(2014) 02 NCDRC CK 0082

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD. APPELLANT

Vs

Balrampur Chinik Mills Ltd. RESPONDENT

Date of Decision : 13-02-2014

Acts Referred:

Citation : 2014 0 NCDRC 95

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : A.K.DE , RAJESH DWIVEDI , K.V.BALAKRISHNAN

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 14.2.2008 passed by the U.P. State Consumer Disputes Redressal Commission, Lucknow (in short, ''the State Commission '') in Appeal No. 222 of 2004 - United India Insurance Co. Ltd. Vs. Balrampur Chini Mills Ltd. by which, while partly allowing appeal, order of District Forum allowing complaint with 16% p.a. interest was modified.

2. BRIEF facts of the case are that complainant/respondent obtained insurance policies from OP/petitioner for various years from 1993 to 2000 and paid excess premium. Inspite of repeated requests, OP refunded premium after a long delay. Complainant claimed Rs.4,70,607/ - as interest at the rate of 18% p.a. on the late refund of excess premium and filed complaint before District Forum for grant of this relief. OP contested complaint and submitted that claim is time barred and interest on interest is not payable and prayed for dismissal of complaint. Learned District Forum after hearing both the parties, allowed complaint and directed OP to pay Rs.4,47,823/ - along with 16% p.a. interest and further allowed Rs.3,000/ - as costs. Appeal filed by the petitioner was partly allowed and learned State Commission reduced interest from 16% p.a. to 9% p.a. against which, this revision petition has been filed. Heard learned Counsel for the parties and perused record.

3. LEARNED Counsel for the petitioner submitted that claim was time barred in respect of interest claimed for first 3 policies and further submitted that learned District Forum committed error in allowing 18% interest on the delayed refund of

premium and further submitted that interest @ 9% p.a. on interest upheld by State Commission is not permissible; hence, revision petition be allowed and impugned order be set aside. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

4. IT is not disputed that complainant obtained insurance policy from OP for various years and charged excess premium which was returned by OP after a long delay. Complainant has claimed interest @ 18% p.a. on the delayed refund of premium. As far time barred claim is concerned, learned Counsel for the respondent submitted that complaint has been filed on 13.1.2001 and claim for interest on delayed refund of excess premium of first 3 policies from 18.2.1993 to 17.2.1996 which was refunded upto 18.11.1997 is clearly time barred. As per complainant himself, excess premium for the first 3 years was refunded upto 18.11.1997, but complaint has been filed on 13.2.2001 meaning thereby after more than 3 years and 3 months and no application has been filed under Section 24A for condonation of delay and claim for interest on delayed refund of premium is apparently time barred. Learned Counsel for the respondent submitted that OP refused to pay interest on 10.1.2001, though; in the complaint 10.1.2000 has been mentioned. No such letter has been placed on record by the complainant regarding refusal to pay interest on delayed refund of premium. OP in its written statement has denied the contents of paragraph 7 of the complaint in which it was alleged that OP refused to make payment of interest on 10.1.2000. Learned Counsel for the respondent apprised to the Bench on 21.1.2014 that he does not possess letter dated 10.1.2001 regarding repudiation of the claim.

5. LEARNED Counsel for the respondent submitted that petitioner was required to prove that he has not refused to make payment of interest on 10.1.2001. This argument is devoid of force as respondent was to prove the fact that claim of interest was refused by the petitioner on 10.1.2001. It was obligatory on the part of respondent to place on record letter of refusal for payment of interest. Learned Counsel for the respondent placed reliance on II (2012) CPJ 312 (NC) - Chambal Fertilizers and Chemicals Ltd. Vs. Iffco -TokoGeneral Insurance Co. Ltd. & Ors. in which it was held that date of repudiation of the insurance claim, which may also be treated as the date of accrual of the cause of action and period of limitation of two years prescribed under Section 24A of the Act may be reckoned from the date of such repudiation. We agree with the proposition of law laid down in the aforesaid judgment, but in the present case, respondent failed to prove the fact that claim was refused on 10.1.2000 or 10.1.2001 and in such circumstances, claim for interest Rs.53,256/ -, 1,44,960/ - and Rs.8,878/ - regarding first 3 policies premium refund which was made upto 18.11.1997 is time barred and learned District Forum committed error in allowing claim in toto.

6. COMPLAINANT claimed interest @ 18% p.a. and learned Counsel for the petitioner submitted that there was no justification to grant interest @ 18%;

hence, it should be reduced. Learned Counsel for the respondent submitted that as respondent was paying interest @ 18% p.a. on borrowing he was entitled to get interest @ 18% p.a. Respondent has not placed any material on record to substantiate that respondent was taking loan @ 18% p.a. and in such circumstances, it would be appropriate to allow interest @ 12% p.a. instead of 18% p.a. as claimed by the complainant in the complaint. Learned Counsel for the petitioner further submitted that respondent is not entitled to get any interest on interest. We do not agree with this contention. Decretal amount whether it was in the form of interest or principal, the decree holder is entitled to get interest on that amount also and learned State Commission has not committed any error in allowing 9% p.a. interest on the aforesaid amount.

7. CONSEQUENTLY , revision petition filed by the petitioner is to be allowed partly and complainant/respondent is entitled to get Rs.1,75,856/ - as interest on the delayed refund of premium and further interest @ 9% p.a. from 13.2.2001 till realization on this amount as allowed by the State Commission with cost of Rs.3,000/ - as allowed by District Forum.

8. CONSEQUENTLY , revision petition filed by the petitioner is partly allowed and impugned order dated 14.2.2008 passed by learned State Commission in Appeal No. 222 of 2004 and order of District Forum dated 23.12.2003 are modified and it is ordered that respondent is entitled to get Rs.1,75,856/ - from the petitioner with 9% p.a. interest from 13.2.2001 till realization on the amount along with cost of Rs.3,000/ -.