(2002) 01 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd. APPELLANT

Vs

DWARKA MINERALS AND CHEMICALS PVT. LTD. RESPONDENT

Date of Decision : 29-01-2002

Acts Referred:

Citation : 2002 2 CPC 160 : 2003 3 CLT 618 : 2003 4 CPJ 262

Hon'ble Judges : K.K.Srivastava , Devinderjit Dhatt , MajGenS.P.Kapoor J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal filed by the United India Insurance Co. Ltd. [for short hereinafter to be referred as the Insurance Company] against order dated 1.10.2001, passed by the District Consumer Disputes Redressal Forum-I, U.T. Chandigarh [for short hereinafter to be referred as the District Forum-I], in Complaint Case No. 1064 of 1997, M/s. Dwarka Minerals and Chemicals Pvt. Ltd. v. United India Insurance Company Ltd. & Ors. The District Forum-I has allowed the complaint and has directed the United India Insurance Company to refund the complainant the assessed amount of repairs, as assessed by the Insurance Company''s Surveyor alongwith interest @ 12% p.a. from the date of survey report i.e. 26.3.1996 till payment. The District Forum-I also awarded costs of Rs. 2,000/- to the complainant.

2. M/s. Dwarka Minerals and Chemicals Pvt. Ltd. (for brevity to be referred as complainant/respondent No. 1) had bought a GEC-200 HP Electronic Motor for Rs. 2,13,000/- from M/s. GE Alsthom India Ltd./O.P. No. 3 in the complaint case. O.P. No. 3 procured this machinery ex stock held by O.P. No. 4, namely, M/s. Makharia Machinery Mart, Bombay. This machinery was insured against breakdown by the Insurance Company/O.P. Nos. 1 and 2 of the complaint case, to the extent of Rs. 2,10,000/- from 12.7.1996 to 11.7.1996 by payment of premium of Rs. 3,143/- by the complainant/respondent No. 1 vide Annexure C-1. The complainant/respondent No. 1 informed the Insurance Company through O.P. No. 2 of the aforesaid machinery''s breakdown vide Annexure C-2 on 29.8.1995. The machinery was sent to the authorised service centre of GEC

where it was inspected by the Insurance Company''s Surveyor, this has been brought on record vide Annexure C-3. The machinery was repaired at the total cost of Rs. 84,120.30 i.e. Rs. 75,000/- for repairs plus Rs. 9,120.30 for spare parts. Copies of the invoices for same have been brought on record vide Annexures C-7 and C-8. The complainant/respondent No. 1 forwarded the claim to the Insurance Company for payment but the same was rejected vide Annexures C-18 and C-19. The complainant/respondent No. 1 alleged deficiency in service in rejection of the claim.

The appellant-Insurance Company (O.P. Nos. 1 and 2) put in appearance before the District Forum-I and filed written statement. O.P. Nos. 1 and 2 raised preliminary objection stating that the Insurance Company had taken bona fide decision to reject the claim as it fell within the ''Special Exclusion Clause No. 3'' of the insurance policy because the loss was due to inherent defect in the machinery and it fell within the guarantee period and hence there was no deficiency in service. Reference in this context was made to Annexure R-2, which is the report of the Insurance Company''s Surveyor. It was also contended that the complaint case involved complicated questions of law and facts and was hence beyond the jurisdiction of the Consumer Protection Act, 1986 (for short hereinafter to be referred as the C.P. Act)

3. THE Insurance Company also denied that they ever gave any approval to the insurer to get the machinery repaired. It was further averred that the delay in final rejection of the claim was due to non-supply of required documents/ information by the complainant/respondent No. 1. G.E.C. Alsthom India Ltd./O.P. No. 3 also filed their written statement denying the allegations made by the complainant against it. It was also stated that since the complaint is against rejection of the insurance claim, no liability whatsoever can be fastened on it. Subsequently, the complainant also submitted before the District Forum-I that no relief is sought from O.P. No. 3.

4. IN evidence, the complainant filed affidavit of its Director, Sh. Rakesh Rattan Aggarwal, whereas affidavits of K.K. Kaushal, Asstt. Divisional Manager, United INdia Assurance Co. Ltd., Chandigarh and Col. Chander Parkash (Retd.), 2134, Sector 35-C, Chandigarh have been filed by the INsurance Company. O.P. No. 3 i.e G.E.C. Alsthom INdia Ltd. filed evidence in the shape of affidavit of its Regional Director Sh. N.K. Bhatia. Based on the evidence led and documents on record, the District Forum-I held that since in this case no warranty/guarantee was given by the manufacturer ''Exclusion Clause No. 3'', which reads as under, "(3) Loss or damage for which the manufacturer or supplier or repairer of the property is responsible either by law or under Contract."

is not attracted in this case. However, the District Forum-I held that since the claim of the complainant was assessed by the Surveyor at Rs. 52,288/- and the same was also accepted to be paid alongwith other reliefs by the learned Counsel for the complainant, the claim amount be restricted to that amount along with interest @ 12% p.a. from the date of survey report i.e. 26.3.1996 till payment.

In addition, it was held by the District Forum-I that the complainant shall be entitled to costs quantified at Rs. 2,000/-. Aggrieved against the order passed by the District Forum-I, this appeal has been filed by the Insurance Company.

