(1996) 02 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

ROOPAWATI BHAT — APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. — RESPONDENT

Date of Decision : 02-02-1996

Acts Referred:

Citation : 1997 3 CPJ 312

Hon'ble Judges : Malik Sharief-Ud-Din , KrRameshwar Singh J.

Final Decision : Complaint disposed of

Judgement

1. HEARD. First we may note that during the pendency of this complaint the insured Vish Nath Bhat had died and his name in the complaint Roopawati Bhat and son Makhen Lal who are the legal representatives of the insured and that is how the title of the complaint came to be changed.

2. THERE is no need for us to refer to the detailed facts. However, the fact of the matter is that an insurance for Rs. 5.00 lacs was carried out for the house and houses hold goods of the complainant regarding which a claim was raised and finally settlement arrived at between the parties at Rs. 2,65,604/-. This amount was admittedly received by the complainant in full and final satisfaction under the contract of insurance. The grievances of the complainant is that since he was a migrant and was under financial distress and since he was in need of money and the Insurance Company had almost procrastinating for two years he opted for receiving the money against his Will in full and final satisfaction as otherwise the opposite party was not prepared to make the payment. The defence of the opposite party is that having received the liability determined under the contract in full and final satisfaction there was no deficiency of service and therefore this complaint is not maintainable. It is also submitted that if there is any dispute in respect of quantum the same is referable to the arbitration under the contract of insurance.

Now after giving our careful consideration to the state of facts we would like to point out that it has been our sad experience that in large number of cases these Insurance Companies delay the settlement of the claims either for extraneous considerations or for the reason that in this way the insured will be subjected to pressure to accept the settlement offered to him. We are however helpless in a situation such as this case. It is for the insured to offer resistence and to raise the dispute before us but that can only be done without accepting the amount in full and final satisfaction. We are unable to go into the question as to how and under what circumstances the settlement was arrived upon. This is a matter, which is for the Civil Court. To this extent we fully agree with the contention raised by Mr. Jugal Kishore also for the reason that to this extent there is no deficiency of service.

3. THIS however is not the end of the matter. The question as to whether there has been any deficiency of service on the other count still remains alive. The general language contract and the state of law on the subject clearly indicates that the insured is to be indemnified fully from the date of loss. THIS is true even whether the Insurance Company takes reasonable time to settle the claim. Even in such situation once the claim has been settled the indemnification has to be made in full and must relate to the very date of loss. In the cases where there is inordinate delay in the settlement of the claims also the indemnification has to be in full and must relate to the very date of loss. While accepting its liability in the present case the Insurance Company has only settled the amount of reimbursement to be made to the insured under the terms of the policy. The policy was for a sum of Rs. 5.00 lacs, which was settled for a sum of Rs. 2,65,604/-. THIS only gives quietous to the opposite party against the terms of the contract but it can neither in fact nor in law amount to full indemnification. In the present case the Insurance Company has taken almost two years to accept its liability and the insured had been left at its tender mercy. He was finally told to accept what a party to the contract though it was liable to pay. Since the insured has to be indemnified fully from the very date of loss it can only be done by way of allowing him interest at commercial rates because by withholding this amount from the insured for a period of two years the insurer has put himself to roundful gain and has subjected the insured to wrongful loss. It is this situation that is to be remedied and it is on this principle that we find it necessary to allow interest even in such cases where the amount determined has been accepted in full and final satisfaction. We are, therefore, of the view that the insured in the present case has not been fully indemnified and in order to fully indemnify him he ought to have been paid interest on this amount, which has not been done. On this ground we allow the complaint to the limit extent and direct the opposite party to pay to the complainant interest @18% per annum on the amount accepted by him from the date of loss till the date the payment was made. Having also regard to the fact that for two long years the insured was deprived of his just and rightful claim and having also regard to the fact that in keeping with their usual work culture the Insurance Companies are procrastinating in the matter of such just claims. We allow a further sum of Rs. 50,000/- as compensation to the complainant as for long two years he was subjected to enormous physical and mental and financial strain. We direct that this order

should be complied with within six weeks from the date of this order.

4. A certified copy of this order be given to the parties free of cost to be collected by them within a week''s time on their own. The complaint is disposed of. Complaint disposed of.

