
(2002) 10 NCDRC CK 0079

In the National Consumer Disputes Redressal Commission

POCHAMPALLY HANDLOOM HOUSE

APPELLANT

Vs

United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Citation : 2003 0 CTJ 9 : 2003 1 CPJ 63

Hon'ble Judges : D.P.Wadhwa , J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Complaint dismissed

Judgement

1. THIS original petition is filed against the United India Insurance Company Ltd. by M/s. Pochampally Handloom House. The facts in brief are as under :

2. THE complainant who is dealing in the handloom business, had taken an insurance policy for the period 8.2.2000 to 7.2.2001 for a sum of Rs. 72 lakhs covering flood and other damages. On the intervening night of 23rd and 24th August, 2000 there were floods and heavy damage occurred to the stocks covered under the policy, which fact was brought to the notice of the Insurance Company on 25th August, 2000 and the Insurance Company deputed a Surveyor to conduct the survey. THE complainant states that according to the documents, account books and other concerned records the total damage to the stocks worked out at Rs. 5,79,856.90 ps. it is alleged in the complaint whatever the information required by the Surveyor was submitted to him. As per the complaint, the complainant had also submitted representations to the Insurance Company for early settlement of the claim. It is also mentioned in the complaint that the Surveyor had informed the complainant that unless the complainant agrees for Rs. 14,50,000/- in full and final settlement, the opposite party No. 1, the Insurance Company, will not recommend the case for settlement. And, hence, the complainant constrained to give letter dated 2.2.2001 to the Surveyor agreeing to accept Rs. 14,50,000/- in full and final settlement. THE complainant has also submitted a notarised affidavit to this effect at the instance of the Insurance Company. After a long drawn correspondence, the Insurance Company sent a discharge voucher for a sum of Rs. 14,50,000/-, which the complainant

accepted. THEREafter, the complainant alleges that he was constrained to sign the discharge voucher because of heavy financial problems and hence the discharge voucher, according to him, which is a stereo print with the words "towards full and final settlement of the claim", is not binding and the complainant sent representations to the Insurance Company for release of the remaining amount under the policy. In response to the representations, the Insurance Company replied that the matter had been closed in view of the complainant having given consent for the settlement of the claim at Rs. 14,50,000/-, and discharging the voucher towards the full and final settlement of the claim. In support of his contentions the complainant mentioned the details of the stocks from 31st December, 1998 to 9th August, 2000 and contends that the discharge voucher is given under financial pressure, compulsions, as such, the signing of the discharge voucher cannot be construed as a voluntary one. THE complainant also states that the action on the part of the opposite party in not settling the claim within the reasonable period does amount to unfair trade practice. Since the opposite party have not responded to these representations and denied to release the balance amount under the policy, the complainant had filed a complaint before us claiming the balance amount with interest. On notice being issued, the opposite party filed its reply. The stand taken by the opposite party is that the complainant after receiving the survey report and relevant documents, thoroughly examined the report and the documents as well as the terms and conditions of the insurance policy and approved the insurance claim in question for a sum of Rs. 14,50,000/-, and the complainant is estopped from challenging the quantum of insurance claim and, therefore, cannot maintain the claim against the Insurance Company under Consumer Protection Act, 1986. The Insurance Company has also relied upon the judgment of the Hon'ble Supreme Court delivered in the case of *Synco Industries v. State Bank of Bikaner*, I (2002) CPJ 16 (SC)=I (2002) SLT 214=(2002) 2 SCC 1, and prayed that the complaint be dismissed with costs.

We have heard the learned Counsel for the party. We have also gone through the papers filed before us.

3. IN this case, the complainant has offered his acceptance for a sum of Rs. 14,50,000/- in full and final settlement on 31.7.2001. Not only that, an affidavit has also been sworn on behalf of the complainant to the same effect. Thereafter, on 16.8.2001 the complainant raised the protest against that payment and has alleged that this payment was received under protest. We consider that unless a very strong case is made out on evidence, this petition cannot be entertained particularly, when protest has come after 16 days. Furthermore, the allegations of undue influence and coercion cannot be adjudicated without proper evidence, which, in our summary jurisdiction, we are not able to embark upon. IN his connection, it is appropriate to extract the views of the Hon'ble Supreme Court in the case of *Synco Industries v. State Bank of Bikaner* (supra), which are as under : "Given the nature of the claim in the complaint and the prayer for damages in the sum of Rupees fifteen crores and for an additional sum of Rupees

sixty lakhs for covering the cost of travelling and other expenses incurred by the appellant, it is obvious that very detailed evidence would have to be led, both to prove claim and thereafter to prove the damages and expenses. It is, therefore, in any event, not an appropriate case to be heard and dispose of in a summary fashion. The National Commission was right in giving to the appellant liberty to move the Civil Court. This is an appropriate claim for a Civil Court to decide and, obviously, was not filed before a Civil Court to start with because, before the Consumer Forum, any figure in damages can be claimed without having to pay Court-fees. This, in that sense, is an abuse of the process of the Consumer Forum."

IN view of the above mentioned decision of the Hon"ble Supreme Court, it will be open to the complainant to move the Civil Court under Section 14 of the Limitation Act, 1963 for exclusion of time spent in the present proceedings. IN this connection a decision of Hon"ble Supreme Court in the case of Laxmi Engineering Works v. PSG INdustrial INstitute, II (1995) CPJ 1 (SC)=(1995) 3 SCC 583, wherein the Hon"ble Supreme Court held as under : "If the appellant chooses to file a suit for the relief claimed in these proceedings, he can do so according to law and in such a case he can claim the benefit of Section 14 of the Limitation Act to exclude the period spent in prosecuting the proceedings under the Consumer Protection Act, while computing the period of limitation prescribed for such a suit."

Accordingly, this complaint is dismissed without prejudice to the complainant's rights to approach Civil Court or any other appropriate Forum in accordance with law. Parties are left to bear their own costs. Complaint dismissed.