
(2017) 01 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

Case No : 71 of 2009

NATIONAL INSURANCE CO. LTD., & ANR.

APPELLANT

Vs

P. J. THOMAS

RESPONDENT

Date of Decision : 05-01-2017

Acts Referred:

[Contract Act, 1872](#), [Section 14](#), [Section 20](#), [Section 15](#), [Section 16](#), [Section 22](#), [Section 18](#), [Section 17](#)

Citation : 2017 1 CPR 160

Hon'ble Judges : B.C. Gupta

Advocate : Sudhir Kr. Gupta, R. K. Gupta, Manish Gupta, Shyam Padman, Jaimon Andrews, N. P. Rakeesh

Judgement

1. This first appeal has been filed under section 19 read with section 21(a)(ii) of the Consumer Protection Act, 1986 against the impugned order dated 10.11.2008, passed by the Kerala State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission") in Consumer Complaint No. OP/24/2000, filed by the present respondent P.J. Thomas, vide which, the said complaint was allowed and the appellant/OP Insurance Company was directed to pay a sum of 4,76,000/- to the complainant with interest @18% p.a. from 23.08.1999, for damage to the stocks during a fire incident.

2. Briefly stated, the facts of the case are that the complainant/respondent P.J. Thomas started a wood industry in February 1998 in the name and style of Ponnammattathil Wood Industries, Thamarassery, Calicut, after taking financial assistance from the Kerala Finance Corporation Limited. The complainant obtained a fire policy, "C-98/3100628" from the appellant insurance company, covering period from 09.12.98 to 08.12.99 for an assured sum of 11.5 lakh, consisting of 3 lakh for the building, 3.5 lakh for plant and machinery and 5 lakh for the stocks. It is stated that on 29.03.99, fire occurred in the factory around 1:00 AM. The fire department and the police were intimated and they reached

the spot, but there was huge damage to the building, machinery and stock in trade. The complainant evaluated the loss to the machinery at 1.68 lakh, cable work at 55,000/-, loss to the building at 1.85 lakh and loss of stock at 4.76 lakh. In this way, the total loss assessed by the complainant was 8.83 lakh. On intimation, the appellant insurance company appointed a surveyor Sh. Lohidakshan Nair, who visited the spot on 30.03.99 with a team of three persons. Further, on 10.04.99, another joint surveyor Sh. Sanker came to the site and inspected the documents. It has been alleged in the consumer complaint that despite these inspections/visits, the claim was not paid and finally, in August 1999, the surveyor asked the complainant to submit an agreement on stamp-paper, saying that the loss/damage was limited to building and machinery alone and the complainant was withdrawing his claim for loss to stocks. It is the case of the complainant that they were forced by the said surveyor to sign the agreement on 23.08.99, withdrawing their claim for the loss of stocks. Since they were in dire need of money and wanted to discharge their mounting liabilities, they were forced to sign the same.

3. The complainant stated in his complaint that the said document, got executed from them by the said surveyor, was not legally valid or binding. However, the insurance company made them payment of Rs.2,38,000/-, following which they sent a legal notice to them, raising their objections and saying that the amount had been received under protest. The consumer complaint was then filed, seeking directions to the insurance company to pay a sum of 7,81,056/-, which was the amount calculated based on their original demand of 8,83,000/- after deduction of the amount of 2,38,000/- paid by the insurance company and after adding further interest till date. The complainant also requested that a sum of 2,50,000/- should also be given to them as compensation for deficiency in service etc. on the part of the OPs.

4. In their written statement filed before the State Commission, the insurance company took the stand that the incident of fire was in fact an act of arson and not an accidental fire. The industry run by the complainant was not electrified and hence, there was no question of any electric short-circuit. The fire incident was, therefore, a result of deliberate, pre-planned act, committed by the complainant to claim insurance indemnity. The power generator installed in the same building, which was not covered by insurance cover, remained untouched in the incident. The insurance company further stated that elaborate evidence was required to be submitted for arriving at the truth of the matter and hence, a civil court was the competent forum for taking a decision in the case. The Insurance Company further stated that the surveyor's report made it absolutely clear that the stock of wood items was kept at another, separate work-shed in the compound and there was no damage to the wood. However, in spite of the fact that the occurrence appeared to be a deliberate act, the insurance company decided to settle the claim, based on the letter of the complainant, executed on a stamp paper, although the said settlement was also a mistake committed by them. Further, the complainant got an impression after the visit of the

investigator that the claim could be repudiated. He, thereafter, wrote the letter in question and there was no element of any compulsion, undue influence, coercion etc. upon him which forced him to write such a letter.

