

(1997) 03 NCDRC CK 0059

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE CO.

APPELLANT

Vs

MANGLA DEVI

RESPONDENT

Date of Decision : 11-03-1997

Acts Referred:

Citation : 1997 2 CPJ 584 : 1997 3 CPR 353

Hon'ble Judges : N.C.Sharma , Firoza Bano J.

Final Decision : Appeal allowed

Judgement

1. DECEASED Bagduram Sharma was a workman in J.K. Cement Works, Nimbahera run by M/s. J.K. Synthetic Ltd. Under a group Insurance Policy of workman in J.K. Cement works with Oriental Insurance Company, Bagduram Sharma was also insured against accident risk. The case of the complainant Smt. Mangla Devi, widow of deceased Bagduram Sharma, was that her husband was returning after performing his duties in the said factory at about 10 p.m. of the night intervening 12th and 13th September, 1984. At that time, some trouble was taking place between the workmen of J.K. Cement Works and its management relating to certain demands of the workmen. During this agitation of trouble the police fired a gun shot which hit Bagduram Sharma and he died. His widow Smt. Mangla Devi filed a complaint before the District Forum, Chittorgarh as against J.K. Cement Works and Oriental Insurance Company on 27.1.93 claiming the group insurance amount of Rs. 50,000/- with interest @ 12% per annum.

2. VERSION of M/s. J.K. Cement Works was that this concern was owned by M/s. J.K. Synthetics Ltd. which had not been made a party in the complaint. On the facts of the case M/s. J.K. Cement Works pleaded that Bagduram Sharma deceased after performing his duties in B shift of the factory at 10 p.m. was going and he joined the agitation and striking workmen of the factory. The workmen caused damage to the factory gate and post office and started beating the security persons. In order to maintain law and order and for protecting the property, the Sub Divisional Magistrate seeing that the position was worsening

ordered the police, to fire and due to the firing by the police, Bagduram Sharma and Indersingh, who were amongst rioters, died as a result of gun shot. The police registered a criminal case No. 235/84 for various offences and filed a charge-sheet in criminal Court. The criminal case was pending in the Court of Addl. District and Sessions Judge, Nimbahera being criminal case No. 78.87. M/s. J.K. Cement Works also pleaded that the death of Bagduram Sharma did not take place during the course of his performing duties of Opposite Party No. 1. His death took place because he participated in the agitation alongwith other striking workmen of the factory. Opposite Party No. 1 also stated that it was not liable to pay the insured amount to the complainant and the complainant was not its "consumer" for the Group Insurance Policy. If at all there exists any liability it is of the Insurance Company. The Oriental Insurance Company, which was Opposite Party No. 2 in the complaint, also filed a version. In its version the Insurance Company pleaded that M/s. J.K. Cement Works submitted the claim form on 12.3.85 and the Insurance Company came to the conclusion that the death of Bagduram Sharma insured had resulted from his committing breach of the law with criminal intent and, therefore, the liability of the Insurance Company was excluded by virtue of exception No. 5 in the terms and conditions of Group Insurance Policy. The Insurance Company, therefore, repudiated the claim and informed of the repudiation to M/s. J.K. Cement Works and the insured on 3.2.87. The Insurance Company pleaded that the complaint was filed beyond limitation period of three years and, therefore, the same was not maintainable. The Insurance Company also pleaded that the alleged letter dated 29.5.91 of the Regional Office of the Insurance Company did not give rise to any fresh cause of action and does not have the effect of extending the limitation period for filing the complaint. It was also stated that the complainant himself had sent an application on 16.4.87 to the Branch Manager of the Insurance Company for re-considering the repudiation and thus she had knowledge of the repudiation of the claim of the complainant by the Insurance Company. Still the complaint was filed after considerable delay on 27.1.93 by the complainant. The Insurance Company also pleaded that deceased Bagduram Sharma was taking part in the agitation of workman and he was also made an accused by the police. On the above grounds, the Insurance Company denied its liability.

