

(2014) 07 NCDRC CK 0060

In the National Consumer Disputes Redressal Commission

Tata Aig General Insurance Co. Ltd.

APPELLANT

Vs

Nissan Electronics Ltd.

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Citation : 2014 0 NCDRC 420 : 2014 3 CPJ 285

Hon'ble Judges : D.K.JAIN , VINEETA RAI , VINAY KUMAR J.

Advocate : ANJALLI BANSALL

Judgement

1. BY this First Appeal, Tata AIG General Insurance Company Ltd. (for short, ""the Insurance Company """) question the correctness and legality of order dated 29.08.2008 made by the State Consumer Disputes Redressal Commission, Union Territory of Daman, Diu, Dadara and Nagar Haveli, Silvassa (for short ""the State Commission """) in Consumer Complaint No. FA 01/2007. By the impugned order, the State Commission has partly allowed the complaint filed by Nissan Electronics Ltd. (for short ""the Complainant """), under Section 17 of the Consumer Protection Act, 1986 (for short ""the Act """), with a direction to the Insurance Company to pay to the Complainant a sum of Rs.26,78,410/- as compensation in respect of the electronic items, which were submerged in the flood waters and could not be salvaged, along with interest @ 12% p.a. from 23.03.05, till payment.

2. THE material facts, giving rise to the present appeal, are as under: - The Complainant, a Private Limited Company, is engaged in the manufacture of electronic consumer durables, such as Cassette Recorders, CD Players, etc.. The manufacturing unit of the Complainant was situated at Silvassa. On 03.08.2004, when the unit was closed, the town where the factory was situated, was lashed by heavy rains as a result whereof, there were devastating floods in Daman Ganga River, close to the factory. The river defied its banks and its water gushed into the town submerging the roads, streets, houses including the factory of the Complainant. According to the Complainant, the factory was submerged upto 8 ft., resulting in heavy losses to the stocks in process, finished goods and packing

materials. Since the Complainant had obtained an insurance cover, it lodged a claim with the Insurance Company for Rs.3,22,22,066/ -. The Insurance Company appointed one M/s. C.P. Mehta & Co., as the Surveyor for assessment of loss and damage caused to the property insured. The said Surveyor submitted the final report on 23.03.2005, assessing the loss at Rs.1,81,99,031/ - which was subsequently reduced to Rs.1,81,18,271/ - vide an addendum dated 07.07.2005. The said amount was received by the Complainant in four installments between the period, 26.08.2004 to 21.07.2005. The last installment of Rs.3,70,000/ - was paid after final estimation of loss by the Surveyor vide letter dated 04.07.2005. The letter refers to the earlier discussions, which the Surveyor had with the Complainant. The relevant portion of the letter reads as under: - ""5.0 The claim will be revised and the amount due for the Insurers consideration will now be as under : - Claim as assessed (Revised) Rs.1,81,18,271.00 Less: Withholding in respect of modvat Nil Less: On account payment Rs.1,00,00,000.00 Less: Paid earlier after final Survey Report Rs. 77,47,371.00 Amount now due for the Insurers consideration 3,70,900.00 5.1. It was clarified to you that this is not an admission of liability either by the Insurance Company or by ourselves as surveyors either on our own behalf or on behalf of the Insurance Company, but is only an agreement of acceptance on your part to the revised amount of loss as assessed. 5.2 You had confirmed that there is no further insurance claim in connection with the flood loss on 3rd August, 2004. 6.0 Please mark your confirmation to the above on the extra copy of this letter and return it to us for our records. ""

On receipt of the final installment in terms of the said letter, one of Directors/ Authorized Signatory of the Complainant Company issued a discharge voucher on 19.07.2005. The relevant portion of the discharge voucher reads as follow: - ""DISCHARGE VOUCHER Received from Tata - AIG General Insurance Co. Ltd., the sum of Rs.3,70,900/ - (Rs. Three lakhs seventy thousand and nine hundred only) being last installment of full and final payment of Rs.1,81,18,271/ - (Rupees one crore eighty one lakhs eighteen thousand two hundred and seventy one), which I/ we agree to accept in full and final satisfaction and discharge of my/our claim No.000106404 - A upon the company under policy no./certificate no.0600012000 in respect of claim arising on 03.08.2004 due to Flash floods at Silvassa. ""

