(1992) 01 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd. , MOHAN LAL — APPELLANT

Vs

United India Insurance Co. Ltd , MOHAN LAL And SONS — RESPONDENT

Date of Decision : 08-01-1992

Acts Referred:

Citation : 1992 0 CPC 101 : 1992 1 CPJ 132 : 1992 1 CPR 364 : 1993 1 CLT 488

Hon'ble Judges : V.Balakrishna Eradi , A.S.Vijayakar , Y.Krishan , B.S.Yadav J.

Final Decision : Appeal dismissed

Judgement

1. - ACCORDING to the respondent complainant in F.A. 22/91 he had taken out two insurance policies : (a) Fire Policy A effective for the period from 9.9.1988 to 8.9.1989 for a sum of Rs. 3 lacs; (b) A Shopkeeper Insurance Policy from 17.1.1989 to 16.1.1990 for a sum of Rs. 3 lacs.

The fire occurred on 21st April, 1989. While dealing with the claim against the fire policy, the appellant Insurance Company discovered that the policy was for Rs. 2 lacs, but through clerical mistake it was shown in the insurance policy document as a sum of Rs. 3 lacs. Premium, however, was recovered for the amount of Rs. 2 lacs only. The complainant respondent was paid a sum of Rs. 4,53,603/- as total insurance amount under both the policies.

2. THE State Commission, after examination of evidence, came to the conclusion that the Fire Policy was for Rs. 2 lacs, that there was a typing error in indicating the amount of insurance in the policy document and that the respondent complainant cannot take advantage of the typing mistake committed in the office of the Insurance Company. During the arguments before the State Commission, it came to the notice of that Commission that the Insurance Company had deducted a sum of Rs. 45,360/- on the ground that the claim was substandard inasmuch as a gas cylinder and a welding machine were stated to have been found kept in the premises. The State Commission, after consideration, declared that there was no reationale behind the action of the Insurance Company in deducting 10 per cent of the payment to be made to the insured on fire claim and a deduction of Rs. 45,360/- was not correct and that it was a wrongful

deduction without any basis whatsoever. The State Commission, therefore, ruled that the complainant was entitled to get Rs. 45,360/-.

We have gone into the matter in detail and heard the parties at length. It has been conclusively established that the Fire Insurance Policy was for a sum of Rs. 2 lacs, the premium recovered was also for Rs. 2 lacs and that the amount shown in the policy documents viz. Rs. 3 lacs was a mistake.

3. IN coming to this conclusion, the following facts are relevant: (i) Originally a Fire INsurance Policy had been issued based on the insurance proposal for a period of 4 months from 10.5.1988 to 9.9.1988 for a sum of Rs. 2 lacs. The renewal notice issued by the INsurance Company for the relevant policy from 9.9.1988 to 8.9.1990 was for a sum of Rs. 2 lacs. The premium recovered was also for a sum of Rs. 2 lacs. (ii) The insured was informed about the error in the amount of policy being Rs. 2 lacs and not Rs. 3 lacs on 23rd August, 1989 but the insured kept quiet. (iii) Subsequently the insured received the amount under a full and final discharge without any qualification or protest in November, 1989, (iv) The respondent complainant filed his complaint regarding deficient amount having been paid to him under the policy only in the year 1990.

We, therefore, confirm the finding of the State Commission that the policy was for a sum of Rs. 2 lacs and that the Respondent complainant cannot be allowed to take unfair advantage of a typing mistake in the INsurance Policy document regarding the amount insured. We have also good reasons to feel that the respondent complainant has tried to take unfair advantage of a typing mistake knowing full well that the policy was for Rs. 2 lacs only, and that he has tried to make use of the Consumer Disputes Redressal machinery to extract extra and undue amount from the appellant-opposite party.

4. AS mentioned earlier, the Insurance Company while settling the claim had made a deduction of 10 per cent by way of penalty inasmuch as the claim was deemed to be substandard but which deduction has been disallowed by the State Commission. According to the Appellant that the respondent/complainant had not raised any objection to this deduction at the time of settlement of the claim, but the State Commission suo motu disallowed this deduction. We feel that this was done by the State Commission for good and sufficient reasons. The State Commission had observed that, the relevant provision for deduction for such contingency was not placed before the State Commission, and that there was no evidence that a gas cylinder was lying on the spot. We, therefore, concur with the finding of the State Commission that there is no rationale behind the action of the Insurance Company in deducting 10 per cent from the payment to be made to the insured on the fire claim. In appeal before us the Appeallant Insurance Company has assailed the Order of the State Commission on the ground that in the absence of a specific prayer in the Original Petition filed by the Respondent Complainant before the State Commission regarding the said 10 per cent deduction no relief/compensation could have been awarded: the State Commission could not act suo motu in granting relief not prayed for. In the case

Karnataka State Electricity Board v. Escon Pvt. Ltd. I (1991) CPJ 182 (NC), the appellant had also attacked the Order of the State Commission on the ground that the said Commission had gone out of its way to make out a case for Respondent Complainant which was not pleaded by him. In that case we had observed: "This Commission must point out that the Consumer Protection Act is intended to protect the ligitimate interests of consumers against traders, suppliers etc. Most of the consumers are small consumers who may not be educated or conversant with law and may not what precisely a pleading is. There is, therefore, nothing wrong with the Consumer Disputes Redressal Forums interpreting the legal implication of the facts disclosed in complaints and in submission made by the parties before them. The Consumer Disputes Redressal Forums will be failing in their duty under the Act if they did not do so........"

We reiterate that if the facts of a complaint before a Consumer Forum reveal that the amount payable to the complainant by way of the refund of the price of the goods or of the value of service rendered has been unjustifiably and wrongfully reduced, the Consumer Forums are not debarred from taking cognizance of the same. Merely because the complainant due to ignorance has failed to make a specific prayer for a relief in his petition will be no bar to the Consumer Forums taking cognizance of the same suo motu.

5. THE Consumer Forums have to protect the interests of consumers and would be within their rights, if any deficiency in service is noticed from the facts disclosed in the complaint sent by them but which the consumer had failed to formulate and articulate in the complaint. THE Consumer Forums are bound only to observe principles of natural justice and, therefore, when they take cognizance of any deficiency in service or unjust reduction in the amount payable to the complainant suo motu on the basis of facts disclosed, full opportunity must necessarily be given to the opposite party to justify and defend its action. It need hardly be emphasised that the Consumer Forums cannot allow new facts to be introduced and they must confine themselves to the facts already placed before them.

6. IN this connection we would like to point out that under the Consumer Protection Act, 1986 engagement of lawyers by the complainants is not a must for pleading their cases before the Consumer Forums. On the other hand a petty consumer may be illiterate or ignorant. This makes it all the more necessary for the forums to determine, on the basis of the facts disclosed in the petitions and in the proceedings before them, whether the complainant has been wrongfully denied the amount which becomes payable to him for the alleged defective goods and deficiency in service. With these observations we uphold the Order of the State Commission. The Respondent Complainant having invoked the machinery for redressal of disputes under the Consumer Protection Act frivolously and unjustifiably should pay a sum of Rs. 3,000/- as costs to the appellant Insurance Company. The Cross Appeal No. 57 of 1991 Mis. Mohanlal & Sons v. United India Insurance Co. is belated and time barred. There is no case for condonation of

delay. This appeal is dismissed as being barred by time. Appeal dismissed.

