**(1991) 04 NCDRC CK 0003**

**In the National Consumer Disputes Redressal Commission**

R.S.OIL AND GENERAL MILLS APPELLANT

Vs

NATIONAL INSURANCE COMPANY LTD., CALCUTTA RESPONDENT

**Date of Decision :** 21-04-1991

**Acts Referred:**

**Citation :** 1991 0 CPC 540 : 1991 2 CPJ 402 : 1993 2 CLT 73 : 1993 2 CPR 212

**Hon'ble Judges :** S.S.Sandhawalia , Basanti Devi , Tikka Singh J.

**Final Decision :** Complaint rejected

## Judgement

1. WHETHER the rejection of an insured party''s claim by the Insuring Company is per se a jurisdictional bar to seek redress before the Forums under the Consumer Protection Act, 1986-is the significant threshold question in this complaint.

2. FOR the purposes of this order adjudicating on the preliminary objection of the nature aforesaid, it is unnecessary to recount the facts in detail. It suffices to mention that the complainant, M/s. R.S. Oil and General Mills Limited had preferred the present complaint against the National Insurance Company Limited for seeking the relief of payment of a sum of Rs. 2,73,000/- being the insured amount for the value of the consignment of the complainant Company which had not reached the consignee. They also sought a further award of Rs. 3 lakhs by way of compensation for negligence and non-payment of the claim in time. Both claims arise from a contract of insurance with the opposite party dated the 19th of January, 1988. In the written statement on behalf of the National Insurance Company Limited apart from merits, a preliminary objection with regard to the very maintainability of the complaint has been raised in terms which merit notice in extenso as under : "That this Hon''ble Commission has no jurisdiction to try this complaint under Section 18 of the Consumer Protection Act as the claim which was made by the complainant, was rejected as not payable by the respondent Company. Once the claim has been rejected by the company this Hon''ble Commission has no jurisdiction to decide the said case."

The aforesaid preliminary objection was strenuously pressed on behalf of the opposite party by their learned Counsel. It was contended both on principle and on recent precedent that once an Insurance Company has rejected the claim of the insured party then the redressal Forums under the Act have no jurisdiction. It was pointed out that the competent authority of the Insurance Company vide their letter dated the 29th of April, 1991 had categorically repudiated the claim of the complainant. It was the stand that in this context, the only remedy of the insured lies in his approaching the ordinary Civil Courts and no relief can be granted under the Act. Inevitably the aforesaid position has been forcibly controverted on behalf of the complainant both in the replication and in the submissions of their learned Counsel.

As is manifest from the diametrically opposite stand of the parties, the issue herein pertains to the very jurisdiction of this Commission to take cognisance of the lis. Consequently, this has been taken up as a preliminary issue. The learned Counsel for the parties have advanced comprehensive arguments in support of their respective stands.

3. MR. L.M. Suri, Advocate, on behalf of the opposite party, has placed primary reliance on Janta Machine Tools v. Oriental Insurance Co. Ltd, I (1991) CPJ 234 (NC), which is a decision of the National Commission and its subsequent reiteration and acceptance in M/s Rajdeep Leasing & Finance (Delhi) Pvt. Ltd. v. Asstt. General Manager, New India Assurance Co. Ltd. and Others, 1 (1991) CPJ 302 . Taking a cue from the passing observations in Janta Machine Tools'' case (supra), MR. Suri took up the plea that the very ratio of that case was that once there has been a repudiation of an insurance claim, then a sole remedy against the same lay in a Civil Court and it would operate as a jurisdictional bar against the Consumer Redressal Forums. Reliance was further placed on an unreported decision of the Delhi State Commission in Continental Chemical Limited v/s. The Oriental Insurance Company Limited, Case No. C-104 of 1990 decided on the 20th of February, 1991. On the other hand, Mr. Bansal, apart from submissions on principle, has pinned himself on the observations of the National Commission in The New India Assurance Co. Ltd. v. M/s Vipro Electronics Pvt. Ltd., I (1991) CPJ 335 (NC), for advocating the contrary view. An ancillary submission was that the rejection of the complainant''s insurance claim had not been communicated to them till the time of the filing of the case.

