(1999) 03 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE COMPANY LIMITED	APPELLANT
Vs	
U.P. STATE TEXTILE CORPORATION LTD.	RESPONDENT

Date of Decision : 09-03-1999

Acts Referred:

Citation : 1999 3 CPJ 25

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal has been filed by National Insurance Company Limited, through the Senior Divisional Manager, Meerut against U.P. State Textile Corporation''s Spinning Mill, Partappur, District Meerut. The appeal is against order dated 6.5.1995 (passed by District Consumer Forum, Meerut) in Complaint Case No. 693/1993. Briefly stated, the facts of the case are as follows :

2. THE respondent-U.P. State Textile Corporation, Unit Partappur had taken policy of Workmen''s Compensation Act from National Insurance Company Limited for the period 30.11.1985 to 29.11.1986 and under the said policy the entire work-force consisting of clerical staff mill employees, security staff, sweepers, gardners etc. numbering 2601 were covered. THE Insurance Company was liable to indemnify the Partappur Unit of UPSTC of any liability arising out of Workmen''s Compensation Act. Sri Dharambir Singh was working as Reeler in the said unit and this employee died of Tuberculosis on 6.9.1998. Wife of the deceased employee, Smt. Jai Devi, filed a claim under Workmen''s Compensation Act in which the Insurance Company was also impleaded as a party. THE complainant, UPSTC, Partappur Unit resisted the claim of the employee, but the Workmen''s Compensation Commissioner in his judgment dated 28.6.1992 held that Tuberculosis was an occupational disease and by the same order the employee was awarded a relief of Rs. 66,633.64 as compensation plus 10% simple interest from the date of the death of the deceased employee. THE Workmen''s Compensation Commissioner observed that the Insurance Company is not directly responsible for making payment of compensation, but the case of the

complainant, respondent in this appeal, was that the Insurance Company was liable to indemnify the liability and cannot absolve itself of the liability. THE respondent filed an appeal against order dated 28.6.1992 of the Workmen''s Compensation Commissioner after depositing the total amount of Rs. 1,06,522.84 before Hon''ble High Court, Allahabad. THE Hon''ble High Court passed an order that until further orders the amount of compensation may not be paid to the claimant, but the amount should be invested in FDR for three years in some Nationalised Bank. This order was dated 13.10.1992. By another order dated 15.4.1993, the Hon''ble High Court at Allahabad ordered that the amount of compensation which is deposited in the Fixed Deposit Receipt, shall be appropriated in the following manner until disposal of the case : (a) 50% of compensation alongwith interest shall be released to the wife of the deceased unconditionally. (b) Remaining 50% amount shall remain deposited in the FDR in a Nationalised Bank and the interest on the said amount shall be calculated annually and paid to the wife of the deceased at the close of the financial year. THE interest which accrues on the fixed deposit receipt shall not be added to the amount but disbursed to the wife of the deceased. (c) This amount was to be appropriated by the wife of the deceased alongwith two minor children.

The UPSTC, Partappur unit wrote to the Insurance Company advising them of the conditional order of the Hon''ble High Court and called upon them to indemnify the UPSTC against the amount deposit by them under the Workmen''s Compensation Act, but the Insurance Company did not do so. The amount deposited by the UPSTC alongwith damage of Rs. 50,000/- as well as interest was claimed from the Insurance Company by UPSTC, before the District Forum. The opposite party in the District Forum denied the claim as not tenable and challenged the legality of the complaint. The Insurance Company also stated that the complainant is not entitled to any claim under Consumer Protection Act and the District Forum has no jurisdiction to entertain the complaint as the matter is in dispute, was still subjudice and pending before the High Court and as such no proceedings can be initiated in the District Consumer Forum. It was also stated that the Workmen''s Compensation Commissioner had absolved the Insurance Company from any liability to pay the awarded amount. It was also added that there was no deficiency of service on the part of the Insurance Company.

The learned District Forum after hearing the case held the view that it was the duty of the Insurance Company to pay the amount to the complainant as provided under the insurance policy. It was ordered by the District Forum that the Insurance Company was to pay to the complainant the amount ordered by the Workmen''s Compensation Commissioner vide his order dated 28.6.1992 to the complainant and the complainant was to execute an indemnity bond undertaking to reimburse the amount, if any, if the order of the Workmen''s Compensation Commissioner is set aside or modified by the Hon''ble High Court.

