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**(1999) 07 NCDRC CK 0039**

**In the National Consumer Disputes Redressal Commission**

ORIENTAL INSURANCE Company Limited

APPELLANT

Vs

DHARMENDRA KUMAR LALL

RESPONDENT

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**Date of Decision :** 28-07-1999

**Acts Referred:**

**Citation :** 1999 0 CTJ 581 : 1999 2 CLT 687 : 1999 2 CPC 519 : 1999 3 CPJ 20 :  
1999 3 CPR 10

**Hon'ble Judges :** S.C.Sen , R.Thamarajakshi , S.P.Bagla , C.L.Chaudhry ,  
J.K.Mehra J.

**Final Decision :** Ordered accordingly

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**Judgement**

1. THIS case arises out of an insurance claim. The complaint was filed before the Rajasthan State Commission claiming a sum of Rs. 17,32,196.75 by the complainant against the Insurance Company. The case was heard on evidence by the State Commission on 28.11.1996. It is recorded in the order sheet "Arguments heard. The case is reserved for orders". The Chairman of the Commission Mr. Justice N.C. Sharma dictated the order disposing of the complaint, signed it and sent it to Mrs. Firoza Bano, another Member of the Commission. It is not known when it was sent to her ? But it appears that Mrs. Firoza Bano on 12.5.1997 wrote on the body of the copy of the judgment sent to her "I do not agree with this judgment. I will write separate judgment. Sd/- Firoza Bano/12.5.1997". There is nothing to indicate that judgment of the Chairman was placed before the third Member Dr. Subhash Purohit. Justice Mr. N.C. Sharma retired from the Commission shortly thereafter and the Commission was re-constituted in September, 1997. Mrs. Firoza Bano on 19.12.1997 wrote a dissenting judgment and sent it to the third Member Dr. Subhash Purohit. No order sheet has been maintained since 12.8.1996 about this case and there is nothing in the order sheet regarding the date of the judgment of Mrs. Firoza Bano. There is also nothing on record to indicate whether the copy of the order passed by the Chairman was at any stage sent to Dr. Subhash Purohit. We called for a report from the State Commission.

2. THE State Commission also found it difficult to execute the impugned order. In an execution application filed by the complainant before it under Section 25 of the Consumer Protection Act, the Insurance Company made a prayer before it that the execution petition filed by the complainant may be stayed till the final disposal of the appeal pending before this Commission. THE State Commission found difficulty in drawing up a decree for execution and was of the view that the alleged order dated 19.12.1997 could not be executed and sought direction from this Commission. The State Commission has reported in its order dated 12.5.1998 : "The record does not indicate that the copy of the order passed by the Chairman was at any stage sent to the third Member Dr. Subhash Purohit and it is again not borne out that he had the benefits of going through the order passed by the Chairman at any stage and hence fact of Hon"ble Mr. N.C. Sharma is not clear from any documents in record much less the order sheets. It is also not borne out as to whether after 12.5.1997 when the dissent was recorded where it was mentioned I will write separate judgment at that time she got the record with her or it was sent to the third Member namely Dr. Subhash Purohit. Obviously, after 10.5.1997 on the date this judgment has been pronounced Hon"ble Mr. Justice N.C. Sharma was no longer in the Commission as he has resigned from the Commission. It is again not borne out from the record that the judgment has been sent to Registry for placing before the new Chairman for constituting the Bench on 19th December, 1997 for pronouncement of the order. (One of us who was party to the majority judgment) during the course of the arguments of this application could not recall that she ever sought the consultation of the present Chairman on the date it was pronounced or that the Commission pronounced the order. She was unable to recall whether on the date, the judgment was pronounced it was in accordance with the provisions contained in Rule 7(12) of the Consumer Protection (Rajasthan) Rules, 1987 wherein it has been mentioned that orders of the State Commission shall be pronounced and shall be signed and dated by the Members of the State Commission constituting the Bench and shall be communicated to the parties free of charge. It is also relevant to record here that there is no order passed by Commission that in view of the majority judgment, the complaint is allowed. It has also been observed that there is nothing to indicate in the order sheet that Hon"ble Justice N.C. Sharma's order after the dissenting note by Mrs. Firoza Bano was at any time either referred to the third Member or he had an access to his judgment."

The State Commission also sought our opinion and advice whether it could proceed to execute this order which according to the State Commission had not been properly passed.

3. THE points for consideration are whether the majority judgment can be upheld valid, (i) in the absence of any order sheet since after 28.11.1996; (ii) without formal pronouncement of the order by the two Members; (iii) without any mention about file having sent to the third Member; and (iv) without being pronounced by the Chairman. The Rule 8(9) of The Consumer Protection (Rajasthan) Rules, 1987 provides that Order of the State Commission on appeal

shall be pronounced and shall be signed and dated by the Members of the State Commission constituting the Bench.

4. IN this case, because of the long delay in getting the judgment of Mrs. Firoza Bano ready, the judgment of the District Forum cannot be pronounced by the Bench which heard the case because the then Chairman had retired long before the judgment of Mrs. Firoza Bano was made ready. The order of Court has to be drawn up according to the judgment to be signed by all the Members. Since Justice N.C. Sharma has already left, he did not have an opportunity to sign or pronounce the order. Moreover, the inordinate delay in passing the dissenting judgment by Mrs. Firoza Bano has caused great harm in this case. Dr. Subhash Purohit was apparently unaware of the judgment delivered by the Chairman. Under these circumstances, it is very difficult to uphold the validity of this judgment. Under Section 12(2-A), every order made by the District Forum has to be signed by its President and the Members or the Members who conducted the proceedings. If there is a difference of opinion between any two Members, the matter should be referred to the third Member for a decision. These rules also apply to the proceedings conducted by the State Commission. There is no doubt in this case that the order was passed by the President who after sometime left the Commission. But another Member of the Commission who dissented from the President did not write her dissenting judgment for more than six months. The third Member who heard the case was unaware of the judgment of the President. Moreover, no meaningful discussion on the judgment proposed to be delivered by Mrs. Firoza Bano took place between the President and the third Member and Mrs. Firoza Bano. Formal order of the State Commission according to the majority view was not drawn up and signed and dated by the Members of the State Commission constituting the Bench as required by Rule 7(12) of the Consumer Protection (Rajasthan) Rules, 1987. Under these circumstances, the impugned order passed by Mrs. Firoza Bano dated 19.12.1997 cannot be said to be the judgment or order of the State Commission. Under these circumstances, we are of the view that the majority judgment passed on 19.12.1997 is a nullity. The impugned judgment of the State Commission is set aside. The appeal is allowed. The State Commission will re-hear the case de novo in accordance with law. The reference made by the State Commission on 21.5.1999 is also answered as above. Ordered accordingly.