5. The State Commission, after taking into account the averments of the parties, allowed the consumer complaint, concluding that the letter dated 23.08.99 was signed by the complainant as a result of coercive bargaining and under the pressure and compulsion of the surveyor. The State Commission directed the Insurance Company to pay a sum of 4,76,000/- to the complainant with interest @18% from 23.08.99 till realisation. Being aggrieved against the said order, the insurance company is before this Commission by way of the present first appeal.

6. At the time of arguments, the Ld. Counsel for the appellant insurance company stated that the amount of 2.38 lakh had been released by them as full and final settlement of claim of the complainant/respondent in accordance with the letter of agreement dated 23.08.99, sent by him. After the said amount was credited to the account of the Kerala Finance Corporation, the complainant started raising demand for obtaining further amount from them for loss of stocks and also filed the consumer complaint in question. The Ld. Counsel argued that at the time of agreement with the complainant, there was no element of any fraud, coercion or misrepresentation with the complainant and hence, he was debarred from raising any further claim.

7. The Ld. Counsel for the respondent, however, stated that the surveyor in his conversation with the complainant had pressurised him to sign the letter dated 23.08.99 to the complainant. Moreover, the insurance company had directly transferred the amount in question to the Kerala Finance Corporation and upon learning about the same, he had sent a legal notice to the OP insurance company and then filed the consumer complaint in question. The Ld. Counsel argued that the incident of fire and consequential damage had nowhere been denied by the other party and the evidence produced by them was unchallenged. The Insurance Company had no evidence to say that the fire was an act of arson. Further, if the insurance company thought it to be an act of arson, they should not have paid even the part amount of 2.38 lakh to the Kerala Finance Corporation. The version given by the insurance company that there was mistake on their part in making that payment as well, was not acceptable because in that case, the said insurance company could have started recovery proceedings against them. The Ld. Counsel further stated that there was no reason for the insurance company to change the surveyor. Moreover, the delay in the settlement of the claim had not been explained by them.

8. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me.

9. The main issue involved in the present appeal revolves around the letter dated 23.08.99, addressed by the complainant to the OP Insurance Company. The contention of the OP Insurance Company is that the amount of 2.38 lakh was

sent to the Kerala Finance Corporation as full and final settlement of the claim of the complainant, but the version of the complainant is, that they were made to send that letter by the surveyor under pressure. Two letters, both dated 23.08.99, purported to have been sent by the complainant to the insurance company have been placed on record. The first page of both these letters is the same, while the second page carries different version. In both the letters, it is stated that the complainant withdrew its claim under the policy towards loss/damage to stock in trade, consisting of wood, finished and semi-finished goods etc. and they were restricting their claim towards loss/damage to building and machinery only. The last para of the first letter dated 23.08.99 says as follows:-

"We understand that the settlement is without prejudice to the rights of anyone concerned and subject to the terms, conditions and limitations of the policy upon which this claim is preferred. We also understand that the settlement is only recommendatory in nature."

10. However, in the last para of second letter on record, also dated 23.08.99, it is stated as follows:-

"The claim lodged against suspected damage to stock was only provisional. On further inspection and physical verification by us and surveyors and also on the discussion mentioned in the previous paragraphs with the surveyors we confirm that the stock was kept in the separate work shed which is not affected by fire. Hence based on the fact that there was no damage to stock, our claim against the same stands withdrawn:-

We submit our final claim bill as under:

(1) Damage to building : Rs.1,12,000.00

(2) Damage to machinery : Rs.1,36,000.00

Rs.2,48,000.00

Less : Excess (-) : Rs. 10,000.00

: Rs.2,38,000.00

This final claim bill is submitted subject to terms, conditions and limitations of the policy upon which this claim is preferred."

