(1999) 05 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

UNITED INSURANCE COMPANY LIMITED — APPELLANT

Vs

BALDEV CHAND MAHAJAN — RESPONDENT

Date of Decision : 04-05-1999

Acts Referred:

Citation : 1999 1 CLT 653 : 1999 1 CPC 650 : 1999 2 CPJ 368 : 1999 2 CPR 161

Hon'ble Judges : P.N.Nag , I.D.Bali J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal has been directed against the order of the District Forum, Mandi, dated 23.11.1998 whereby the appellant (hereinafter to be referred to as the Insurance Company) has been directed to pay to the respondent/complainant (hereinafter to be referred to as the complainant) an amount of Rs. 59,000/- alongwith interest @ 12% per annum with effect from 6.8.1995 till the amount is actually paid. Cost of Rs. 450/- has also been awarded.

2. THE brief facts of the case necessary to be mentioned, for determining the point in controversy are that the complainant who was the owner of vehicle-Maruti Van No. HP-30-0087, had previously registered this vehicle as Taxi No. HP Y-l184, but later on converted it into a private Car with new Registration No. HP-30- 0087 with effect from 28.1.1995. Unfortunately, on 20.2.1995, the vehicle while on its way back from Seri to Karsog alongwith patient Mohan Lal and his attendants, developed sudden mechanical defect and met with an accident at about 11.00 p.m. to 12.00 p.m. (mid-night) and four occupants of the vehicle died on the spot and one died in the Hospital, while the driver sustained multiple injuries. THE vehicle was totally damaged. FIR was lodged and the claim was also preferred with the Insurance Company. At the relevant time, admittedly, the insurance policy was in force for a sum of Rs. 90,000/-. THE Insurance Company, however, repudiated the claim on 28.2.1996 and the complainant, therefore, has been constrained to file the present complaint. The Insurance Company has resisted the claim on the ground that the complaint has not been filed within a period of 12 calendar months from the date of disclaimer

by the Insurance Company and is time-barred and that the vehicle was used as a Taxi, whereas it was later on converted for private use.

The only point argued and stressed before us by the learned Counsel for the Insurance Company was that the complaint in time-barred, as the claim has been repudiated by the Insurance Company vide their letter dated 28.2.1996, whereas the complaint has been filed on 12.2.1998 after more than 12 months and as such in terms of Clause 8 of the insurance policy, the complainant is deemed to have abandoned his claim. In order to appreciate the contention of the learned Counsel, relevant extract of Clause 8 may be reproduced as under : ".....It is also hereby further expressly agreed and declared that if the Company shall disclaim liability to the insured for any claim hereunder and such claim shall not, within twelve calendar months from the date of such disclaimer have been made, the subject matter of a suit in a Court of law, then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder."

3. WE are afraid we cannot accept such a contention of the Counsel for the Insurance Company. In this context at the very outset we may refer to a decision of the Kerala State Commission in a case titled as Divisional Manager, National Insurance Company Limited v. Muhammed & Anr., reported as I (1997) CPJ 41, wherein exactly similar submission was made and that similar clause of the insurance policy was under consideration of the State Commission and the Kerala State Commission after relying upon the judgment of the Hon''ble Supreme Court in Food Corporation of India v. The New India Assurance Company Limited & Ors., 1994 (3) Supreme Court Cases 342, rejected such contention of the appellant-Insurance Company and following such judgment we accordingly also reject the submission of the Counsel for the Insurance Company. The Counsel for the Insurance Company has relied upon a decision of the Hon''ble Supreme Court in support of his contention in a case titled as National Insurance Co. Ltd. v. Sujir Ganesh Nayak & Anr., reported as I (1997) ACC 537 (SC)=1997 (2) TAC 206, wherein it has been held that where there is an agreement which does not seek to curtail the time for enforcement of the right, but provides for the forfeiture or waiver of the right itself if no action is commenced within the period stipulated by the agreement, such a clause in the agreement would not fall within the mischief of Sec. 28 of the Contract Act.

4. THE decision of the Hon''ble Supreme Court in Nationl Insurance Company v. Sujir Ganesh Nayak (supra), relied upon by the Counsel for the Insurance Company is distinguishable. This decision does not cover the cases of deficiency under the Consumer Protection Act. Further a bare perusal of Clause 8 would reveal that this clause can only be attracted in case the complainant does not make his claim a subject matter of suit in a Court of law within 12 calendar months from the date of disclaimer by the Insurance Company. THE proceedings taken by the complainant under the Consumer Protection Act cannot be technically called a subject matter of suit. Section 3 of the Consumer Protection

Act clearly provides that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. No other points were urged. In the light of what is discussed above, there is no force in this appeal and the appeal is accordingly dismissed with no orders as to costs. Appeal dismissed. _______________

