs. 10,00,000 along with interest @ 8% p.a. from 13.7.2004 till

realisation and cost of Rs. 2,000. This order was challenged by the Insurance Company before the State Commission. The State Commission, after detailed consideration of the evidence including reports of the Surveyor and the Investigator, came to the conclusion that the fire which damaged the boat was not accidental but caused by a deliberate act and that the Insurance Company was, therefore, justified in repudiating the claim of the complainant.

3. THIS revision petition has been filed after a delay of 1018 days. An application for condonation of delay has also been filed. The main ground cited in the application for the delay is that the petitioner/complainant had challenged the order of the State Commission by way of a writ petition before the High Court of Karnataka, Dharwad and that by its order dated 30.5.2011, the High Court disposed of the writ petition and allowed liberty to the petitioner to approach this Commission.

4. IN this context, it is pertinent to refer to a recent judgment of the Supreme Court in the case of M/s. Advance Scientific Equipment Ltd. and Anr. v. West Bengal Pharma and Photochemical Development Corporation Ltd., CA Nos. 17068-17069 of 2010, Dated 9.7.2010. In this case, the Supreme Court has observed, inter alia, as under: ".....We are further of the view that the petitioners" venture of filing petition under Article 227 of the Constitution was clearly an abuse of the process of the Court and the High Court ought not to have entertained the petition even for a single day because an effective alternative remedy was available to the petitioner under Section 23 of the Act and the orders passed by the State Commission did not suffer from lack of jurisdiction."

5. IT is thus obvious that the petitioner"s choice to seek remedy before the High Court cannot be considered a "sufficient cause" under Section 24-A of the Consumer Protection Act, 1986 to condone the delay that has occurred in filing this revision petition. The application for condonation of delay is, therefore, liable to be dismissed and consequently, also the revision petition.

6. EVEN on merits, the revision petition does not bring out any additional ground which would point, even remotely, to jurisdictional error, legal infirmity or material irregularity in the impugned order of the State Commission. In conclusion, the revision petition is dismissed both on the grounds of uncondonable delay and on merits. Revision Petition dismissed.