5. NOTICE of the appeal was issued to the respondents. Mr. Pankaj Chandgothia, Advocate has appeared on behalf of the respondent No. 1, who was the complainant before the District Forum-I. Respondent No. 2 has put in appearance through Mr. H.S. Kathpal, Advocate, whereas none has appeared for respondent No. 3, who had been duly served vide Registered A.D. Card placed on the record. Record of the complaint case was received from the District Forum-I.

6. WE have heard the learned Counsel for the appellant, Mr. Gopal Mittal, Advocate and the learned Counsel for the respondent No. 1, Mr. Pankaj Chandgothia, Advocate and Mr. H.S. Kathpal, Advocate appearing for the respondent No. 2. WE have also perused the impugned order of the District Forum-I and record of the complaint case. The main argument of the learned Counsel for the appellant was that the complainant/respondent No. 1 is not a consumer under Section 2(1)(d) of the C.P. Act as the machinery was being used for commercial purpose. To support this contention, the learned Counsel for the appellant cited the case of Stereocraft v. Monotype India Ltd., 2000 (1) CPC 3, decided by the Hon''ble Supreme Court. He further stated that the main reason for breakdown as per the appellant was sub-standard machinery. Also the breakdown being within the warranty period, attracted ''Exclusion Clause No. 3'' of the insurance policy and, therefore, the Insurance Company was not to indemnify the loss. He also mentioned that the learned District Forum-I had not discussed the report of the Insurance Company''s Surveyor. The learned Counsel also objected to the interest on the claim being levied from 26.3.1996 i.e. the date of filing the survey report, whereas the date of filing the complaint is 25.11.1997. He also submitted that the rate of interest @ 12% p.a. exceeds the rate of 9% p.a. as directed by the Hon''ble Supreme Court in the case of Smt. Kaushnuma Begum & Ors. v. The New India Assurance Co. Ltd. & Ors., Vol. CXXVIII (2001-02) PLR Page 335. He further argued that the learned District Forum-I had wrongly awarded costs quantified at Rs. 2,000/- to the complainant/ respondent No. 1.

The learned Counsel for the respondent No. 1/complainant clarified that since the complaint is for deficiency in service, contention of the appellant that respondent No. 1 is not a ''Customer'' under Section 2(1)(d) of the C.P. Act is irrelevant. He also pointed out that since there was no warranty/guarantee for the machinery by the manufacturer rejecting the claim under Insurance Policy ''Exclusion Clause No. 3'' by the Insurance Company amounted to deficiency in service. He further pointed out that the interest rate awarded by the District Forum-I in the instant case was far below the 18% p.a. interest rate prevalent during the period of the claim.

7. IN our considered opinion, the judgment of the Hon''ble Supreme Court in the case of Stereocraft v. Monotype INdia Ltd. (supra), referred to by the learned

Counsel for the appellant in support of his contention that complainant is not customer, is not relevant to the instant case as in the case cited above, the issue was ''Defective Machinery'' and not ''Deficiency in Service''. A ''Consumer'' has been defined in the C.P. Act under Section 2(1)(d) as under : "2(1)(d) ''Consumer'' means any person who- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) [hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person. [''Explanation''-For the purposes of Sub-clause (I) ''commercial purpose'' does not included use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;]"

It is evident from the above that using a machinery for commercial purpose does not debar a ''Consumer'' from claiming ''Deficiency in Service'' as the bar for use of goods for commercial purpose under the C.P. Act is only applicable to Sub Para 29(1)(d)(i) of Section 2 of the C.P. Act. It is well-settled law that insurance of machinery is a service and even if that machinery is being used for commercial purpose, any deficiency in this regard is covered under the jurisdiction of C.P. Act, as deficiency in service. It is, therefore, our considered view that the respondent No. 1/complainant is covered under the jurisdiction of the C.P. Act. 16.It has been very clearly stated with reasons by District Forum-I that in the absence of any guarantee/warranty attraction of ''Exclusion Clause No. 3'' of the insurance policy tantamounts to deficiency in service and we fully concur with this finding of the District Forum-I. 17. It is also pertinent to mention that the main basis of the judgment of the District Forum-I is the survey report of the Insurance Company''s Surveyor and the same has been so mentioned in the order of the District Forum-I and the contention of the learned Counsel for the appellant about the survey report having not been discussed by the District Forum-I is wholly unwarranted. We also find no merit in the objection of the learned Counsel for the appellant regarding the rate of interest awarded by the District Forum-I on the claimed amount from a date earlier than the date of filing the appeal. It is well-settled law that the interest becomes due from the date of payment and it is not from the date of filing the complaint. The Hon''ble Supreme Court''s direction regarding rate of interest not exceeding 9% p.a. due to change in economy and policy of the Reserve Bank of India in the case of Smt. Kaushnuma Begum & Ors. v. The New India Assurance Co. Ltd. (supra) is keeping in view, conditions of 21st Century and the claims arising therein. Application of these directions to the claim of the time period of 20th Century may be miscarriage of justice. Resultantly, we find no infirmity in the order of the District Forum-I and affirm the same. The appeal filed by the appellant is dismissed with no order as to costs. Copy of the order be sent to the parties free of charges.

Appeal dismissed.

