(1999) 03 NCDRC CK 0077

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE COMPANY — APPELLANT

Vs

SH VESH NATH JAD — RESPONDENT

Date of Decision : 12-03-1999

Acts Referred:

Citation : 1999 3 CPJ 482

Hon'ble Judges : T.S.Doabia , G.D.Sharma J.

Final Decision : Appeal allowed

Judgement

1. THE house property belonging to the respondent complainant was insured with the appellant Insurance Company. THE said house suffered damage on account of fire. This damage was caused on the night intervening 11 /12th December, 1994. A Surveyor was appointed. He assessed the loss at Rs. 5,54,581 /-. On 4th December, 1996, the appellant Company paid a sum of Rs. 5,54,581/-. This was accepted by the complainant. After accepting this amount, the complainant approached the State Commission constituted under the Jammu and Kashmir Consumer Protection Act, 1987. He submitted that the Surveyor''s report was not in accordance with the law. In any case, the respondent-complainant submitted that he was entitled to interest on the late payment.

2. THE appellant Company took an objection. This objection was to the effect that the complainant had given a receipt which indicates that there was full and final settlement and the liability of the appellant Insurance Company under the contract of insurance stood met. The State Commission was of the view that not withstanding the fact that the complainant had issued a receipt regarding receipt of compensation amount indicating that there was full and final settlement, the complainant was still entitled to the interest on account of delayed payment. The view of the Commission is that so far as the question of interest is concerned that can still be examined. The plea of estoppel if any, would operate only regarding compensation amount and not regarding any other claim. After forming this view, the Commission allowed interest @ 18% from the date of occurrence till the date of payment i.e. 4th December 1996. It is against the

above order passed by the Commission, the present appeal has been preferred.

The learned Counsel appearing for the appellant submits that the question of dispute being settled would arise only when there is a subsisting dispute or difference between the parties. It is submitted that once there is a settlement of claims, then the question of a dispute being pending which requires adjudication before the authorities constituted under the Jammu and Kashmir State Consumer Protection Act of 1987, would not arise. What is sought to be contended is that an accord and satisfaction can be pleaded as a defence in these proceedings and this, if proved, would be enough to reject the claim of the complainant.

3. THERE are decisions of the National Commission under the Consumer Protection Act of 1986 i.e. the Central Act wherein a receipt given by the complainant indicating full and final settlement was held to be a valid defence. Thus, in Pooja Industries v. United India Insurance Co. Ltd. & Anr., II (1994) CPJ 105 (NC), the complainant had executed a formal receipt acknowledging payment of Rs. 7.30 lakhs from the Insurance Company in full and final settlement of the claim. This was held to be good and sufficient for rejecting the claim of the complainant. The plea sought to be taken by the complainant that receipt was given under coercion was not looked into because there was no evidence on the record in proof of such a claim. In another case again arising before the National Consumer Disputes Redressal Commission, New Delhi, I (1996) CPJ 140 (NC), the situation was similar. The complainant received the amount in full and final settlement. It was observed that in these circumstances, the question of there being any deficiency in service would not arise. As a matter of fact, the general rules applicable to the payment or discharge of other contractual obligations apply to the payment or discharge of insurance policies also. What is applicable in these cases is the principle of subrogation. Subrogation is a normal incident of indemnity insurance, and, where the insurance contract is regarded as one of indemnity, the Company on payment of the loss is subrogated to all of the rights of insured against the person whose fault or negligence caused the loss. This principle applies to the policies taken for burglary and theft. In Volume 46 Corpus Juris Secundum, P.160, the principle of law has been enunciated as under : "An insurer paying a loss under a burglary and theft policy is subrogated to the rights of the insured to recover the stolen property or to recover damages from a bailee for negligence in permitting the theft or from a third person whose tortious act occasioned the loss."

Thus a release of all claims by an insured would bar further proceedings. The mere fact that the Insurance Company had made a hard bargain with the insurer in procuring a receipt discharging liability is in itself not sufficient reason for fastening the liability again on the insurer. The exception to the rule can be : (i) mental incompetence of the insured; (ii) presence of fraud. Thus, in the absence of plea of fraud, a receipt in full and valid accord and satisfaction prevents further recovery, an accord and satisfaction or release by the insured of all the claims under the policy supported by valuable consideration would bar further

recovery. See Corpus Juris Secundum Vol. 46, p. 145. In this regard, it would be apt to refer to the decision given by the Supreme Court of India in the case reported as M/s. P.K. Ramaiah and Company v. Chairman and Managing Director, National Thermal Power Corporation, 1994 Suppl. (3) SCC 126. The above case, no doubt, arose under the Arbitration Act of 1940, but the principle indicated therein would apply to the facts of this case also. In the above case, the Construction Company had given a receipt in writing indicating full and final satisfaction and the amount was received uncoditionally what was observed by the Supreme Court at page 129 is reproduced below : "Admittedly the full and final satisfaction was acknowledged by a receipt in writing and the amount was received unconditionally. Thus there is accord and satisfaction by final settlement of the claims. The subsequent allegation of coercion is an afterthought and a devise to get over the settlement of the dispute, acceptance of the payment and receipt voluntarily given. In Russel on Arbitration, 19th Edn., p. 396 it is stated that "an accord and satisfaction may be pleaded in an action on award and will constitute a good defence". Accordingly, we hold that the appellant having acknowledged the settlement and also accepted measurements and having received the amount in full and final settlement of the claim, there is accord and satisfaction. There is no existing arbitrable dispute for reference to the arbitration."

4. THE above principle would apply to the facts of this case also. THE complainant having received the amount in full and final satisfaction under the contract of insurance, cannot raise a further demand and initiate proceedings by filing a complaint under the Consumer Protection Act. The State Commission has observed : "It has been our sad experience that in large number of cases these Insurance Companies delay the settlement of the claims either for extraneous considerations or for the reason that in this way the insured will be subjected to pressure to accept the settlement offered to him."

It be seen that such an experience on the part of Commission was not a justifiable ground to record a finding that the complainant notwithstanding the fact having agreed to settle the matter and after having given a receipt indicating full and final settlement was still within his rights to continue with the proceedings. Some other contentions have also been raised by the Insurance Company. These are to the effect that the proceedings were not conducted in accordance with the law. This aspect of the matter was considered in detail in CIMA 61/95 titled M/s. Oriental Insurance Company Ltd. & Anr. v. Sh. Pyare Lal Koul, decided by this Court on 13.11.1998. The conclusions which have been arrived at are as under : (i) that the rate of interest should be 12%; (ii) that this should be payable two months after the Surveyor has submitted its report; (iii) that if the Divisional Forum or the State Commission comes to a conclusion that there is inordinate delay caused by the Insurance Company and the proceedings have lingered-on on account of dilatory tactics adopted by the Insurance Company. Then it can award even higher rate of interest, but in doing so, reason would have to be mentioned; (iv) that so far as the proceedings are concerned,

these can be conducted by two members. The presence of President is not necessary; (v) that the lacuna in the matter of the order having been not signed by all the members, stood validated by the Validation Act. Section 16-A which was brought on the Statute Book validates the proceedings which were not in conformity with the Act as it originally existed; (vi) that the order signed by two Members is to be taken as a valid order; (vii) that the argument that the President heard the argument and the other members signed the order later on, cannot be looked into in this appeal.

5. IN view of what has been stated above, vis-a-vis complainant having received the amount in full and final settlement, the further contentions noticed above would not affect the merits of the controversy. This appeal is accordingly allowed. The order passed by the State Commission is set aside. Appeal allowed.

