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(2004) 03 NCDRC CK 0058

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE COMPANY LIMITED — APPELLANT

Vs

APEX INDUSTRIES — RESPONDENT

Date of Decision : 16-03-2004

Acts Referred:

Citation : 2004 2 CPC 44 : 2004 2 CPJ 490

Hon'ble Judges : K.K.Srivastava , Devinderjit Dhatt , MajGenS.P.Kapoor J.

Final Decision : Appeals dismissed

Judgement

1. -THESE are cross appeals filed against one and the same order dated 4.12.2003 passed by District Consumer Disputes Redressal Forum-II, U.T., Chandigarh (for short hereinafter referred to as the District Forum) in Complaint Case No. 130 of 2001, M/s. Apex Industries through Sh. R.M. Gupta, proprietor, 254, Industrial Area, Phase I, Chandigarh v. The New India Assurance Company Limited, through its Divisional Manager, SCO No. 36-37, Sector 17-A, Chandigarh.

2. THE complainant-M/s. Apex Industries took a fire policy of insurance from the New India Assurance Company Limited (for short hereinafter referred to as the Assurance Company), Sector 17-A, Chandigarh, which is dated 19.1.1984 for a sum of Rs. 2 lacs covering the risk for the period from 19.1.1984 to 19.1.1985. THE policy of insurance was regarding the stock of all kinds of folding beds with cotton Niwar belonging to the insured M/s. Apex Industries lying and/or stored and/or kept at 254, Industrial Area, Chandigarh where the said industry is located. THEre was an incident of fire in the premises of the complainant M/s Apex Industries on 6.4.1984. THE complainant informed the Assurance Company telephonically as well as through a written communication sent on 7.4.1984 under certificate of posting, which was followed by reminders sent on 2.7.1984, 23.8.1984, 15.11.1984, 26.11.1984, 1.2.1985, 25.11.1985 and lastly on 11.12.1985. A copy of police report (Annexure C-10) was submitted by the complainant to the Assurance Company along with their letter Annexure C-9. THE Assurance Company did not settle their claim. A legal notice was served through the Counsel on 11.8.1986. Yet another legal notice dated 18.11.1986

was sent under registered post. THE Assurance Company vide their reply dated 10.12.1986 (Annexure C-11) asked the complainant to furnish full details, which was submitted by their letter dated 14.2.1987 (Annexure C-14). THE vouchers of the purchase bills relating to the loss of goods, which had been duly communicated to O.P. (Annexures C-15 to C-17) dated 30.3.1984 were also annexed. Again the Assurance Company did not take any action in the matter. THE complainant had to send reminders on 25.2.1987, 8.2.1988 and 22.9.1988 (Annexures C-18 to C-20). THE Assurance Company vide their letter dated 18.11.1988 (Annexure C-21) communicated to the complainant that the claim had been filed as ''No Claim''. The complainant had filed a previous Complaint No. 942/91/F/98 in the year 1991 in the District Forum-I, U.T., Chandigarh claiming Rs. 47,000/- as compensation for the loss suffered in the incident of fire. The O.P. contested the case. The complaint was disposed of by the District Forum-I, U.T., Chandigarh vide order 30.11.1999 (Annexure C-29) holding that the complainant had furnished wrong policy number and did not furnish full particulars, which was the cause of treating the claim as ''No Claim''. The District Forum issued direction to the Assurance Company to adjudicate/settle the claim of the complainant by giving reasonable opportunity of producing documents whatever are sought or whatever are available and the claim be settled by passing a reasoned order expeditiously and preferably within a period of four months of furnishing documents by the complainant, if so liked to furnish the same. The complainant received the certified copy of the order from the District Forum on 22.4.2000 and in compliance of the directions, a letter dated 25.4.2000 (Annexure C-30) was sent to the Assurance Company enclosed therewith all necessary documents and the complainant approached the O.P. vide communications (Annexures C-31 and C-32) but to no avail. The Assurance Company by their letter dated 4.10.2001 (Annexure C-33) repudiated the claim of the complainant, which has been described to be unfair, unjust and arbitrary. The acts of omission and commission on the part of the Assurance Company amounted to deficiency in service resulting in the filing of the present complaint claiming a sum of Rs. 47,000/- as compensation for deficiency in service and unfair trade practice by quashing letter dated 4.10.2001 and claiming compensation to the tune of Rs. 50,000/- for harassment and victimization of the complainant.

