(2016) 06 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

Case No : 433 of 2016

NECTAR LIFESCIENCES LTD. APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LTD. & 2 ORS. RESPONDENT

Date of Decision : 30-06-2016

Acts Referred:

Marine Insurance Act, 1963, Section 80, Section 34 - Right of contribution - Double insurance

Citation : 2016 3 CPR 138

Hon'ble Judges : V.K. Jain

Advocate : Ajay Pal Singh

Judgement

1. The appellant/complainant which is a company incorporated under the provisions of Companies Act and is engaged in manufacturing of pharmaceutical products, imported Ceftriaxone Sodium (a bulk drug) from a company in Hong Kong, namely, Dawnrays International Company Limited in 3 consignments. An insurance cover had been obtained by the appellant/complainant from a Chinese Insurer namely PICC Property and Casualty Co. Ltd. to cover the risk arising in relation to the aforesaid consignment, which was to discharge at Nhava Sheva Seaport in Mumbai. The appellant/complainant had also obtained an insurance policy from M/s. New India Assurance Co. Ltd and the case of the appellant/complainant is that the said policy also covered the above referred consignments. This is also the case of the appellant/complainant that when the goods were received at Derabassi, Punjab they were found in

damaged condition. The complainant therefore lodged a claim in this regard with Chinese Insurer as well as New India Assurance Co. Ltd. A surveyor was appointed by the Chinese Insurer but the claim was eventually repudiated by the said Insurer. No surveyor was appointed by the New India Assurance Co. Ltd. Being aggrieved from the rejection of the claim by the Chinese Insurer, the appellant/complainant approached the State Consumer Disputes Redressal Commission Punjab by way of three separate consumer complaint impleading the Chinese Insurer, its settling agent-Gladstone Agencies Ltd. and Dawnrays

International Company Ltd. as the opposite parties in the said complaint.

2. Vide order dated 21.11.2014, the State Commission allowed the said complaints filed by the appellant company and directed the Chinese Insurer to settle the insurance claim in accordance with the terms and conditions of the insurance policy and also pay compensation quantified at Rs.50,000/- each and the cost of litigation quantified at Rs.20,000/- in every complaint.

3. The case of the complainant is that they tried to execute the said orders passed by the State Commission but could not succeed. The complainant/ appellant thereupon asked the Indian Insurer i.e. New India Assurance Co. Ltd. to reimburse them for the loss sustained by them. Being unable to succeed, they filed 3 fresh consumer complaints before the State Commission impleading New India Assurance Co. Ltd. and its officers as the opposite parties. Since there was a delay of more than 2 years in filing the said complaints, applications seeking condonation of the said delay were also filed. The State Commission vide its order dated 03.03.2016 dismissed the applications seeking condonation of delay and consequently dismissed the complaints. Being aggrieved the complainant/ appellant is before this Commission by way of First Appeal Nos.433/2016, 434/2016 and 435/2016. The facts are identical all the three appeals except to the extent that the delay was 2 years 6 months and 15 days in filing the complaint subject matter of F.A. No.434 of 2016, 2 years 4 months and 15 days in filing the complaint subject matter of F.A. No.435/2016 and 2 years 3 months and 24 days in filing the complaint, subject matter of F.A. No.433/2016.

2. Section 24-A of the Consumer Protection Act to the extent it is relevant provides that the State Commission shall not admit a complaint unless it is filed within two years on the date on which the cause of action has arisen provided that such a complaint may be entertained even after the above referred period if the complainant satisfies the State Commission that he had sufficient cause for not filing the complaint within the prescribed period.

3. It is contended by the learned counsel for the appellant that in view of the provisions contained in Section 34 r/w Section 80 of the Marine Insurance Act, 1963, the appellant on being unsuccessful in executing the order of the State Commission against the Chinese Insurer was entitled to file a consumer complaint against the Indian Insurer.

4. Section 34 of the Marine Insurance Act to the extent it is relevant reads as under:-

" 34. Double insurance - (1) Where two or more policies are effected by or on behalf of the assured, on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance.

(2) Where the assured is over-insured by double insurance -

(a) The assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Act;"

Section 80 of the Marine Insurance Act reads as under:

"Right of contribution- (1) Where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under his contract.

(2) If any insurer pays more than his proportion of the loss, he is entitled to maintain a suit for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt."

It is evident from a bare perusal of Section 34, reproduced hereinabove, that in a case where the loss sustained by an insured is covered by more than one insurance policy, resulting in over-insurance, the insured may at his option, raise the claim with either of the insurers which have issued the insurance policy covering the risk of the loss sustained by him. It is not as if the insured, in such a case, can first sue one of the insurers and in the event of failing to recover the loss from him, sue the other insurer. The choice has to be made and the option is to be exercised by him at the very initial stage. Therefore having chosen to file a consumer complaint only against the Chinese Insurer without impleading the Indian Insurer as a party to the consumer complaint the appellant/complainant gave up its claim against the Indian Insurer. The provision of Section 34 of the Marine Insurance Act, 1963 would not help him in such a situation.

5. As far as Section 80 of the Marine Insurance Act is concerned, that deals with right of an insurer and would apply only when one of the insurers pays more than his proportion of the loss. The said section has no applicability to the factual situation prevailing in these matters.

6. It is an admitted position before me that at the initial stage the appellant had lodged a claim with the New India Assurance Co. Ltd. The learned counsel for the appellant states that the said Indian insurer did not appoint any surveyor and did not at all entertain the claim lodged with it. If this is so, the complainant/ appellant could have filed a consumer complaint against the New India Assurance Co. Ltd. within two years from the date on which the cause of action against New India Assurance Co. Ltd. arose. That admittedly was not done and there is no explanation for not filing a consumer complaint against the New India Assurance Co. Ltd. within the prescribed of limitation.

7. It is an admitted position that Chinese Insurer had repudiated the claim on 20.09.2011. Even if it is assumed that the cause of action to the complainant/ appellant against New India Assurance Co. Ltd. arose on the aforesaid date, the complaint ought to have filed by 20.09.2013. Again there is no explanation for not filing a consumer complaint against New India Assurance Co. Ltd. or not impleading the said insurer in the complaint which the appellant/complainant had

filed against the Chinese Insurer. Therefore from whatever angle I may look at it there is absolutely no explanation for the abnormal delay of more than two years in approaching the State Commission, against the New India Assurance Co. Ltd. This is apart from the fact that by filing a consumer complaint only against Chinese Insurer, without impleading New India Assurance Co. Ltd. as a party to the said complaint, the appellant/complainant is deemed to have waived its right against the Indian Insurer.

8. For the reasons stated hereinabove, I find no good ground to interfere with the impugned order passed by the State Commission. The appeals are accordingly dismissed with no order as to costs. In case any civil remedy is available to the appellant/complainant, the dismissal of the consumer complaint filed before the State Commission shall not come in the way of availing such a remedy.

