(1993) 10 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : C.I. Miscellaneous Appeal No. 100 of 1992

Nanaji Koul APPELLANT

Vs

Oriental Insurance Co. RESPONDENT

Date of Decision : 08-10-1993

Acts Referred:

Citation : (1994) 1 SriLJ 77

Hon'ble Judges : R.P.Sethi, J

Bench : Single Bench

Advocate : K.Kaushik, G.D.Bhargava, Advocates appearing for the Parties

Judgement

1. This appeal is directed against (he order of State Consumer Protection Commission, who, vide the order impugned dismissed the complaint of

the appellant herein without affording him an opportunity of leading evidence to prove his case.

2. According to the facts detailed in the complaint, the appellant had alleged that he had insured his personal belongings with the respondent

insurance company for a sum of Rs. 1,40,500 against the risk of fire and paid due premium. On 30.4.1990 the house of the father of the

complainantappellant was allegedly gutted in fire and all his belongings insured with the insurance company were destroyed. He informed the

respondents about the incident who appointed a surveyor to assess the loss. The surveyor is stated to have gone on spot and recommended the

payment of Rs.1,11,000/to the complainant as compensation for the loss of his belongings but after about 1 1/2 years he received information from

the insurance company that only a sum of Rs.64,108 could be paid to him in full and final settlement of claim. The complainant being satisfied with the order, agitated the matter before the respondents but without any response. He is alleged to have been coerced and compelled to receive and

accept the cheque of the aforesaid amount, by the insurance company, without any condition in full and final settlement of she insurance claim.

3. On his filing the complaint the respondents resisted its maintainability on the ground that as the amount of Rs.64,108 has been paid to the

complaint in full and final settlement of his claim, he was not authorised to reopen the matter by filing the complaint before the commission.

Regarding the settlement of the claim of the appellant, the commission found that as the plea was a question of fact which required evidence, same

could not be agitated or adjudicated. The other picas raised by the appellant were held not adjudicatable as the same required evidence. It found,

The complaint under the Redressal Commissions Act, may not be entertained if it was found that recording of elaborate evidence was required

and consequently dismissed the complaint.

4. f have heard learned counsel for the parties at length and perused the record.

5. The Jammu and Kashmir Consumers Protection Act, 1987 (hereinafter referred to as the Act) is the result of the long history of consumer

movement. In Donoghuc V. Stevcnson (1932 Ac 526), it was held that a manufacturer has a general duty to the ultimate consumer. Under

common law, the principle ""caveat cmpter"" which means let the buyer be aware allows the seller to disown his liability as it thrust scantier

responsibility on the buyer and envisages that every man must look out for himself. Such a rule was adopted in ancient times when the men bough

their goods in the open market places. With the change of commercial traditions and the complicacies involved in the trade of the commodities the

old principle could not be said to be applicable under the prevalent society where the manufacturer and the buyer did not even get the opportunity

to see their faces or ascertain the nature of the product sold or purchased. The old doctrine of ""let buyer be aware"" stood progressively modified in

the interests of the consumer under the changed trade relations and their ethics. The doctrine was modified in the interests of the consumer to the

extent that the law is governed more by exceptions than by the rules itself. As the principle of the modern trade was that ""buyer is served best by

free competition between sellers"" changes occurred in the past century in the nature of the industrial corporations and in the types of products

available to the consumer rendering the old orthodox assumption as invalid. The consumer is no longer afforded opportunity to choose many

effective competing suppliers. Another factor which has weakened the effectiveness of the consumer in protecting his own interests by rational

choice among competing alternatives is the complexity of the products that modern technology has made available. Advertisements have also

played a persuasive role rather than informative to create demands for products that arc in circulation and most of the times such advertisements

have played a predominant role for making a choice in buying the product from the market. The consumer protection being the acknowledged

responsibility of the state, consumers movement commenced in many countries including, England, North America and Europe which showed that

the protection of consumer was on the high priority list of the Governments. A number of legislations such as Essential commodities Act, Standard

of Weights and Measures Act, M.R.T.P. Act, Trade and Merchandise Act, Drugs and Cosmetics Act, Prevention of Food Adulteration Act,

Agriculture produce Act, etc. were enacted but felt to be inadequate in protecting the interests of the consumer. The consumer Protection Bill,

1989, was introduced inthcLokSabhaon9.12.1989, which later on became law as Act No. 68 of3986, enforced with effect from 24.12.1986. The

preamble of the said ACT Provides. ""An Act to provide for better protection of the interests of the consumers and for that purpose to make

provision for the establishment of consumer councils and other authorities for the settlement of consumers disputes and for matters connected

therewith."" On the same analogy the Jammu and Kashmir Consumers Protection Act. 1987 was enacted on 19.8.1987. The Act seeks, interalia,

to promote and protect the rights of the consumers such as:

(a) The right to he protected against marketing of goods which are hazardous to life and property;

(b) the right to be informed about the quality, quantity potency, purity, standard and price of goods to protect the consumer against unfair trade

practices;

(c) the right to he assured, wherever possible, access to an authority of goods at competitive prices;

(d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;

(e) the right to seek redressed against unfair trade practices or unscrupulous exploitation of consumers; and

(f) right to consumer education.

6. it can safely be said that the Act is a milestone in the history of socioeconomic legislation in out country and is one of the most progressive and

comprehensive piece of legislation enacted for the protection of the consumer.