In the written statement, the Assurance Company pleaded that the District Forum had no jurisdiction and no cause of action had arisen to the complainant. Plea of limitation was also taken. On merit, it was pleaded that the policy covered only the stocks of all kinds of folding beds with cotton Niwar belonging to the insured while lying and/or stored and/or kept at 254, Industrial Area, Chandigarh. The claim of the complainant with regard to cotton Niwar, chairs, tables, office furniture, plant and machinery, etc. was not covered under the policy of insurance. The complainant failed to produce any concrete evidence regarding the alleged loss suffered by them in the incident of fire. Shri T.N. Trehan, who was appointed not by the Assurance Company but by another

Insurance Company i.e., M/s. National Insurance Company Ltd., mentioned that the complainant had not submitted any account books, estimate of the quantity of articles damaged for preparation of loss valuation due to which it could not be estimated whether there was any loss covered under the policy. The claim case was thus rightly filed as ''No Claim''. The receipt of letters from the complainant were denied. It was contended that the complainant for the first time mentioned the correct policy number in their letter dated 1.11.1986 and they were themselves negligent by their act and conduct in providing a wrong information to the Assurance Company and due to the inordinate delay on the part of the complainant, the factum of loss alleged to have been suffered by the complainant on 6.4.1984 could hardly be verified with spot survey and from other sources. The repudiation of the claim was defended.

3. THE District Forum held that the letter of repudiation (Annexure C-33) on perusal showed that the Assurance Company had not cared to apply their open mind afresh to the evidence and material placed before them and they were adamant and took the stand taken previously by them to repudiate the claim of the complainant. THE purchase bills (Annexures C-15 to C-17) being ample evidence and prove that the complainant had purchased cotton Niwar worth Rs. 44,160.72 ps. on 30.3.1984 i.e., only a few days before the incident of fire and the loss of the complainant to that extent is proved. THE District Forum also took notice of the fact that the Complaint Case No. 743 of 1991 filed by the complainant against the National Insurance Company Limited relating to the same incident of fire though under the different insurance policy relating to the same premises, was decided by the District Forum and an appeal had been filed being Appeal No. 11 of 1999 by the National Insurance Company Limited against M/s. Apex Industries, which was decided by the State Commission vide order dated 28.4.1999 and it was held that it will not be in the interest of justice to remand the old case and to delay the disposal further. THE impugned order was set aside and it was held that a sum of Rs. 20,948/- shall be payable to M/s. Apex Industries, Chandigarh within a period of one month failing which the appellant shall be liable to pay interest as well @ 12% per annum from the date of the decision. The District Forum further held that practically the same facts and circumstances were involved in the present case and the District Forum thought that there was no valid reason to take a different view except to follow the aforesaid order of the State Commission. Apart from it, it was found that the building where the stocks of all kinds of folding beds with cotton Niwar belonging to the insured were lying and/or stored and/or kept, was built of first class construction and goods were lying in open covered boundary wall under tents. The District Forum further noticed that it was not disputed that cotton Niwar, which was proved to have been destroyed, was lying in the aforesaid premises.

4. THE contention of the Assurance Company that what was insured was only folding beds with cotton Niwar and not the cotton Niwar simplicitor was not supported by the material placed on record. It was held by the District Forum that cotton Niwar was a very essential part of the merchandise because without

the ready stocks of cotton Niwar the finished folding beds knitted with cotton Niwar could not be manufactured nor supplied to the purchasers. THE policy of insurance thus has to be read as it covered all kinds of folding beds with cotton Niwar and cotton Niwar simplicitor as well. THE District Forum allowed the complaint and set aside the letter of repudiation of the claim of the complainant and a finding of deficiency in service committed by the Assurance Company has been recorded, which was directed to pay a sum of Rs. 44,160.72 ps. to the complainant. THE Assurance Company was also directed to pay a sum of Rs. 500/- to the complainant as costs of litigation. THE amount of compensation was directed to be paid within a period of one month from the receipt of certified copy of the order failing which interest @ 12% per annum was ordered to be paid on the amount of compensation till payment. The appeal filed by M/s. Apex Industries/complainant being Appeal No. 34 of 2004 is on the ground of inadequacy of the amount of compensation and regarding the rate of interest allowed. It has been allegedly urged that once a finding of deficiency in service has been recorded then either compensation has to be awarded or interest has to be ordered to be paid from the date on which the incident of fire had taken place till the date of making the payment. The order passed by the District Forum is sought to be modified by ordering payment of interest to the appellant from the date the incident of fire had taken place till the date of actual payment. In the cross-appeal filed by the O.P.-Assurance Company being Appeal No. 40 of 2004, the Assurance Company has challenged the impugned order on the ground that the Assurance Company was right in repudiating the claim of the complainant. The cotton Niwar, which was lying in the premises of the complainant, was not covered under the policy of insurance, which only covered folding beds with cotton Niwar. Apart from it, it was contended that the complainant had filed the complaint quite belatedly and the same was barred by limitation. The District Forum should not have entertained the complaint and it should have dismissed the complaint as being barred by limitation. The learned Counsel for the appellant-Assurance Company contended that the terms and conditions of the contract are to be strictly construed. It was contended that in the instant case, there was no such provision and the matter had to be decided strictly in accordance with the terms and conditions of the contract.

5. WE shall take up Appeal No. 40 of 2004 filed by the O.P.-Assurance Company in the first instance as it poses a challenge to the maintainability of the complaint as well as the liability fastened on the Assurance Company. The Appeal No. 34 of 2004 filed by the complainant is in respect of awarding of interest from the date of incident of fire on the amount of compensation, which we will take up subsequently to the decision of the appeal filed by the Assurance Company.

