
(1997) 05 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE COMPANY LTD

APPELLANT

Vs

NEW BHARAT RICE MILLS

RESPONDENT

Date of Decision : 05-05-1997

Acts Referred:

Citation : 1997 2 CPC 160 : 1997 2 CPJ 77 : 1997 2 CPR 48

Hon'ble Judges : V.BALAKRISHNA ERADI , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA , C.L.CHAUDHRY J.

Judgement

1. THIS First Appeal is directed against the Order dated 5.5.95 of the Punjab State Commission at Chandigarh in Complaint Case No. 27/94 allowing the complaint partly and directing the opposite party to pay a sum of Rs. 2,47,824/ - with interest @ 18% per annum from the date of the payment of the additional premium till realisation besides costs of Rs. 5,000/ -.

2. THE appeal has been filed delayed by a period of 36 days and is accompanied by an application for condonation of delay supported by the affidavit of Mr. K.K. Dutta, Deputy Manager of the appellant -Insurance Company. We have gone through the affidavit. We are satisfied that there was sufficient cause for not filing the appeal within time. The delay is condoned and the appeal is entertained. The facts necessary for the disposal of the appeal lie in a narrow compass and may be stated. The complainant, M/s. New Bharat Rice Mills, had taken two insurance policies for the period 4.6.93 to 6.3.94 in respect of stocks of all kinds of paddy and/or rice packed in gunny bags etc. lying in their godown. In the first week of July, 1993 on account of devastating floods the entire stocks of the complainant were destroyed and damaged and the opposite party was duly informed on 12.7.93 about the loss suffered. The opposite party appointed M/s. Mehta and Padamsey Surveyors Pvt. Ltd. to survey and assess the loss and finally the claim was approved by the Head Office for a sum of Rs. 40,56,755/ -. The Branch Office of the opposite party wrote letter dated 17.3.94 conveying to the complainant about the approval of the claim subject to collection of additional premium being difference of premium arising out of "wrong rating and flouter extra" amounting to Rs. 3,46,180/ -. The complainant paid the sum of Rs.

3,46,180/ - and the cheque for Rs. 40,56,755/ - was released on 22.3.94. According to the complainant he was coerced to deposit the difference of premium amounting to Rs. 3,46,180/ - for the policies from 1990 -91 onwards and as the complainant's entire business had been ruined due to the loss, he was left with no option but to deposit the amount demanded in order to get the approved claim. The complainant alleged that since 1990 -91 he had been getting his stocks, building etc. insured from the opposite party and at no stage whatsoever any objection or mistake in the payment of premium was raised, but when the loss occurred to the complainant, the opposite party started raising illegal objections and created hurdles in the settlement of just claim. The complainant claimed that the amount which he was coerced to deposit illegally and arbitrarily, be refunded to the complainant as there has been deficiency in service on the part of the opposite party. Besides there were other claims made by the complainant which have been negated by the State Commission and are not being noticed as the complainant has not filed any appeal.

3. ON being noticed the opposite party asserted that deductions were rightly made and the extra premium was required to be charged. Both the parties filed their affidavits in support of their case and produced documents such as insurance policies and other correspondence between the parties. The State Commission in the impugned order extracted the details of the amount of difference of premium as given at page 8 of the complaint. The State Commission came to the conclusion that the complainant was coerced to deposit a sum of Rs. 3,46,180/ - before the settled amount was paid to him. The State Commission also held that legally the Insurance Company could not claim any difference of premium in respect of the insurance policies of the previous years, namely, the year 1990 -91, 1991 -92 and 1992 -93 and the Insurance Company could charge extra premium while deciding the claim for the insurance policies issued for the year 1993 -94. The State Commission came to the conclusion that the opposite party could only claim extra premium for the relevant period of the year 1993 -94 and not for the policies of the previous years as the insurance policy is a contract specifying the period of policy and if no claim is made for the relevant period of the policy, the policy itself lapsed. The State Commission held that the opposite party was entitled to make a claim for godown insurance Rs. 93,000/ - and for processing unit insurance Rs. 5,850/ - i.e., Rs. 98,850/ - and the balance of the amount of Rs. 2,47,824/ - was illegally recovered before making payment of the assessed loss. The State Commission came to the conclusion that the complainant is entitled to the aforesaid amount to that extent as it was a case of deficiency in service on the part of the opposite party besides interest @ 18% from the date he was made to make the payment till realisation.

4. WE heard Mr. Kishore Rawat, Advocate for the appellant and Mr. Vijay Kishan, Advocate for the complainant and with their help have gone through the records. There is no merit in the first submission of Mr. Rawat that the State Commission erred in entertaining and allowing the complaint as the claim of the complainant was settled for Rs. 40,56,755/ - for which the complainant had executed the

discharge voucher in full and final settlement of the claim. The discharge voucher dated 17.3.94 does state that it was in "full and final settlement" of the claim, but the facts and circumstances noticed by the State Commission clearly establish that the complainant was coerced to agree to sign the voucher. This Commission had occasion to consider various aspects of the service agreed to be performed by the Insurance Company in pursuance of the contract of insurance in the event of the loss of the risk covered. In First Appeal No. 59 of 1994 "National Insurance Company Ltd. v. M/s. Lal Chand Jain & Sons, decided on 8.1.97 it was ruled that in case where the claim has been quantified and offered, the complainant may have been compelled to give a valid discharge voucher to the Insurance Company who may have coerced the complainant into accepting the settlement of the claim unwillingly or involuntarily. The Insurance Company will not disburse the amount unless discharge voucher in full and final settlement without protest is given by the insured. The complainant may have no option but to accept the amount offered due to financial constraints or other compelling reasons. The insured may lodge a protest immediately on receipt or soon thereafter. The conduct of the insured becomes relevant on the facts of each case to find out whether the discharge voucher was given voluntarily in full and final settlement or he was coerced into. In this case the cheque was released on 22.3.94 and the complaint itself was filed on or about 2.6.94. The complainant being in an unequal bargaining capacity had to pay the difference of premium demanded as otherwise the Insurance Company had refused to release the payment of compensation. The view taken by the State Commission that the complainant was coerced to deposit a sum of Rs. 3,46,180/- before the settled amount was paid to him, is affirmed and the complainant's conduct established that he never accepted it voluntarily in full and final settlement. The Miscellaneous and General Insurance Policies are policies for a specified period. The renewals are fresh contracts. If a property is destroyed between the date of expiry and date of renewal, the Insurance Company is not liable as the insurable interest was not in existence on that date of renewal. The risks are covered on payment of premium for the specified period on the expiry of which the policy lapses or the contract of indemnity comes to an end. We are not concerned in this case whether the Insurance Company is entitled or not to recover the shortfall of the premium payable in appropriate proceedings. The Insurance Company is not entitled to make any claims with respect to the lapsed policies or lay down conditions for settlement of the claim arising out of the current policy that only on payment of additional premium on lapsed policies that the settled claim would be paid. The demand and realisation of additional premium for the lapsed policies for settlement of the claim of current policy is clear deficiency in service. The making of the said demand as a condition precedent for making payment of the assessed loss is negligence in the performance of service on the part of the Insurance Company and deficiency in service. The State Commission is right in its conclusion that the Insurance Company could only claim extra premium for the subsisting and operative policy of the current year and not for the lapsed policies of the previous year of 1990 -91, 1991 -92 and 1992 -93.

5. FOR the above reasons the appeal fails and is dismissed with costs assessed at Rs. 2,000/ -. Appeal dismissed with costs.