11. As stated above, the second letter says that the stock was kept in a separate work-shed and was not affected by fire. Further, it has come in the joint surveyor report, i.e., 15.09.99 also, that the stock of wood item was seen kept in another, separate work-shed, situated in the same compound and hence, the stock was not affected.

12. The question that arises for consideration is whether the said letter dated 23.08.99 was given by the complainant with his free consent or not. In this regard, section 14 of the Indian Contract Act, 1872, which is relevant, reads as under:-

"14. "Free consent" defined

Consent is said to be free when it is not caused by- (1) coercion, as defined in section 15, or (2) undue influence, as defined in section 16, or (3) fraud, as defined in section 17, or (4) misrepresentation, as defined in section 18, or (5) mistake, subject to the provisions of sections 20, 21, and 22. Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake."

13. The terms coercion, undue influence, fraud and misrepresentation are defined in Sections 15, 16, 17 and 18 respectively of the Indian Contract Act and read as under:

15. "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation: It is immaterial whether the Indian Penal Code (45 of 1860) is or is not in force in the place where the coercion is employed.

16. "Undue influence" defined

(1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another-

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872).

17. "Fraud defined

"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agents , with intent to deceive another

party thereto or his agent, or to induce him to enter into the contract:

- (1) the suggestion as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

Explanation: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

18. "Misrepresentation" defined

"Misrepresentation" means and includes-

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) any breach of duty which, without an intent to deceive, gains and advantage to the person committing it, or any one claiming under him; by misleading another to his prejudice, or to the prejudice of any one claiming under him;
- (3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement."

14. From the above, it is made out that the consent given by a person would be deemed to be a free consent and would be binding upon the parties to the contract, unless it can be shown that it was obtained by exercise of coercion, undue influence, fraud, misrepresentation etc., as defined in sections 15, 16, 17 & 18 or by mistake subject to provisions of sections 20 to 22 of the Indian Contract Act."

15. In the instant case, there is no material or evidence on record from which it could be deciphered that the OP insurance company was in a position to dominate the will of the complainant and used that position to cause undue influence upon him. There is no evidence that the mental capacity of the complainant was temporarily or permanently affected by reasons of age, illness or mental or bodily distressed. There is no allegation of any fraud or concealment of any material fact by the insurance company from the complainant. There are no allegation of any misrepresentation also, meaning thereby that there is no action, which could be termed as illegal under the provisions quoted above. The contention of the complainant that the letter dated 23.08.99 was sent because of financial hardship faced by him, does not constitute coercion as defined in

section 15 of the Indian Contract Act. The complainant was free to file a consumer complaint against the OP Insurance Company, even before he signed the letter dated 23.08.99. Moreover, the complainant has not produced any account books / balance sheet etc. from which it could be observed that the complainant was in a state of financial distress at that time. The complainant has, therefore, failed to substantiate the reasons given by him that the letter dated 23.08.99 was sent by him without free consent.

16. The Ld. Counsel for the complainant argued that the insurance company should not have changed their surveyor and they had failed to explain the delay in settlement of the claim. It is observed that in the report filed by the first surveyor Lohidakashan Nair, which is the joint survey report dated 15.09.99 as well, it was stated that the stock of wood item, was seen kept in another separate work-shed situated, in the same point; hence the stock was not affected. Moreover, the alleged delay in finalising the claim does not lead to establish that the complainant was liable to receive the amount as claimed by him without checking the genuineness of the said claim.

17. Based on the discussion above, it is made out that the alleged deficiency in service on the part of the insurance company has not been proved. The order passed by the State Commission, therefore, does not reflect a correct analysis of the facts and circumstances on record. It is held, therefore, that the said order is perverse in the eyes of law and the same is ordered to be set aside. The present first appeal is, therefore, allowed and the consumer complaint in question is ordered to be dismissed. There shall be no order as to costs.