(1992) 05 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

SUPER RECLAMATIONS (PVT.) LIMITED, KARNAL — APPELLANT

Vs

DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD. — RESPONDENT

Date of Decision : 21-05-1992

Acts Referred:

Citation : 1992 0 CPC 471 : 1992 2 CPJ 702 : 1993 2 CLT 180

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

Final Decision : Appeal dismissed

Judgement

1. THIS complaint is virtually concluded against the complainant by the order of this Commission in I (1992) CPJ 320 ''Nafe Singh Badal of District Jind v. The National Insurance Company Ltd.'' wherein has been held as follows:- "In the light of the aforesaid discussion, the answer to the question posed at the outset is rendered in the negative and it is held that an insured person cannot maintain a consumer dispute against his insurer with regard to quantum of his claim after having accepted an amount in full and final settlement thereof."

2. TO the same tenor are the observations and conclusion in II (1991) CPJ 597 ''Ashwani Aggarwal v. United India Insur. Co. Ltd. Ambala. In view of the above, the facts deserve notice only with relevance to the issue aforesaid and with utmost brevity M/s. Super Reclamations Pvt. Limited has insured their factory premises under Machinery Break Down Insurance Scheme on the 20th of October, 1989, for a period of one year for the sum of Rs. 4,34,500/- against a premium amount of Rs. 6,018/-. Within the period covered by the insurance policy, the complainant''s transformer of 1000 KVA got damaged on the 9th of April, 1990at 8.25 p.m. regarding which information was sent to the instead M/s. United India Insurance Company Limited (hereinafter called the Insurance Company). The latter appointed Dr. T.S. Bhayana, consultant engineer as the surveyor and loss assessor for the same and he submitted his report dated the 24th of April, 1990 after inspecting the machinery at Ludhiana. It is the complainant''s case that the repairs for the aforesaid damaged machinery were got effected from M/s. Nucon Switchgears Pvt. Ltd. and a sum of Rs. 1,13,197/-

was paid to them by cheque on the 1st of August, 1990. The complainant was also asked to deposit a sum of Rs. 283/- being the difference of premium with effect from 9th of April, 1990 to 19th of October, 1990 and he accordingly deposited the said amount, therefore. Later on the 8th of April, 1991 a cheque of even date was forwarded by the Insurance Company to the complainant for a sum of Rs. 32,102/- only for the loss which was received and encashed by them. However, it is the complainant''s case that this was done under protest with reservation of their right to claim the balance Rs. 81,095/-. Thereafter the complainant repeatedly sought the settlement of their case and addressed numerous communications to the insurers without any effect. It is further alleged that initially M/s. G.P.S. Miglani and Company Engineers were instructed by the Insurance Company who submitted their report, but the copy thereof was not supplied to the complainant. The primal grievance raised is that the balance sum of Rs. 81,095/- is being with-held by the Insurance Company and they be directed to pay the same with interest @ 24% from the 1st of August, 1990. Annexures 1 to 7 were attached to the complaint in support thereof.

Originally as many as seven opposite parties were impleaded, but learned Counsel for the complainant fairly stated that his primal relief was confined to opposite parties No. 1,2,5,7 only and others being merely pro-forma were given up. Consequently, the written statement was filed only on behalf of respondent Nos. 1, 2, 5 & 7 wherein the primal preliminary objection taken was that the claim of the complainants has been settled and full and final discharge of the claim has already been given and as such they were estopped from raising any dispute in respect of the same. On merits the basic plea taken was that in the instant case direct damage to the transformer was only to two coils whereas the insured got replaced all the three field coils in order to obtain a performance guarantee of one year from the repairers. Consequently, the insurers were not liable for the same because they were bound to indemnify the actual loss and the repairs therefor, which was confined to two coils only. It was admitted that the complainant was asked to deposit a sum of Rs. 283/- as the difference of premium with effect from 9th of April, 1990 to 9th of October, 1990.