3. THE matter seems to have rested till 18.10.2005, when the Chairman of the Complainant addressed a letter to the President of the Insurance Company requesting for release of the balance unpaid claimed amount. It was stated in the said letter that since the loss on account of flood was beyond one 's imagination, they had no choice but to accept the discharge voucher as they were in dire need of the funds to pay the bank 's dues. It was also stated that they had accepted the amount of Rs.1,81,18,271/ - under ""silent protest """. It was further alleged that they were given to understand that unless they accept the loss determined by the Surveyor, the Insurance Company would not release any amount.

4. HAVING failed to get a positive response from the Insurance Company,

alleging deficiency in service on the part of the Insurance Company, the Complainant filed a complaint u/s 17 of the Act, inter alia, praying for a direction to the Insurance Company to pay a sum of Rs.35,11,430/- along with interest @ 12% p.a. and exemplary compensation of Rs.25,00,000/-. The complaint was resisted by the Insurance Company mainly on the ground that the Complainant having accepted the aforesaid amount, which was based on the final survey report as full and final settlement of its claim and executed a discharge voucher, they were estopped from demanding the balance amount of compensation, as claimed by them.

5. ON consideration of the evidence adduced by the Complainant by way of affidavits, the State Commission came to the conclusion that the Complainant was not a victim of any kind of duress or coercion exercised by the Insurance Company. It has been observed that while receiving various amounts, at no point of time, the Complainant had even whispered that the Insurance Company was exercising duress and coercion to accept the said amount as full and final settlement. It has further observed that even though the last installment of Rs.3,70,000/- was paid to the Complainant on 21.07.2005 after the signing of discharge voucher on 19.07.2005, yet the Managing Director of the Complainant did not register any protest for having received the said amount as "part payment " or "under protest ". Nevertheless, the State Commission proceeded to deal with the complaint on merits. Agreeing with the Complainant that being electronic items, its raw material, semi -finished goods were rendered worthless when these remained submerged in flood waters and had no saleable value, the State Commission partly allowed the complaint to the extent of Rs.26,78,410/- Hence, the present appeal.

6. HAVING heard Ld. Counsel for the parties, perused the documents on record and the written submissions filed before us, we are of the opinion that the decision of the State Commission is unsustainable. The law on the question whether or not an insured is estopped from making any further claim after accepting the amount offered by the Insurer in full and final settlement of all the claims, by executing the discharge voucher, is well settled. It is trite that if the consumer can satisfy a For a that the discharge voucher or receipt had been obtained from him by fraud, coercion, undue influence, etc., mere execution of a discharge voucher/receipt would not always deprive the consumer from preferring claim with respect to the deficiency in service or consequential benefits arising out of the amount paid in default of the service rendered. If the concerned Forum is satisfied that the said document was signed under any of the said circumstances, it would be justified in ignoring such voucher etc. and in granting appropriate relief. However, if such voucher or receipt is found to have been executed voluntarily, the claimant will be bound by it, resulting in rejection of the complaint (see *United India Insurance Co. Ltd. Vs. Ajmer Singh Cotton & General Mills and Ors.* - (1999) 6 SCC 400 and *National Insurance Co. Ltd. Vs. Nipha Exports (P) Ltd.* - (2006) 8 SCC 156

