(2012) 07 NCDRC CK 0081

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE CO LTD APPELLANT

Vs

M Jayakara RESPONDENT

Date of Decision : 27-07-2012

Acts Referred:

Citation : (2012) 07 NCDRC CK 0081

Hon'ble Judges : V.R.Kingaonkar , Vinay Kumar J.

Final Decision : Appeal dismissed.

Judgement

1. THE appeal arises out of the judgment and order, dated 16.11.06 rendered by Karnataka State Consumer Disputes Redressal Commission (hereinafter referred to as ''the State Commission'') in complaint case No. 171/2000. By the impugned judgment, the State Commission partly allowed the complaint and held that the complainant (respondent herein) is entitled for payment of Rs. 6,68,500 from the appellants/original opposite party Nos. 1 and 2.

2. THERE is no dispute about the fact that a Vessel of the respondent/ complainant was insured with the appellants for the period between 31.1.1984 to 30.1.1985. The Vessel went astray and was capsized on 23.5.1984 near Calicut. The Vessel was completely damaged due to the said incident. The complainant sought reimbursement in accordance with the terms of the insurance policy. The appellants appointed a Surveyor. The Surveyor gave opinion that the insured had taken loan of Rs. 4.75 lakh from opposite party No. 3 i.e. Syndicate Bank and outstanding loan amount was Rs. 6,98,047.50. The claim put forth by the complainant was neither settled nor repudiated for a considerable period. However, by letter, dated 13.2.1987, the appellants forwarded a cheque for Rs. 5,01,375 payable to the banker of the complainant towards full and final satisfaction of the claim. The complainant did not accept the offer. The cheque was returned to the appellants. The Syndicate Bank filed suit against the complainant for recovery of the loan amount. That was transferred to Debt Recovery Tribunal (DRT). By order dated 31.7.1998, the DRT allowed the claim of the Syndicate Bank with direction that the complainant and the Carrier shall pay

amount of Rs. 12,77,170 along with due interest. After the said award, the complaint was filed by the complainant before this Commission but it was disposed of by order, dated 8.8.2000. This Commission held that the claim was exorbitant and the complaint should have been filed before the State Commission. The complaint was accordingly filed before the State Commission. The complainant filed application for condonation of delay by resorting to provision of Section 14 of the Limitation Act. The delay was condoned. That order was challenged by filing revision petition No. 1235/03. This Commission by order dated 2.8.2005 was pleased to dismiss the revision petition, holding that the appellants were at liberty to agitate the same point at the time of the final hearing of the complaint.

3. THE State Commission, at the time of final hearing of the complaint came to the conclusion that it was desirable to decide the complaint case on merits. The State Commission held that since the amount of Rs. 5,01,375 was offered by the appellants, there was every justification to condone the delay and consider the merits of the complaint. On the basis of available material, the State Commission partly allowed the complaint as indicated earlier.

4. WE have heard learned Counsel for the parties. The Counsel for the appellants submits that the complaint was barred by limitation and, therefore, ought to have been dismissed. He pointed out that the settlement was not accepted by the complainant inasmuch as the cheque was returned on 17.3.1987 by the Syndicate Bank as per the instructions of the complainant and, therefore, within three years, the complaint should have been filed. He would submit that as on the date of filing of the complaint, i.e., 15.11.2000, the complaint was barred by limitation and hence deserved to be dismissed. He argued further that when there was full and final settlement of the claim on "non-standard" basis, the State Commission committed error while partly allowing the complaint. He contended that the report of the Surveyor was over-looked by the State Commission. He argued that when the vessel was undermanned and the complainant did not take proper care to ensure safety of the Vessel, the full amount of the insurance was not payable to the latter. Hence, he urged to allow the appeal. Per contra, learned Counsel for the respondent No. 1 supports the impugned judgment.

5. SO far as the question of limitation is concerned, it may be stated that as on the date of filing of original complaint No. 140/99 before this Commission, Section 24-A of the Consumer Protection Act, 1986 was not brought on book. It was inserted by Act 62/2002 w.e.f. 15.3.2003. That apart, the State Commission has assigned good reasons for condonation of delay. It appears from the record that the Syndicate Bank (original opposite party No. 3) had filed recovery proceedings against the complainants and the appellants. It appears that as per the terms of the insurance policy, the amount was payable to the Banker of the complainant. That is why, vide letter, dated 12.2.1997, the cheque was forwarded by the appellants to M/s. Syndicate Bank, Malpe. The admitted fact is

that the sum assured is Rs. 6,68,500. The Bank returned the said cheque for the reason that it was not towards the full settlement. It appears that the cause of action to claim the assured amount was continued and ultimately when the award was passed by the DRT against the complainant for payment of the entire amount, the complainant was required to file the complaint. For, had the claim of M/s. Syndicate Bank been rejected by the DRT, there was no reason for the complainant to file any complaint.

6. COMING to the merits of the matter, it may be gathered that mere fact that the report of the Surveyor indicated lesser deployment of the number of crew on the vessel by itself, cannot be treated as fundamental violation of the terms of the insurance agreement, nor, it was the ground raised by the appellants for the purpose of repudiation of part of the claim. The appellants never came out with a case that the amount of Rs. 5,01,375 was offered by sending cheque on 13.2.1967 on non-standard settlement basis". Admittedly, the claim preferred by the complainant in the month of May, 1984 was processed and ultimately was partly accepted by the appellants after about three years when the so called offer was made on 13.2.1987. The State Commission was, therefore, justified in holding that there was inordinate delay in processing the claim, which tantamounts to deficiency in the service on part of the appellants. We do not find any substantial error committed by the State Commission while reaching conclusion that the appellants committed delay in partly accepting the claim and thereby could be held guilty for deficiency in the service.

7. WE are of the opinion that when the complainant was required to pay interest @ 15% p.a. as per the award passed by the DRT, the appellants also contributed to the financial burden of the complainant. The State Commission, in fact, awarded interest @ 9% p.a. from the date of the incident. We are of the considered opinion that the interest amount could be awarded only from the date of filing of the complaint before the State Commission and not from the date of the incident. The learned Counsel for the complainant fairly concedes to such modification in the impugned order. Taking over all view of the matter, we are inclined to hold that the impugned judgment and order does not call for any interference on merits. However, the only modification needed in the impugned order is about the change of direction pertaining to the date from which the interest would be payable. We, accordingly, modify the impugned order by directing that instead of 23.5.1984, i.e., the alleged incident, the interest @ 9% p.a. shall be paid by the appellants from the date of filing of the complaint before the State Commission, till realization of the entire amount. The appellants also shall pay amount of Rs. 10,000 to the respondent No. 1 (complainant) as costs of the appeal and shall bear their own. The appeal is accordingly dismissed with above modification in the impugned order.

8. THO statutory amount deposited, if any, be refunded to the appellants, along with accruals, if any. Appeal dismissed.

