(1996) 06 NCDRC CK 0097

In the National Consumer Disputes Redressal Commission

VINOD KUMAR NAGRATH APPELLANT

Vs

Oriental Insurance Co. Ltd. RESPONDENT

Date of Decision : 06-06-1996

Acts Referred:

Citation : 1996 3 CPJ 162

Hon'ble Judges : A.P.Chowdhri , S.Brar , Desh Bandhu J.

Final Decision : Application disposed of

Judgement

1. IN Complaint Case No. C-472/92, this Commission directed the Oriental INsurance Company Ltd., hereinafter referred to as the opposite party to pay to the complainant a sum of Rs. 2,05,000/- with interest @ 15% p.a. from 1.5.92 till the date of payment by order dated 4.2.94. The opposite party preferred First Appeal No. 177/94 before the National Commission against the said order. The INsurance Company applied for a stay of the recovery of the amount. By order dated 19.8.94, the National Commission issued notice in the said application and issued an interim stay subject to the applicant INsurance Company, depositing a sum of Rs. 75,000/- within three weeks. The interim stay was made conditional on the said deposit failing which it was to stand vacated automatically. The INsurance Company deposited the amount and the cheque thereof was given to the complainant on 22.9.94. Ultimately, the National Commission disposed of the stay matter by order dated 14.12.94. IN that order it was noted that a sum of Rs. 75,000/- had already been received by the complainant. It was further directed that the balance amount payable under the order of the State Commission includeing the interest up-to-date shall be deposited by the INsurance Company before the State Commission within a period of six weeks from the date of the order. It was further directed that the complainant would be entitled to withdraw the said amount from the State Commission on his furnishing security to the satisfaction of the State Commission. Accordingly, the INsurance Company deposited a sum of Rs. 2,14,252,50. The complainant was unable to furnish security to the satisfaction of the State Commission and ultimately the amount aforesaid was deposited under a Fixed Deposit Receipt

dated 1.7.95 in favour of the complainant, Vinod Kumar Nagrath. The National Commission finally disposed of the appeal itself by order dated 8.11.95. According to the final order passed in the appeal, the complainant was to be paid Rs. 1,70,675./- with interest @ 15% p.a. from 1.5.92 till the date of payment. The complainant was directed to refund the excess amount received under orders dated 14.12.94. IN the present application dated 29.11.95, the complainant has prayed that he may be given a sum of Rs. 1,89,459.32 as per calculations given by him therein and the balance amount refunded to the INsurance Company in compliance with the order of the National Commission from out of the FDR for Rs. 2,14,252.50. Reply has been filed by the INsurance Company in which it has been stated that the INsurance Company is entitled to receive Rs. 34,325/- besides interest @ 15% p.a. from 9.5.92 as excess amount paid to the complainant as well as interest which has accrued on the FDR. IN the rejoinder, the complainant has stated as follows: "That so far the complainant has received only a sum of Rs. 75,000/- on 1.10.94. The amount of Rs. 75,000/- by way of cheque was transferred in the account of complainant on 1.10.94. The cheque for Rs. 2,14,252.50 which was deposited (only cheque) with the State Commission was kept by the State Commission in an FDR under its control and that amount has never been paid, to the complainant. A sum of Rs. 61,869.69 p. was payable as interest @ 15% per annum for the period from 1.5.92 to 1.10.94 and the complainant has appropriated this amount towards payment of interest first and the remainder towards payment of costs and then towards payment of part of principal amount. After adjustment of Rs. 61,869.69 p. and Rs. 2,000/-as costs the balance amount of Rs. 11,130.31 p. has been adjusted towards the principal amount and on 1.10.94 the balance principal amount payable was Rs. 1,59,544.69 p. as mentioned in Item (f) of para 2 of the application dated 29.11.95 moved by the complainant. Thereafter interest calculated @ 15% per annum from 1.10.94 to 1.1.96 works out to Rs. 29,914.63 p. Now a balance amount of Rs. 1,89,459.32 p. is payable from out of the proceeds of the FDR for Rs. 2,14,252.50 p. to the complainant and the balance amount from out of the FDR may be paid to the respondents."