3. THE case of the appellant is that the deceased was also covered under the said insurance policy. THE Workmen''s Compensation Commissioner in his order

held that the deceased who was working as Reeler died of Tuberculosis which was an occupational disease and accordingly the deceased was fully covered by the insurance scheme made by UPSTC to cover all losses under the Workmen''s Compensation Act with the Insurance Company. Although the order of the Workmen''s Compensation Commissioner was made on the respondents-Partappur Unit of UPSTC - that did not mean that the order barred the Insurance Company''s liability to indemnify the UPSTC for any compensation. Inspite of this fact, the Insurance Company failed to indemnify the UPSTC for compensation paid to the claimant workmen''s wife in fulfilment of the terms and conditions of the insurance policy. THE appellant also stated that the case before the District Forum was to decide the issue of fixing of responsibility of payment to UPSTC by the Insurance Company. THE premium on policy was accepted and the agreement was duly signed by the Insurance Company. THE liability of the Insurance Company in case of death of any employee of UPSTC due to accident or disease arising out of the employment, is covered in the policy and accordingly it is right of UPSTC to be indemnified. It is further stated by the appellant that the order of the Workmen''s Compensation Commissioner was given after due consideration of the replies submitted by the Insurance Company as well as UPSTC and compensation in favour of Sri Dharambir Singh, the deceased was imposed upon the opposite party. Since the opposite party, UPSTC, was made responsible for payment of compensation, it does not absolve the Insurance Company from discharging their liability as the insurance cover was already there under the Workmen''s Compensation Act. THE Workmen''s Compensation Commissioner could have only directed the UPSTC to make payment. It is for the Insurance Company to discharge the liability by paying to the insurer, who is UPSTC. We have gone through the entire evidence on record. We have also heard the arguments of learned Counsel for the appellant Mr. Anil Kumar and learned Counsel for the respondent, Ms. Tanuja Somvanshi. The appellant, National Insurance Company, had put forward the plea that there is no justification for the District Forum to entertain the complaint when the matter is admittedly subjudice before the Hon''ble High Court. They have also stated that since Tuberculosis does not come under the occupational diseases, they are not liable to pay the compensation. It is further stated by them that they are not necessary party in the matter because the matter under the Workmen''s Compensation Act was between UPSTC and the deceased employee, Dharambir Singh. The insurance policy under Workmen''s Compensation Act makes it clear that payment in respect to the claim has to be made by the Insurance Company. The Workmen''s Compensation Commissioner has held that Tuberculosis is an occupational disease and the compensation has been awarded. The Hon''ble High Court has made an interim order and so long as the interim order is not changed or modified, the orders of the Workmen''s Compensation Commissioner read with the interim orders passed by the Hon''ble High Court is to be applied with and since UPSTC has already deposited the payment, Insurance Company has an obligation to reimburse the claim to UPSTC.

4. KEEPING in view all the points raised above, we are of the opinion that in order to settle the appeal, we need not go through the entire gamut of the episodes, reflecting initial denial of UPSTC of the claim preferred by the wife of the deceased and allied events. It is clear that the Workmen''s Compensation Commissioner ordered for the payment of compensation and on an appeal by UPSTC before the Hon''ble High Court at Allahabad, the Hon''ble Court made interim order and payment was deposited by UPSTC and liability for such payment was not accepted by the Insurance Company. The respondent went to the District Forum and the Consumer Forum passed an order in favour of the complainant. The District Forum has rightly held that the Insurance Company is to discharge its liability of paying compensation as ordered by the Workmen''s Compensation Commissioner subject to execution of an indemnity bond by UPSTC in view of the interim order of the Hon''ble High Court. We feel that the order of the learned District Forum does not need to be interfered with. It has been argued that the claim was time barred. KEEPING the entire facts in view, we have come to the conclusion that cause of action still continued because the liability of UPSTC started after the judgment of the Workmen''s Compensation Commissioner. The claim is, therefore, not time barred. Since an insurance policy was obtained by UPSTC the liability under Workmen''s Compensation Act is to be discharged by the Insurance Company and UPSTC in the process is a consumer beyond doubt. It is, therefore, futile to think that the case cannot be adjudicated by the Consumer Forum, and the appeal is liable to be dismissed. ORDER The appeal is dismissed and the order of the District Consumer Forum, Meerut dated 6.5.1995 is upheld. Accordingly, stay order dated 19.11.1998 is vacated. Let execution proceedings take place. Let copy of this order be made available to the parties as per rules. Appeal dismissed.