3. SPECIFICALLY in reply to para 6, it was pleaded that the amount of Rs. 32,102/- was accepted by the complainant vide cheque No. 046870 dated 8th of April, 1991 without any protest or reservation and a full and final discharge of the claim was given by the complainant. A photostat copy of the discharge voucher was annexed to the written statement. It was denied that the same was received under protest or any reservation to claim the balance. It was also the case that at best the complainant could resort to the arbitration clause in the policy, if there was a dispute over the quantum of the claim. The very fact that the complainant did not opt for arbitration was itself proof of the fact that he had accepted the amount towards full and final settlement. Whilst admitting that originally M/s. G.P.S. Miglani and Company were instructed by the Regional Manager of the Insurance Company later Shri B.K. Sharma was appointed to investigate the loss, who submitted a detailed report on the 25th of February,

1991. It was stated that the Insurance Company was not bound to supply the report of the surveyors to the complainant since these are privileged and confidential documents for the use of the insurers only. The complainant''s claim was thus denied and the dismissal of the complaint sought. In the replication filed on behalf of the complainant it was sought to be denied that the complainant had accepted the company''s assessment in full and final settlement of his claim. It was alleged that the subsequent enhancing of the amount from Rs. 32,102/- to Rs. 45,125/-vide letter dated 9th of September, 1991 was a clear pointer to this effect. The original stand of the complainant was reiterated and the averments in the written statement were sought to be controverted.

4. IN support of their case, the complainants put in the affidavit of Shri Tejwant Singh, the Managing Director of the Company reiterating their case and relied on the documents placed on record. Mr. Tejwant Singh aforesaid was also put into the witness box and cross-examined on behalf of the INsurance Company. On behalf of the Insurance Company the affidavit of Shri B.K. Sharma, Surveyor and Loss Assessor and of Shri C.S. Tandon, Divisional Manager were placed on record and both of them were also put into the witness box and crossexamined by the complainant. From the aforesaid resume of the pleadings and the evidence placed on the record, it is somewhat manifest that the crucial threshold question herein is whether the sum of Rs. 32,102/- admittedly accepted by the complainant was in full and final settlement of his claim under the policy.

5. ON the aforesaid issue what first meets the eye is the fact that in the very first instance the opposite party in their written took up their primal and the very first plea to the effect that the claim of the complainant has been settled and full and final discharge of the claim has already been given. In support of the same Shri C.S. Tandon, the Divisional Manager of the United India Insurance Company Limited, Karnal first clarified that Shri B.K. Sharma, Engineer and Surveyor was ultimately appointed to investigate the loss and he submitted his detailed report dated the 25th of February, 1991 in which he held that only two coils of the transformer were directly damaged within the insured peril and he allowed the replacement of two coils. The said report of Mr. B.K. Sharma duly proved on the record assessed the net payable amount to the complainant at Rs. 37,391/- only. Mr. Tandon, in this context asserted in para 3 of his affidavit as under:- "That in accordance with the report made by the surveryor, the Company sent a cheque in the sum of Rs. 32,102/- being the assessed amount of the loss on the basis of the report of the Surveyor which amount was accepted by M/s. Super Reclamations in full and final settlement and a clear discharge was given by them. The letter of discharge in full and final discharge of the claim is annexed with the affidavit."

It is significant to point out that the aforesaid disbursement claim voucher duly executed by Shri Tejwant Singh, the Managing Director of the complainant was placed on the record and its authenticity was at no stage challenged at all. Even when Mr. Tandon was put into the witness box and cross-examined by Mr. S.K.

Kapoor not a single question was asked from him own with regard to his categorical stand that the sum of Rs. 32,102/- had been accepted in full and final settlement. Equally Shri B.K. Sharma, Surveyor and loss assessor has put in his affidavit wherein in para No. 5, he stated as under:- "that the loss on account of damage to the two coil of the transformer was assessed by the deponent to the tune of Rs. 36,760/-. When Mr. B.K. Sharma stepped into the witness box barring a basis formal suggestion that he was deposing wrongly and on hear-see his report and assessment was not assailed. It would thus be manifest from the testimony of Shri B.K. Sharma coupled with his report and the testimony of Shri C.S. Tandon including his cross-examination that the sum of Rs. 30,102/- was paid in pursuance of the said report and accepted in full and final settlement of the claim by the complainant. It is significant to notice that though at the present stage this was sought to be denied on behalf of the complainant not a single document co-terminus with or prior or immediately subsequent to the disbursement claims voucher was indicated which could even give a hint that the receipt of the cheque for the afore-mentioned amount and its subsequent encashment was in any way under protest and not in full and final discharge of the claim. It bears repetition that the authenticity of the said voucher remained unchallenged and Shri Tejwant Singh in his affidavit or testimony never suggested that it did not bears his signature or that this had been obtained by any fraud or coercion.