2. A perusal of the order dated 19.8.94 directing the Insurance Company to deposit Rs. 75,000/- shows that no conditions were attached and accordingly the amount was deposited by the Insurance Company without any condition and the cheque of the said amount was directed to be given to the complainant by order dated 22.9.94. It was actually credited to the complainant''s account on 1.10.94. With regard to the balance amount, there was a clear direction that the same was to be paid to the complainant subject to his furnishing security to the satisfaction of the State Commission. That security was not furnished. In order to protect the legitimate interests of both the parties it was directed that the said amount be deposited in the Punjab National Bank under Fixed Deposit Receipt. This was done. Two principles are required to be considered. One underlies Section 60 of the Contract Act which reads as under: "Section 60. Application of payment where debt to be charged is not indicated-Where the debtor has

omitted to intimate, and there are no other circumstances indicating which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits."

In Meghraj v. Bayabai, AIR 1970 SC 161, it was laid-down that the normal rule was that the amounts deposited in Court should first be applied towards satisfaction of the interest and costs and thereafter towards the principal. No indication having been brought to our notice that the amount of Rs. 75,000/- was to be appropriated towards principal, it was open to the complainant to appropriate the same towards costs and interest.

3. THE second principle underlies the provisions of Order 21 Rule 1 of the Code of Civil Procedure. THE provision lays down modes of paying money under the decree, Sub-rules (4) & (5) are relevant which lay-down as under : "(4) On any amount paid under Clause (a) of Clause (c) of Sub-rule (1),interest, if any, shall cease to run from the date of service of the notice referred to in Sub-rule (2). (5) On any amount paid under Clause (b) Sub-rule (1), interest, if any shall cease to run from the date of such payment: Provided that, where the decree-holder refuses to accept the postal money order or payment through a Bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through Bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the Postal Authorities or the Bank, as the case may be."

The question arises as to the effect of payment on furnishing security for refund of the amount to await a certain future eventuality. This point was considered by the Apex Court in P.S.L. Ramanathan Chettiar v. O.R.M.P.R.M. Ramathan Chettiar, AIR 1968 SC 1047. It was observed vide para 15 at page 1050 as under : "The last contention raised on behalf of the respondent was that at any rate the decreeholder cannot claim any amount by way of interest after the deposit of the money in Court. There is no substance in this point because the deposit in this case was not unconditional and the decree-holder was not free to withdraw it whenever he liked even before the disposal of the appeal. In case he wanted to do so, he had to give security in terms of the order. The deposit was not in terms of Order 21, Rule 1, Civil Procedure Code and as such, there is no question of the stoppage of interest after the deposit."

4. THE above was followed in Oriental Insurance Co. Ltd. v. Arpu Devi & Ors., 1991 ACJ 249, Rajasthan High Court and Satyawati Pathak v. Hari Ram & Ors., 1983 ACJ 424 Delhi High Court (vide para 35). For the aforesaid reasons it follows that interest did not cease from running to the extent of interest calculated in terms of the order of the National Commission from out of the sum of Rs. 75,000/-, the balance being liable to be appropriated towards principal. Interest also did not cease from running on the balance amount which was an

additional deposit. To sum up, the complainant is entitled to a sum of Rs. 1,89,459.32 till 1.1.96 and further interest at the allowed rate by the National Commission upto the date of payment. The balance amount is liable to be refunded to the Insurance Company. The Insurance Company is also entitled to the interest which has accrued on the FDR. Directions to the Punjab National Bank be accordingly issued with reference to their letter dated 3.7.95. The application is disposed of in these terms. A copy of this order be communicated to both the parties. Application disposed of.