7. I have referred to the history preceding the enactment of the Act with particular reference lo the consumer's movement all over the globe in

order to indicate that the consumers council or the authorities under the Act arc expected to adopt an approach while interpreting the Act in a

manner which should be consistent with the object of legislation. The hyper technical approach in interpreting various provisions of the Act should

not be resorted to which in effect and in essence may result in defeating the purpose for which the Act was enacted. In other words, the forums

constituted under the Act are expected to adopt an approach which is favourable to the consumer and is intended to get his grievances completely

and satisfactorily adjudicated, Taking shelter under the cloak of technicalities resulting in rejection of the claims of the consumer, is neither

warranted nor justified.

8. The scheme of the Act would indicate The purpose and object for which it was enacted. Scc.2 deals with the definitions including the

consumer"", ""the Consumer dispute"", ""the delect"" and ""deficiency"". Chaptercomprising of Sections 4 to 10 deals with the consumer protection

councils and ChapterIll pertains to the consumer disputes redressal agencies. Sec.9 of the Act deals with the jurisdiction of the divisional forum and

Sec, 10 the manner in which the complaint is to be made. Sec. 11 prescribes the procedure to be followed by the divisional forum on receipt of the

complaint. CL.(b) (1) of subsection (12) of Section 11 provides that the divisional forum shall proceed to settle the consumer disputes on the basis

of evidence brought to its notice by the complainant and the opposite party. Under SubSection (4), the Divisional Forum has been empowered

with the sanv; powers as are conferred in a civil court under the code of civil procedure while trying a suit in respect of the matters enumerated in that subsection. Similarly, Subsection (5) of Section 11 provides that every proceeding before the divisional forum shall be deemed to be a judicial

proceedings within the meaning of the Code of Criminal Procedure and the Ranbir Penal Code. Section 12deals with the findings of the divisional

forum which may be arrived at after following the procedure prescribed under Scc.11 of the Act. State Commission is constituted under Sec.14 of

the Act and its Jurisdiction is prescribed by Sec.15 of the Act. Sec. 16 provides ""The procedure specified in sections 10,11,&12 and under rules

made there under for disposal of the complaints by the divisional forum, shall with such modifications, as may be necessary, be applicable of the

disposal of the disputes by the State Commission."" The orders passed by the divisional forum and the State Commission are appealable under

Sections 13 and 17 of the Act respectively. The orders of the forum or the State Commission arc enforceable under the provisions of Sec. 19 of

the Act. The word ""evidence"" used in Section 11 (2) (b) (ii) of the Act means and includes the statements of the witnesses and documents

produced and proved. It may also include the admission of the parties, their conduct and dcmeanur before the Court, circumstances coming under

the direct cognizance of the Court the facts of which the Court must or may presume. In common parlance the evidence may be divided into two

classes, namely, oral and documentary. Oral evidence means statement by a witness before the court in relation to a matter of fact under inquiry

and documentary evidence may include the documents produced and proved in the case in proof of the facts stated or disputed. The Act,

therefore, clearly contemplates that the redressal forums constituted under it have to decide the case filed before them after taking such oral and

documentary evidence, as the circumstances in a given case may require. The question as to whether or not there was negligence on the part of any

one of the parties in relation to the purpose of a particular item of service, or as to whether the claim of the complainant stood settled voluntarily or

there did not exist any obligation upon the respondent to compensate the consumer or that the complaint was mala fide, misconceived or otherwise

not maintainable are some of the cases which require the recording of evidence to some extent for the purposes of determining the rights and

liabilities of the parties under the Act. The mere fact that by examination and crossexamination of the witnesses there would be some delay, is no ground to reject the prayer of a party to produce the evidence and if such an approach is adopted same would be erroneous abdication of the

jurisdiction of the forums. The pleadings of the parties cannot be substituted as evidence and the disputes cannot be settled without providing the

parties opportunity to prove their case by production of evidence which may be oral or documentary or in some specified cases on the affidavits of

the parties.

9. In the instant case, the commission refused to adjudicate the pleas raised by the complainant mainly on the ground that the same was ""major

question of fact to be resolved on evidence"". The Commission, however, failed to afford any opportunity to the complainant to produce evidence,

either oral or documentary or by affidavits, in support of his claims. It appears that the Commission was of the view that as and when elaborate

evidence is necessitated, no opportunity should be afforded to a party to lead the evidence to prove the case. The approach adopted by the State

Commission apparently is contrary to the object for which the Act was enacted. The Commission was under a legal obligation to afford the parties

an opportunity to lead evidence by any one of the modes referred to herein above before deciding the complaint for or against a party. It appears

that the commission has presumed that the complainant had accepted the sum of Rs. 64,108/ in full and final settlement of his claim without there

being any evidence to that effect. The respondentcompany had not even produced any document which could be made a basis for arriving at such

a conclusion. Had such a document been produced the commission was obliged to afford an opportunity to the complainant to prove that the same

was not signed by him or was signed under the circumstances which could not be held to be voluntarily. The commission, therefore, failed to

perform its duties as cast upon it under the provisions of the Act which has resulted in prolonging the litigation and forcing the complainant to

approach this Court in appeal.

10. Learned counsel for the panics have referred to a number of judgments of the National Commission to urge that there was deficiency in service

of the insurance company and vice versa. I am not inclined to deal with the rival contentions of the parties in this behalf as I propose to remand the

case to the State Commission for affording the parties opportunity of leading the evidence and then deciding the complaint of the appellant in

accordance with the provisions of law keeping in view the observations made hereinabove and the judgments delivered by various superior forums.

11. Accordingly this appeal is accepted and the judgment impugned is hereby aside. The case is remanded back to the State Consumer protection

Commission for trail in accordance with the procedure prescribed under the Act and the observations made hereinabove.

12. C.M.P. No. 628 of 1992 shall stand disposed of accordingly.

