

(2012) 09 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO. LTD

APPELLANT

Vs

Lasa Footwear

RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Citation : 2012 0 NCDRC 640

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Advocate : AJAY MAJITHIA , SAURABH JAIN , KARISHMA SINGHAL

Judgement

1. APPELLANT Insurance Company which was Opposite Party No.1 before the State Commission has filed this Appeal against the judgment and order dated 07.12.06 passed by the State Consumer Disputes Redressal Commission, Delhi (in short, "the State Commission ") in Complaint Case No. C-282/1997 wherein the State Commission allowing the complaint filed by the Respondent has directed the Appellant to pay a sum of Rs.5,00,000.00 to the Respondent after deducting the sum of Rs.2,78,175.00 already paid along with Rs.10,000.00 towards costs.

2. COMPLAINANT /Respondent was running a factory of manufacturing of shoes at 10/20 Katra Wazir Khan, Hatras Road, Agra. It had taken two insurance policies in respect of the stock of raw materials, finished and semi-finished shoes, shoes under products, leather sheets, rubber sheets, soles solutions, shoe laces etc. covering the risk of fire and allied perils to the tune of Rs.15,00,000.00. On 29.11.95, Respondent shifted its manufacturing activities from 10/20, Katra Wazir Khan, Hatras Road, Agra to 10/9-B, Katra Wazir Khan, Agra and thereafter the said premises was being used only for storage purposes. The amended policies were issued for both the premises in the sum of Rs.5,00,000.00 each. During the validity of the said policies, a fire broke out on the intervening night of 8/9 December, 1995 at 10/20 Katra Khan, Agra as result of which the entire stocks kept therein got destroyed. Appellant, on being intimated about the fire, appointed joint Surveyors, Mr. S.K. Mittal and Mr. Rajesh Malhotra to assess the loss suffered by the Insured. The said Surveyors

submitted their report on 12.09.96 assessing the loss at Rs.1,10,460.00. Vide letter dated 26.11.96, Appellant offered a sum of Rs.1,10,460.00 towards full and final settlement against the claim of Rs.10,18,897.27 on the basis of detailed report of joint Surveyors which was not accepted by the Respondent. Thereafter, Appellant appointed another Surveyor, M/s. Digambar Lal Puri and Sons who submitted their reports on 1.09.97 assessing the loss at Rs.2,78,175.00. A third Surveyor was appointed in the year 1999 who submitted his report assessing net loss at Rs.9,36,302.00. Appellant offered a sum of Rs.2,78,175.00 towards the settlement of the claim which was accepted by the Respondent under protest. Complainant, being aggrieved, filed the complaint for the balance amount before the State Commission alleging negligence on the part of the Insurance Company. Appellant, on being served, entered appearance and filed its written statement taking the preliminary objection that the State Commission, Delhi did not have the territorial jurisdiction to entertain the complaint as no part of cause of action had arisen within the territorial jurisdiction of the State Commission, Delhi. That since the fire had taken place at Agra, the complaint could have been filed before the State Commission, UP. On merits, it was pleaded that a sum of Rs.2,78,175.00 had already been paid to the Respondent towards settlement of its claim and no further amount was due to it.

3. STATE Commission, after referring to Section 11 (2) (b) of the Consumer Protection Act, 1986 which reads as under :- "11. Jurisdiction of the District Forum. - (1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed ""does not exceed rupees twenty lakhs. (2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction, - (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or (c) the cause of action, wholly or in part, arises. (Emphasis supplied) held that since the Respondent Company had Branch Office at Delhi and working for gain at Delhi, the Consumer Fora at Delhi had the territorial jurisdiction to adjudicate the dispute.

