

CASE NO.:
Appeal (civil) 619 of 2005

PETITIONER:
National Insurance Company Ltd.

RESPONDENT:
Nipha Exports Pvt. Ltd.

DATE OF JUDGMENT: 29/09/2006

BENCH:
H.K. SEMA & P.K.BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T
(with I.A. No. 2)

H.K.SEMA, J.

The challenge in this appeal is to the order dated 8th September, 2004 passed by the National Consumer Disputes Redressal Commission (hereinafter the Commission) in Original Petition No. 42 of 1996. By the aforesaid order, the Commission directed the appellant, National Insurance Company Ltd., to pay interest @ 6% on Rs.70,38,038/- from 10th December 1990 till 8th June, 1994 within a period of eight weeks by way of damages.

A limited notice was issued by this Court on 13.01.2005 on payment of interest @ 6% as damages by reason of delay in payment.

The sole question to be determined in this appeal is, as to whether there was any delay in making the payment of Rs.70,38,038/- and if so, the insurance company, the appellant is liable to pay interest @ 6% for delay in payment as ordered by the Commission.

Few background facts may be noted:

In 1990, five transit insurance were obtained by the respondent herein for covering their consignment to Sudan for their principals i.e. M/s Sudan Gezire Rehabilitation Project, Khartoum, Sudan. The policies were issued subject to the terms and conditions. It was discovered that on arrival of the consignment there was some damage on account of rust. The investigations were carried out in respect of the transit of the consignment at the destination port to find out as to at which stage the damage to the consignment could have had occurred. A dispute was also raised between the parties as to who would be entitled to receive the claim amount as the shipment was on C.I.F. basis. Ultimately, the matter was resolved and the legalized documents of consignments were furnished to the appellant on 21.5.1993. Thereafter, various correspondences between the parties to accept the offer of the claim amount as offered by M/s American President Lines. It is alleged that till the letter dated 25.6.1993 written by the appellant there was no acceptance of the offer by the complainant-respondent herein and the matter was withheld at the instance of the complainant. There was also a dispute between the parties because in the policy, the machinery items were subject to institute replacement clause, which provided for the indemnity to be made only when the loss or damage suffered by the goods to the extent of actual cost of repairs, replacement and conditions effected and incurred. The

complainant was also claiming that they had incurred out of pocket expenses and, therefore, the appellant was asking them to provide and furnish the necessary bills in support of total expenses incurred by them, which they failed to do and therefore, the matter was again referred to M/s Webster & Co. for making the investigation into the possible cost involved from M/s Nipha and their local suppliers, respondent herein.

Ultimately, M/s Webster by its letter dated 8.4.1994 settled the claim on the basis of consignment as done by the Surveyors.

In the facts and circumstances, as recited above, it cannot be said that prior to the letter dated 8.4.1994 the claim had been finally settled and the payment was withheld by the appellant. After the settlement of the amount US \$279158.40 equivalent to Rs.70,38,038/- was paid to the respondent on 8.6.1994. The respondent received the aforesaid amount and gave a clean discharge to the appellant without any qualification, signifying receipt of the amount in full and final settlement of the claim.

Mr. Mahendra Anand, learned senior counsel, appearing on behalf of the respondent, referred to a letter dated 17.3.1991 and submitted that by the aforesaid letter right, title and interest was vested with M/s Nipha Exports Private Ltd. by Sudan Gezire Rehabilitation Project. In the letter aforesaid, it is stated that they have no objection to settle the claim in favour of M/s Nipha Exports Private Ltd., and advised to address the correspondence direct to them in future. It is his contention that there is no explanation whatsoever by the appellant for withholding the payment from 17.3.1991 to 8.4.1994, the date on which the matter was settled. In view of the circumstances, as recited above, we are unable to accept this contention. From the letter dated 17.3.1991, it is clear that it was not the settlement of the claim but it was a no objection certificate that the claim may be settled in favour of the respondent and advise that all future correspondence be addressed to them directly. Therefore, it cannot be said that the final settlement was arrived at by the aforesaid letter.

The next question to be considered is as to whether after giving a clean discharge certificate by accepting the amount signing the voucher, the complainant-respondent can raise the complaint?

As already noticed, the payment was made to the respondent on 8.6.1994 and the respondent gave a clean discharge to the appellant without any qualification, signifying receipt of the amount in full and final settlement of the claim. Thereafter, after a lapse of two months the respondent addressed a letter dated 6.8.1994 to the appellant which is extracted:

"Re: Marine Loss NO.101500/43/90-91/86-90

Ex.M.V. Eagle Nov/Fresia.

Dear Sir,

Thank you for your letter dated the 9th June, 1994 enclosing a Cheque for Rs.70,38,038/- in discharge of your liability under the policies, which, however, did not include interest."

In the letter, thus read there is no complaint that the discharge voucher or receipt had been obtained from the complainant respondent herein fraudulently or by exercise of undue influence or by misrepresentation or the like or coercive

bargaining. In the case of United India Insurance Vs. Ajmer Singh Cotton & General Mills, (1999) 6 SCC 400, it was pointed out by this Court that mere execution of discharge voucher would not always deprive the consumer from preferring claim with respect to the deficiency in service or consequential benefits arising out of the amount paid in default of the service rendered. It was further pointed out that despite execution of the discharge voucher, the consumer may be in a position to satisfy the Tribunal or the Commission under the Act that such discharge voucher or receipt had been obtained from him under circumstances which can be termed as fraudulent or exercise of undue influence or by misrepresentation or the like, and if such a case is proved, the authority before whom the complaint is made would be justified in granting appropriate relief.

This Court in Polymat India P.Ltd. vs. National Insurance Co.Ltd., 2004(10) Scale 99 also considered the facts of a similar case as in the case in hand. In that case the reason for delay had been explained. The fire took place on 13th January, 1993 in which the insured goods were reportedly gutted by fire. The insurance company appointed the Surveyor and Surveyor sent his report dated 5th November, 1993 which was received by the appellant on 9th November, 1993. As there were some discrepancies in the survey report, the insurance company vides letter dated 14th December, 1993 sought for clarification from the Surveyor, which was replied to on 22.4.1994 by the Surveyor. The insurance company after that took the decision and informed the claimant by a letter dated 1.7.1994 for approval of the claim under both the policies. It is, in these circumstances, this Court held that there was no delay in payment and the levy of interest @ 18% by the Commission was set aside by this Court.

In the present case, the claim of the complainant was finally settled by a letter dated 8.4.1994 and the payment was made on 8.6.1994, which was accepted by the respondent without any qualifications. It cannot, therefore, be said that the payment was made belatedly. The important date to be decided in such circumstances is the date on which the quantum of compensation and to whom it should be paid is finally decided and not from the dates on which the correspondences ensued between the parties.

In the facts and circumstances, aforestated, we are of the view, that the claim was finally settled by a letter dated 8.4.1994 and the payment was made on 8.6.1994, and therefore, there was no delay in making the payment which would warrant the award of interest on delayed payment. The view taken by the Commission was, therefore, erroneous. The Order dated 8th September, 2004 of the Commission is set aside. The appeal is allowed. No costs.