4. BEFORE one gets enmeshed in the morass of precedent, it would be refreshing to examine the matter on principle. It seems to be beyond cavil that ''insurance'' is squarely within the ambit of a ''service'' because it has been expressly included in the definition thereof in Clause (o) of sub-section (1) of Section 2 of the Consumer Protection Act, 1986 (hereinafter called the ''Act''). Indeed on this issue there was and can possibly be no dispute. The matter is further butressed by precedent if any was needed. In Shri Umedilal Aggarwal v. United India Assurance Co. Ltd., I (1991) CPJ 3 (NC), the National Commission set at rest all doubts in this context by holding as under : "Having regard to the philosophy of the Consumer Protection Act and its avowed object of providing cheap and

 

speedy redressal to consumers affected by the failure on the part of persons providing "service" for a consideration, we do not find it possible to hold that the settlement of insurance claims will not be covered by the expression ''insurance'' occurring in Section 2(1)(d). Whenever there is a default or negligence in regard to such settlement of an insurance that will constitute a ''deficiency'' in the service on the part of the insurance company and it will be perfectly open to the concerned aggrieved consumer to approach the Redressal Forums under the Act seeking appropriate relief."

Equally, it is well settled, on principle, and also flowing from the judgment aforesaid, that whenever there is any delay or dilatoriness in finalising the insurance claim, the same would be tantamount to a deficiency in service and thus comes squarely within the ken of Consumer Redressal Forums. Now once it is so, would it stand to reason that if instead of delay or dilatoriness, the Insurance Company arbitrarily and wrongfully rejects the insured''s bona fide claim outright, then by such a fiat it will carry itself beyond the pale of redress before the Consumer Forum. It cannot possibly be so. If delay, default and negligence are matters within the ambit of deficiency in ''service'' of an insurance contract, then apparently wrongful rejection of the insurance claim would obviously be the more so. If it is held to be otherwise, then such a construction is likely to lead to abuse and grave public mischief. If a harassed insured party comes to the Consumer Forum to seek redress for delay, default or dilatoriness, can he be cheated of his claim by the simple subterfuge of rejecting the claim outrightly, and thus driving him to the tortous and weary path of civil litigation. We do not think so. Once it is held that default or negligence in the settlement of an insurance claim is a deficiency in ''service'' (as undoubtedly has been laid down by the binding authority), then clearly enough a wrongful, arbitrary or mischievous rejection of an insurance claim would patently be a ''default'' within its larger meaning. On principle, it would seem somewhat manifest that the mere repudiation of the insurance claim cannot by itself operate as a jurisdictional bar for Redressal Forums under the Act. Adverting now to precedent, the sheet-anchor of Mr. Suri''s argument on behalf of the opposite party, is the solitary observation in Janta Machine Tools'' case above. In a short order of barely 15 lines, which could hardly be intended to lay down the law, on so significant an issue, the National Commission without prejudice to the rights of the complainant, relegated him to the remedy before the Civil Court by the following observations therein : "Thus this is not a case where the Insurance Company did not take prompt and necessary steps for deciding the claim under the policies of insurance. It may be that the complainant is not satisfied with the said rejection of his claim by the Insurance Company. Having regard to the facts and circumstances of this case and the nature of the controversy between the parties we consider that this is a matter that should be adjudicated before a Civil Court where the complainant as well as the respondent will have ample opportunities to examine witnesses at length, take out Commission for local inspections etc. and have an elaborate trial of the case. Without prejudice to the right of the complainant to take resort to the remedy by way of civil suit before the proper Court. We dismiss this petition."

Apparently, clutching at a straw, it was argued on the basis of the italicised observation above quoted that the ratio decidenid of the judgment was that it was only in cases of delay and failure in deciding the claim that the Redressal Forums could have jurisdiction. As a corollary and logical consequence thereto, it was urged that where such a claim has been repudiated, the same would operate as ouster of the consumer jurisdiction. The judgments of Delhi State Commission relied upon, have merely followed and rested themselves on the Janta Machine Tools case (supra).