6. THE learned Counsel for the appellant-Assurance Company laid great stress on the point that the complaint was filed well beyond the prescribed period of limitation of two years as provided in Section 24-A of the Consumer Protection Act, 1986 (for short hereinafter referred to as the C.P. Act). It was contended that the incident of fire had taken placed as far back as on 6.4.1984. THE first

complaint was filed in the year 1991 being Complaint Case No. 742 of 1991. THE first complaint was also liable to be dismissed on account of limitation alone. So far as the first complaint is concerned, it may be mentioned that the order passed by the District Forum deciding the first complaint by issuing direction to the Assurance Company was not further challenged inasmuch as the Assurance Company abided by the directions and entertained the correct policy number and considered the claim in the light of documents placed on record and passed a fresh order repudiating the claim preferred by the complainant. When the first complaint was filed, the claim filed by the complainant had been filed as ''No Claim''. Once the Assurance Company allowed the order passed by the District Forum in Complaint Case No. 742 of 1991 decided on 30.1.1999 to become final and abided by the same, the second complaint is to be considered accordingly in the light of the directions issued by the District Forum-I, U.T., Chandigarh vide order dated 30.11.1999. The letter of repudiation issued by the Assurance Company is dated 4.10.2000 vide Annexure C-33. After receiving the letter of repudiation dated 4.10.2000, this complaint which is dated 27.2.2001 had come up for motion hearing on 12.3.2001 on which date, notices were issued to the respondents for 14.5.2001. This Complaint No. 130 of 2001 was thus filed well within the prescribed period of limitation of two years from the date of accrual of cause of action, which in the instant case was with effect from the date of communication of letter of repudiation.

Accordingly, we find no merit in the contention of the appellant-Assurance Company that the complaint deserves to be dismissed as being barred by limitation under Section 24-A of the C.P. Act.

7. THE learned Counsel for the Assurance Company in the next place urged that the terms and conditions of the policy of insurance are to be interpreted strictly and these terms and conditions cannot be varied. THE policy of insurance issued by the appellant-Assurance Company, a copy of which has been placed on record as Annexure C-1, mentions the property insured for Rs. 2 lacs only and reads as under: "On stock of all kinds of folding beds with cotton Niwar, belonging to the insured whilst lying and/or stored and/or kept at 254, Industrial Area, Chandigarh. THE building is built of 1st Class Construction, the goods are lying in open covered by boundary wall under tents". The District Forum has interpreted the property insured so as to mean the folding beds as the finished item vowing with cotton Niwar and meaning thereby that the folding beds and cotton Niwar are the two goods shown as property insured and lying in the premises of M/s. Apex Industries at 254, Industrial Area, Chandigarh.

8. IN our considered opinion, the property insured, which has been quoted above, cannot be meant only for the folding beds already ready and woven with cotton Niwar and thereby excluded cotton Niwar lying therein. This fact need not to be further highlighted that the frame of the folding bed and the cotton Niwar are the two components, which would make a finished folding bed woven with cotton Niwar and at least, it has not been mentioned in the property insured in

the policy of insurance. The terms and conditions clearly and categorically show that "On stock of all kinds of folding beds with cotton Niwar..." In this view of the matter, we do not find any error on the part of the District Forum in holding that the stock of cotton Niwar, lying in the premises which destroyed in the incident of fire, was duly covered by the property insured under the policy of insurance. The District Forum has referred to the case of the same complainant filed against another Insurance Company namely M/s. National Insurance Company Limited in respect of same incident of fire though insured under a different policy of insurance wherein the claim was allowed under somewhat similar circumstances. The District Forum has taken the value of the property destroyed in the incident of fire i.e., cotton Niwar and assessed the same at a sum of Rs. 44,160.72 ps. which was proved by the evidence placed on record by the complainant. The Insurance Company was thus deficient in rendering service by repudiating the claim of the complainant and the District Forum has rightly awarded compensation to the complainant with costs of litigation of Rs. 500/-. The appeal filed by the Insurance Company has thus no merit and deserves to be dismissed. Now coming to the Appeal No. 34 of 2004 filed by the complainant-M/s. Apex Industries, it may be mentioned that the District Forum has awarded interest @ 12% per annum in case the amount is not paid within one month from the date of receipt of certified copy of the order. The complainant in order to claim interest from the date of incident of fire as to show that he himself was quite vigilant and prudent in laying the claim. We have already noted above that the complainant itself delayed the matter and filed the first complaint in the year 1991, which was decided by an order, which became final inasmuch as the same was not challenged in appeal by either party and particularly by the Assurance Company. The delay on the part of the complainant does not make him entitled to claim interest from the date of incident of fire and even if he had taken up the matter rather promptly even then some period was required by the Assurance Company to enquire and settle the claim and the same cannot be awarded from the date of incident of fire. We thus find that the appeal filed by the complainant is also devoid of merit.

9. RESULTANTLY, both the appeals valid and are dismissed. The parties are directed to bear their own costs of appeals. Copies of this order be sent to the parties free of charge. Appeals dismissed.