7. IN the present case, the State Commission has clearly returned a finding that the full and final settlement voucher, signed by the Managing Director of the Complainant on 19.07.2005 after receiving a huge amount of Rs.1,81,17,371/ - till 30.03.2005 was without any duress or coercion. It has observed thus: -. "" Wehave carefully gone through the letters exchanged by the parties and also survey reports which were through the process of discussion and negotiations between the parties at every stage. It is not possible for us to agree with Shri Deshpande that the OP had applied duress and coercion on the managing director of the complainant to receive the 4 amounts on account, pending the finalization of the entire claim under duress and coercion. It appears that the survey report dated 23.03.2005 had sanctioned and finalized the claim settlement for Rs.1,81,99,031/ -. On the basis of the said sanction and finalization the O.P had made payment of third installment on 30.03.2005 and the last installment on 21.07.2005. At no point of time, the Complainant had even whispered that the O.P. was exercising duress and coercion to receive the amount. At least on 23.03.2005 having received the finalization of the Surveyor "s Report the claimant could have protested against the said letter of finalization of the claim by the Surveyors. They could have written a letter on the next day of the receipt of the huge amount of Rs.77 lakhs and odd that they had received the said amounts under duress. Even the receipt of the last installment was so small i.e. Rs.3,17,000/ - (should be Rs.3,70,000/ -) it could have been refused to be received by the Managing Director and he could have refused to sign the full and final settlement voucher as that time he had already received a larger amount of Rs.1 Crore 70 lacs and odd. This was, indeed, a great relief. Further, it is pertinent to note that the last payment made was on 21.07.2005 and the full and final settlement voucher was signed on 19.05.2005. The Managing Director of the Complainant has signed the said voucher after receiving the huge amount till 30th March 2005. There after also there was no single letter of protest for receipt of the amount under duress and coercion. He could have very well refused to sign the full and final settlement voucher but he did not do so. It was a voluntary and free decision of the Managing Director on behalf of the complainant. We, therefore, do not agree with the submissions of Shri Deshpande that his client was a victim of duress and coercion exercised by the O.P. In this case, at least we can not condemn the O.P. to have adopted the high handed tactics of duress and coercion. ""

8. HAVING arrived at the said conclusion, which has not been challenged by either of the parties, in our opinion, the State Commission committed a serious error in law and on facts, in proceeding to examine the correctness of the Surveyor "s Report relating to the balance claim of the Complainant. In their earlier letters as well as in the letter dated 04.07.2005, extracted above, wherein the balance amount due against the claim made by the Complainant had been determined at Rs.3,70,900/ -, it was clearly stated that the loss assessed at Rs.1,81,18,271/ - was based on ""an agreement of acceptance "" by the Complainant and that the Complainant had ""confirmed that "there is no further

insurance claim " in connection with the flood loss on 3rd August 2004 "". Thereafter, the Complainant accepted Rs.3,70,000/ - and issued discharge voucher dated 19.07.2005, without demur. It is only on 24.02.2006 that the Complainant wrote to the Insurance Company requesting for ""release of maximum possible amount "" to their bankers, as they were under ""heavy financial duress and problems "". In none of the documents on record, the Complainant had alleged fraud, coercion or undue influence in the execution of the discharge voucher. Therefore, in the absence of such a plea at any stage anterior to the filing of the complaint, the Complainant was estopped from questioning the correctness of Surveyor 's report for release of the aforesaid amount and allege deficiency in service on the part of the Insurance Company for not accepting in totality the claim preferred by them. We are, therefore, of the view that the State Commission was not justified in directing the Insurance Company to pay to the Complainant the aforesaid amount, in addition to the amount already paid by the Insurance Company. Under the circumstances, the appeal is allowed; the impugned order is set aside and the complaint filed by the Complainant is dismissed with no order as to costs.

9. VIDE order dated 06.11.2008, the operation of the impugned order was stayed subject to the Insurance Company depositing 50% of the decretal amount with the State Commission. On 20.01.2009, the Complainant was granted liberty to withdraw the amount deposited by the Insurance Company subject to furnishing of adequate security to the satisfaction of the State Commission. Since the impugned order has now been set aside, the Complainant is directed to refund the amount, so withdrawn, directly to the Insurance Company, within six weeks of the date of receipt of a copy of this order, failing which the State Commission shall take appropriate steps for restitution of the said amount by invoking the security furnished by the Complainant in terms of order dated 20.01.2009 and remit the same to the Insurance Company. However, the statutory deposit of Rs.35,000/ - by the Insurance Company shall be transferred to the Consumer Welfare Fund.