The District Forum, Chittorgarh held that Bagduram Sharma was returning from the factory after performing his duties at 10 p.m. of the night intervening 12th and 13th September, 1984. It held that the Opposite Party No. 2 i.e. Insurance Company has not adduced reliable evidence to prove that Bagduram was taking part in the agitation or riot. In the FIR lodged by the police he was not mentioned as an accused. The police had filed charge sheet against 39 accused persons and after trial all the 39 accused persons were acquitted by the Addl. District and Sessions Judge, Nimbahera on 11.5.94. The District Forum, therefore, held that the case of Opposite Party No. 2 that deceased Bagduram Sharma was taking part in the riot or agitation automatically becomes false and, therefore, the Insurance Company cannot escape from its liability by taking

shelter of the exception contained in Clause 5 in the terms and conditions of the Insurance Policy. On the question of limitation, the District Forum, Chittorgarh held that the letter dated 3.2.87 had been sent by the Insurance Company to J.K. Cement Works and not to the complainant. The District Forum further stated that the complainant had been making correspondence with the Insurance Company and from the letter dated 29.5.91 sent to the complainant by the Regional Office of the Insurance Company/ it appears that the insurance claim was still pending. The complainant filed the complaint on 27.1.93 in the District Forum and the same was held to be within limitation. The District Forum, Chittorgarh, therefore, by its order dated 11.8.94 directed the Oriental Insurance Company to pay to the complainant the amount of Rs. 50,000/- alongwith interest @ 12% amount w.e.f. 9.3.95 till payment and Rs. 500/- as costs of the complaint. So far as Opposite Party No. 1 M/s. J.K. Cement Works was concerned, the complaint was dismissed. Aggrieved by this order, the Oriental Insurance Company has filed this appeal. We have heard the learned Counsels appearing for the parties and have perused the record.

3. WE will first take the question of limitation. There is no dispute that the Bagduram Sharma was covered under the Group Insurance Policy and that he died on 13.9.84 as a result of sustaining gun shot injury. M/s. J.K. Cement Works had sent the claim to the Insurance Company of Bagduram Sharma. The Divisional Manager of the Insurance Company sent a letter dated 3.2.87 to M/s J.K. Cement Works, Nimbahera wherein it was stated that the Insurance Company had scrutinised the claim file in detail and the facts revealed indicated that the mob was participating in violent activities during the riot and this included beating with sarias, lathis, stone throwing and snatching of guns. The police resorted firing on the crowd only when all other attempts to control the rioters failed. In this firing, 2 people including Bagduram were killed. All this is clearly indicated in the charge-sheet No.38 dated 15.3.85 of the police. It was further mentioned in the said letter that the police charged only 42 people including Bagduram, deceased out of the mob of 600-700 people of various charges such as rioting. This further confirmed that deceased Bagduram was definitely participating in violent activities at the time of the accident. The Insurance Company referred to exception 5 (g) of the Group Insurance Policy which excluded the liability of the Insurance Company if the death resulted from the insured person committing any breach of the law with criminal intent. The Divisional Manager wrote for the information of M/s. J.K. Cement Works that the liability of the Insurance Company, therefore, does not arise. It would thus appear from the letter dated 3.2.87 of the Divisional Manager of the Insurance Company that the claim arising from the death of Bagduram Sharma was repudiated by the Insurance Company on 3.2.87. It is true that this letter of repudiation dated 3.2.87 was sent to M/s. J.K. Cement Works and not to Smt. Mangla Devi widow of Bagduram Sharma. The Group Insurance was got effected by M/s. J.K. Cement Works for the benefit of its workmen. The name of the insured was M/s. J.K. Cement Works in the Group Personal Accident Policy.

