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In the National Consumer Disputes Redressal Commission

RAJDHANI AUTO TRADING COMPANY — APPELLANT

Vs

UNITED INDIA INSURANCE CO.LTD — RESPONDENT

Date of Decision : 28-10-1992

Acts Referred:

Citation : 1992 3 CPJ 196 : 1993 0 CPC 30 : 1994 1 CLT 139

Hon'ble Judges : S.S.Sandhawalia , S.Kulwant Singh J.

Final Decision : Preliminary objections rejected

Judgement

1. FOR the limited purpose of disposing of the preliminary jurisdictional objections sought to be raised by the opposite party, it seems unnecessary and indeed wasteful to delve deeply into the facts and the merits of this complaint.

2. IT suffices to mention that M/s. Rajdhani Auto Company, the complainant is a contractor/transporter of Hindustan Machine Tools'' tractor from their factory at Pinjore to various dealers in India via the Saharanpur Stock Yard. The complainant took out an insurance cover for the road transit risk of the said tractors from the opposite party M/s. United India Insurance Company Limited and paid the necessary premia there for apart on a Bank guarantee for Rs. 25,000/-. On the 7th of September, 1989, HMT tractor No. 54169 during transit from Pinjore to Saharanpur met with an accident near village Karsan resulting in the death of one Nishan Singh. According to the complainant, on the said date the tractor was covered by the insurance policy with effect from the 6th of September, 1989 but this stand is repudiated by the insurers. In the meantime, the widow of Nishan Singh aforementioned namely Sat Pal Kaur filed a case for compensation to the tune of Rs. 2 lacs against the complainant and the HMT in the Court of the Motor Accident Claims Tribunal, Ambala. Therein, a plea was taken on behalf of the opposite party that on the material date, the insured risk was not covered and the relevant cover note was to take effect from the 20th of September, 1989 only. The complainant has sought the reliefs inter-alia that the insurance policy be issued with effect from 6th of September, 1989 and compensation for loss and damages to the tune of Rs. 1.2 lacs with interest at

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18% thereon and Rs. 50,000/- for harassment and hardship etc. due to the alleged negligence of the opposite party. On notice being issued, the opposite party has put in a short reply raising six preliminary objections against the trial. It is first the plea that the complaint is belated because the cause of action had arisen way back in September, 1989. The other primal objection pressed is that the matter regarding the insurers and the accidented tractor No. is directly in issue in the case titled ''Sat Pal Kaur v. Sita Ram'' in the Court of Motor Accident Claims Tribunal, Ambala City and since the matter is sub-judice therein, this Commission has no jurisdiction to proceed to trial or grant relief.

Mr. Nitin Kumar, the learned Counsel for the opposite party has first attempted to raise the technical pleas of limitation. It was submitted that the primal cause of action herein arose way back on the 7th of September, 1989 and the present complaint is thus belated. The hyper technical stand further taken was that there might be a special clause in the policy which would further bar the remedy after a period of twelve months only. Reliance was sought to be placed by way of analogy II (1992) CPJ 582, Saheen Screen Prints v. The United India Insurance Co. & A-One Screen Printers v. The United India. It is somewhat plain that the submission aforesaid is lacking in merit. Even assuming at the highest that the ultimate cause of action had arisen on the 7th of September 1989 and the present complaint has been preferred on the 26th of August, it is still well within the period of three years. It was not disputed before us even on behalf of the opposite parties that the relevant Articles of the limitation even if strictly applied are not less than the time of three years from the date of the accruing of the cause of action.

3. THE learned Counsel''s reliance on Saheen Screen Prints v. THE United India Insurance Co. (supra) is also not well-placed. THE very foundation for attracting the ratio thereof is lacking herein. Even when pointedly asked, the learned Counsel for the opposite party could not pin-point any clause in the policy creating a bar of one year for claims to be lodged. Indeed no copy of the said policy was on the record nor did the learned Counsel for the opposite party choose to produce or rely upon any specific provision thereof even in the course of his arguments. This apart the ratio of the decision in the aforementioned case is that the bar of twelve calendar months would begin from the date of the claim our by the Insurance Company if no complaint or suit is filed within that time. Herein, it is neither the plea nor any proof that the insurer had made a clear-cut repudiation or disclaimour against the insured party''s claim. THE authority relied upon is thus wholly wide of the mark. THE plea of limitation tenuously sought to be raised must therefore be rejected. It was then urged by Mr. Nitin Kumar that because some connected issue was likely to arise with regard to the insurance policy in the case of Sat Pal Kaur v. Sita Ram (supra) before the Motor Accident Claims Tribunal (hereinafter referred to as the ''Tribunal''), Ambala City which is pending decision, the Commission must stay its hands on the ground that the matter is sub-judice. Reliance was placed on I (1991) CPJ 78 (NC), M/s Special Machines Karnal v. Punjab National Bank & Others and II (1991) CPJ 262 (NC),

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Santosh Sharma & Others, v. State Bank of India.

4. WE are afraid that the alternative stand of the learned Counsel is equally'' lacking in substance. What has to be noticed first is the fact that herein, the matter is not before a competent Civil Court of unlimited jurisdiction. At best it is a Tribunal of limited jurisdiction which can grant relief within the narrow confines of the statute namely the Motor Vehicles Act. It deserves highlighting that the primal lis therein is the claim of the widow of Nishan Singh deceased for the death of her husband in the accident. That is a cause of action entirely distinct and separate from what the complainant seeks here. It is worth recalling that the rule of the matter being sub-judice arises only when there is an identity of a cause of action or a substantial similarity thereof. A mere isolated connection is not sufficient to bar the consumer jurisdiction. It is somewhat plain that the relief which the complainant claims here cannot even remotely be granted by the Tribunal. Indeed the issue whether there is a deficiency in the services undertaken to be rendered by the opposite party which is germane to the consumer jurisdiction cannot even be adverted to stricto-sensu in the Tribunal aforementioned. Equally the counsel''s reliance on Santosh Sharma & Ors. v. State Bank of India (supra) is irrelevant because herein, there is no lis pending in any Criminal Court either. For all these reasons, the second submission of the learned Counsel therefore, must fail and is rejected. The other four preliminary objections which overlapped or inter-twined into the aforesaid two primal ones, were not seriously pressed. The jurisdictional objection therefore, fails and the trial will now proceed on its merits. Preliminary objections rejected.

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