6. WHAT however, clinches the issue is the disbursement claims voucher dated the 8th of April, 1991 (Ex. O.P. 1/2). A plain look at this document duly signed by the complainant would totally dislodge the case now sought to be set up on behalf of the complainant. After the bold letterhead of the United India Insurance Company Limited and the relevant column of the amount to be paid and the person receiving the same, it is prominently printed thereon as under:- "Received from United India Insurance Company Limited the aforesaid sum in full and final discharge of claims upon them as per the particulars mentioned below." It bears repetition that the signatures of Shri Tejwant Singh Managing Director of the complainant concern have appeared immediately below the aforesaid caption. The amount of Rs. 31,102/- to be paid is expressly mentioned both in letters and figures which is to be payable to the claimant. All the details of the insurance policy number, claim number etc. are incorporated in the said document. In such a situation, it is somewhat idle to contend on the part of a person of Shri Tejwant Singh''s status and professional experience, that he would not understand the import of the document on which he placed his signatures or that he was not now to be bound by the same. Equally it has to be highlighted that the cheque was duly encashed by the complainants subsequent to its receipt.

The complainant''s main plank for suggesting that the amount received was not final is on the ground that subsequently the Insurance Company had itself made an offer of enhancing the amount to Rs. 45,125/-. This stand appears to be almost an example of trying to bite at the hand which attempt to feed. Mr. C.S. Tandon in para No. 4 of his affidavit explained this in the clearest terms as under:- "That subsequently, the Company detected that the Surveyor had not taken into account the excise duty leviable on the assessed sum. Accordingly, the assessment was enhanced and revised assessment came to Rs. 45,125/- which was communicated to the complainant by the Surveyor as well as by the Company."

To the same effect is Para No. 7 of the affidavit of Mr. B.K. Sharma in the following terms:- "That inadvertently, the excise duty leviable on the assessed amount was not taken into account and accordingly assessment was enhanced to Rs. 45,963/-."

It is significant that neither Mr. B.K. Sharma nor Mr. C.S. Tandon were in the least challenged on this point when they stepped into the witness-box and were cross-examined by the learned Counsel for the complainant.

7. IT may be true that long after the acceptance of Rs. 32,102/- on the 8th of April, 1991 and executing the disbursement claim voucher, the complainants attempted to retract the stand and sought further payments against their claim. But even on their own showing this was as late as five months thereafter in September and even later in December that they attempted to take up such a plea. The document annexed to the replication which is a letter addressed by Shri C.S. Tandon, Divisional Manager of the Insurance Company to the complainants far from aiding their stand seems to run counter thereto. Indeed it bears notice in extenso:- "Sir, Thank you for your nice letter No. SRL/ 19/3/166 of 26th ultimo you have given a clear discharge in respect of said claim for Rs. 32,1031/- on 8th April, 1991. On your specific representation for upward revision, our Regional Office has considered the request and advised Surveyor to revise assessment in the light of your representation revised assessment comes to Rs. 45,125/-which was communicated to you by our Surveyor Sh. B.K. Sharma as well as by undersigned. We requested for final consent for the same to release the difference. Rest of the contents of your letter are absolutely wrong, baseless and are specifically denied by the undersigned. We reconfirm that assessment of Rs. 45,125/- is strictly as per terms and conditions of the policy and is final. "Awaiting your cosent'' for full and final settle ment of the above."

It is plain from the above that the Insurance Company had stood firm as a rock on its stand that the payment on the 8th of April, 1991 was made in full and final settlement of the claim and a clear discharge of all liabilities under the policy. The complainant''s plea that the subsequent fair and even a gracious offer by the Insurance Company to take into account the excise duty leviable which had been inadvertently left out in the assessment in any way detracted from the earlier discharge from all furhter liability on the 8th of April, 1991 in wholly a specious one. It would appear that the stand now sought to be taken on behalf of the complainant is in the nature of and after thought in order to bolster a further claim against the opposite parties. That being the situation, it is legally impossible for the complainant to retrace or retract from his own document, with the result that they are inevitably bound by their signature and their deed.

8. IN view of the above, it must be concluded that the complainant had accepted the sum of Rs. 32,102/- in full and final settlement of their claim on the 8th of April, 1991 and they cannot now maintain a dispute against the insurers with regard to the balance amount. As noticed at the out-set the case is thus concluded against them by the ratios in ''Nafe Singh Badal of District Jind v. The National INsurance Company Ltd.'' and ''Ashwani Aggarwal v. United INdia INsurance Co, Ltd., Ambala'' (supra). This complaint is consequently dismissed but we would leave the parties to bear their own costs. Appeal dismissed.