5. THE aforesaid submission of the learned Counsel for the opposite party reminds one of the hallowed observations of the Lord Halsbury in Quinn v. Leatham, that a case is only an authority for what it actually decides and it cannot be so far every passing observation that may seem to follow logically from it. THE ratio in Quinn v. Leatham has been repeatedly followed by the final Court and particularly in State of Orissa v. Sudhansu Sekhar Misra and Others, AIR 1968 S.C. 647, with the added observation that it is not a profitable task to extract a sentence here and there from a judgment and to build upon it. It appears to us that the learned Counsel for the opposite party is slipping into the same unprofitable task of building a castle on the shifting sands of a passing observation in the short order passed on peculiar facts and circumstances of the case. We regret our inability to read Janta Machine Tools'' case (supra) as any warrant for the proposition that the rejection of a claim by the Insurance Company automatically operates as ouster of the jurisdiction of the Redressal Forums.

6. APART from larger principle already discussed above, another recent precedent of the National Commission would also give the lie direct to the stand taken by the opposite party. The under mentioned observations in the New India Assurance Co. Ltd''s case (supra) are a clear pointer that a blanket stand that an outright rejection of an insurance claim is automatic ouster of jurisdiction cannot hold water : "We are not impressed with the contention raised by Shri S.K. Paul, learned Counsel appearing on behalf of the petitioner that merely because the Insurer had totally repudiated his liability in respect of the claim, no proceedings could be validly initiated under the Consumer Protection Act by the Insured. This contention squarely falls within the ruling given by this Commission in "Umedilal Agarwal v. United India Assurance Co. Ltd." (O.P. No. 3 and 4 of 1989 decided on 28.7.89) I (1991) CPJ 3 (NC). In that decision this Commission has observed that it is not possible to hold that the . settlement, of a disputed insurance claim will not be covered by the expression "service" occurring in Section 2(d) of the Act. It was laid down that whenever there is default or negligence in regard to service that will constitute "deficiency in service" on the part of the insurer and it is perfectly open to the aggrieved party for seeking appropriate relief under the Act."

 

It seems manifest from the above that the National Commission when directly confronted with an identical objection which the Insurance Company had sought to be raised herein as the opposite party has summarily brushed aside and rejected the same. It is true that the observations on this point are equally brief but these have been reiterated and affirmed in an exhaustive order subsequently. The last nail in the coffin of this argument has thus been driven by a recent judgment of the National Commission in the Divisional Manager, L.I.C., Andhra Pradesh v. Sh. Bhavnam Shri Nawas Reddy, First Appeal No. 79 of 1990, decided on the 5th of June, 1991, wherien the specific issue was pointedly raised by and repelled in the following terms : "Thus, it is clear that the jurisdiction of the statutory Redressal Forums to conduct an adjudication into the complaint is in no way affected by the unilateral repudiation of the contract of insurance by the insurer. In the decision rendered by this Commission in the New India Assurance Company Ltd. v. M/s Vipro Electronics Pvt. Ltd., Revision Petition No. 12 of 1990 Reported in I (1991) CPJ 335 (NC) it has been held that the mere fact the insurer had repudiated his liability in respect of the claim put forward by the insured does not operate to take away the jurisdiction of the Redressal Forums constituted under the Act to investigate into the complaint filed by the insured."

The aforesaid ratio seals the fate of the stand taken by the proceedings conclusively against them.

In view of the above, it is unnecessary to examine the ancillary contention of Mr. Bansal on behalf of the complainant that the rejection was not communicated to the complainant. The relevance or otherwise of non-communication of such a rejection in this context would have to wait for adjudication in a more appropriate case.

7. TO conclude the answer to the question posed at the very outset is rendered in the negative and it is held that the mere unilateral rejection of the insured party''s claim by the Insurance Company does not per se operate as a jurisdictional bar to seek redress before the Forums under the Act. In the light of the above, the preliminary objection against the very jurisdiction of this Commission is hereby rejected. The complaint would proceed for trial and decision on merits. Complaint rejected.

 