4. WITH regard to the claim of the Respondent for the balance amount, the State Commission held as under:- " In terms of section 14 (1) (d) every consumer has right to approach the Consumer Forum by way of complaint to seek redressal and amount of compensation as to the actual loss suffered by him and the mental agony and harassment suffered by him even if he had received the amount by way of endorsement as full and final settlement. It is common knowledge that anybody who had already suffered at the hands of the insurance company accepts the amount offered to him by arm-twisting tactics because of financial stringencies otherwise he would wait for another 10 to 20 years to get

his actual claim. Such practice on the part of the insurance company does not augur well either for the business of the companies or for the interests of the consumers. Every term of contract has to be interpreted in consonance with its predominant object of the policy. Predominant object of every insurance company is to indemnify the actual loss as assessed by it subject to verification by the surveyor and not by way of bargaining and forcing the consumer to accept the amount which is five times less than the actual amount claimed by him. Surveyor are appointed by the insurance companies as not only Insurance Company but consumer also reposes faith in their competence and integrity. Unless and until the report of the surveyor is found to be afflicted with malafides or extraneous consideration favouring one party or the other and without any basis or any other kind of substantial inadequacy the insurance company should avoid appointing second or third surveyor. It is for the consumer to assail report of the surveyor by way of resorting to legal remedy. "

State Commission partly allowed the complaint and directed the Appellant Insurance Company to pay a sum of Rs.5,00,000.00 to the Respondent after deducting the sum of Rs.2,78,175.00 already paid along with Rs.10,000.00 towards costs. Appellant, being aggrieved, has filed the present appeal.⁷

5. WE have heard the Id. Counsel for the parties at length. Id. Counsel appearing for the Appellant relying upon the judgment of the Supreme Court of India in the case of *Sonic Surgical Vs. National Insurance Co. Ltd.* ¹² (2010) 1 SCC 135 contends that the view taken by the State Commission is contrary to the law laid down by the Hon "ble Supreme Court. In the said case, the goods lying in a godown at Ambala were destroyed due to fire. Instead of filing the complaint before the District Forum at Ambala or the State Commission, Haryana in whose jurisdiction the Ambala is situated, Complainant filed the complaint before the Consumer Commission at UT Chandigarh. The Consumer Commission, UT Chandigarh allowed the complaint against which the Insurance Company filed the appeal before this Commission. This Commission allowed the appeal holding that the Consumer Commission, UT, Chandigarh did not have the territorial jurisdiction to entertain and adjudicate upon the complaint as no part of cause of action had arisen in the territorial jurisdiction of the Consumer Commission, UT, Chandigarh. Complainant, being aggrieved, filed the SLP in the Supreme Court in which leave was granted. Hon "ble Supreme Court dismissed the appeal interpreting the Section 17 (2) (b) of the Consumer Protection Act, 1986 which reads as under:- "17 (2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction, - (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally work for gain, as the case may be, acquiesce in such institution; or (c) the cause of action, wholly or in part arises. "

(Emphasis supplied) Hon "ble Supreme Court held as under:- " The Id. Counsel for the appellant submitted that the respondent Insurance Company has a branch office at Chandigarh and hence under the amended Section 17(2) the complaint could have been filed in Chandigarh. We regret, we cannot agree with the Id. Counsel for the appellant. In our opinion, an interpretation has to be given to the amended Section 17(2)(b) of the Act, which does not lead to an absurd consequence. If the contention of the Id. Counsel for the appellant is accepted, it will mean that even if a cause of action has arisen in Ambala, then too the complainant can file a claim petition even in Tamil Nadu or Gauhati or anywhere in India where a branch office of the Insurance Company is situated. We cannot agree with this contention. It will lead to absurd consequences and lead to bench-hunting. In our opinion, the expression "branch office " in the amended section 17(2) would mean the branch office where the cause of action has arisen. No doubt this would be departing from the plain and literal words of Section 17(2) (b) of the Act but such departure is sometimes necessary (as it is in this case) to avoid absurdity. (Vide G.P. Singh "s Principles of Statutory Interpretation, 9th Edn.2004. p.79). In the present case, since the cause of action arose at Ambala, the State Consumer Disputes Redressal Commission, Haryana along will have jurisdiction to entertain the complaint. "

6. THE provisions of Section 17(2) (b) and 11(2) (b) of the C.P. Act are para-materia. The view taken by the State Commission is diametrically opposite to the law laid down by the Hon "ble Supreme Court in the aforesaid judgment. Respectfully following the law laid down by the Supreme Court in Sonic Surgical "s case (Supra), the appeal is accepted, impugned order is set aside and the complaint is dismissed reserving liberty with the Respondent to file a fresh complaint before the appropriate forum within a period of two months from today. In case such a complaint is filed, the same shall be entertained without any objection to the limitation. Registry is directed to refund the sum of Rs.35,000.00 deposited by the Appellant as statutory deposit along with accrued interest.