Therefore, intimation of the repudiation of the claim to M/s. J.K. Cement Works was sufficient, because it was the insured, for the benefit of the workmen. Moreover, we are not ready to accept the case of the complainant that she did not have knowledge of this repudiation. After the above repudiation of the claim, the complainant had herself made an application dated 16.4.87 to the Divisional Manager of the Oriental Insurance Company wherein she mentioned that her husband had died as a result of gun shot during the strike in the factory on 12.9.84, but his insurance claim has been rejected. Then the complainant mentioned that in the FIR lodged by the police, the police had not treated Bagduram Sharma as accused. She further mentioned that the basis of the criminal case rested on the FIR. In the charge-sheet, for unknown reasons, the name of her husband was mentioned. The complainant made the request that the amount of his claim may be paid. Contents of the letter of the complainant dated 16.4.87 sent to the Divisional Manager, Oriental Insurance Company, Bhilwara leaves no room for doubt that the complainant had been informed by M/s. J.K. Cement Works about the repudiation of the claim by the Insurance Company. The complainant expressly mentioned in her said letter that the Divisional Manager has rejected the claim. Thus the complainant very well knew that the Insurance Company had rejected the claim by letter dated 3.2.87. Still she filed the complaint before the District Forum, Chittorgarh on 27.1.93 i.e. about six years after the date of repudiation. The complaint was clearly a stale complaint and the District Forum should have dismissed the complaint on this ground. We may also mention that the District Forum, Chittorgarh has further mentioned about a letter dated 29.5.91 which was sent by the Manager of the Regional Office of the Oriental Insurance Company at Jaipur in reply to a complaint or representation made by the complainant on 16.5.91 to the Regional Office. By letter dated 29.5.91 the Manager of the Regional Office had only written to the complainant that her letter dated 16.5.91 has been received. The Regional Office was asking for information from its connected office and they are instructing the concerned office to take urgent action on the pending claim. It was expected that the complainant will receive satisfactory reply from the concerned office. This letter dated 29.5.91 of the Manager of the Regional Office of the Insurance Company neither contains an acknowledgement of liability and nor an admission that the claim of the complainant with Insurance Company was still pending and had not been repudiated by the Insurance Company till that date. The letter dated 29.5.91 was only a routine letter sent by Regional Office to the complainant in reply to the complainant's representation dated 16.5.91. The complainant was only informed that the Regional Office is asking for information from the concerned branch office and were instructing the branch office to take early action on pending claim. This letter dated 29.5.91 did not furnish any fresh cause of action to the complainant and this cannot be relied upon by the complainant to extend the period of limitation.

4. WE may refer to Article 44 of the Limitation Act, 1963 which provides for a limitation of 3 years for insurance claim and the limitation starts from the date of

the death of the deceased or where the claim of the policy is denied, either partly or wholly, the date of such denial. Death of Bagduram Sharma took place on 13.9.84 and the complaint filed on 27.1.93 was clearly a stale complaint if the limitation is taken to start from the date of death of Bagduram Sharma. If, on the other hand, limitation is reckoned from the date of repudiation made by the Insurance Company on 3.2.87 which had come to the knowledge of the complainant, then also the present complaint filed by the complainant before District Forum, Chittorgarh was a stale complaint. WE may also mention that if the complainant on the basis of the letter of the Regional Office dated 29.5.91 wants to harp upon that the claim was still pending and had not been repudiated, then the limitation started from the date of death of Bagduram Sharma which had taken place on 13.9.84. In any view of the matter, therefore, the complaint filed by the complainant was a stale complaint and it was barred by limitation even according to the ordinary law of limitation. The District Forum, Chittorgarh should have dismissed the complaint on this ground alone. Consequently we allow this appeal, set aside the order of the District Forum, Chittorgarh, dated 11.8.94 and dismiss complaint Case No. 83/93 filed by the complainant Smt. Mangla Devi. If any amount has been deposited by the Oriental Insurance Company in District Forum in pursuance of the interim order dated 7.10.94 of this State Commission, the amount deposited will be refunded by the District Forum, Chittorgarh to the Oriental Insurance Company (opposite party-appellant). In the circumstances of the case, parties will bear their own costs throughout. Appeal allowed.