

CASE NO.:
Appeal (civil) 1602 of 2008

PETITIONER:
National Insurance Company Ltd

RESPONDENT:
Sehtia Shoes

DATE OF JUDGMENT: 26/02/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO 1602 OF 2008
(Arising out of SLP (C) No. 12953 of 2005)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by the National Consumer Redressal Commission, New Delhi (in short 'National Commission'). The National Commission by the impugned order dismissed the revision petition filed by the appellant questioning correctness of the order passed by the Consumer District Forum, Hissar (in short 'District Forum') and State Consumer Disputes Redressal Commission, Haryana (in short 'State Commission').

3. The controversy lies within a very narrow compass. Claim was lodged by the respondent who had obtained a shopkeeper insurance policy of the appellant company on 15.7.2001. A claim was lodged with the appellant stating that on account of fire insured articles got destroyed. The Surveyors and Loss Assessors assessed the net loss at Rs.2,82,301/-. It is the case of the appellant that respondent without demur accepted the sum of Rs.2,72,301/- in full and final settlement and accordingly payment of Rs.2,72,301/- was made. Thereafter a complaint was lodged before the District Forum claiming that his claim was Rs.9 lacs and he should be indemnified to the extent of Rs.9 lacs less Rs.2,72,301/- which had been received by him. Appellant objected to the complaint stating that since the respondent had accepted the amount without any protest no further claim survives and the complaint was not maintainable.

4. The District Forum noted the rival stand including the stand of the respondent that the so called settlement was signed by him under coercion and, therefore, the claim petition was maintainable. The District Forum awarded a sum of Rs.4,95,000/-. In appeal, the State Commission dismissed the appeal after noticing the rival stands which were reiteration of the stands taken before the District Forum. A revision, as noted above, was filed before the National Commission which dismissed the same holding as follows:

"In our view, the impugned order passed by the State Commission does not call for any interference. The District Forum as well as State Commission considered the various statements including Income-tax and Sales Tax returns as well as statements submitted to the bank and also surveyor's report. In our view, the assessment by the surveyor in the present case cannot be accepted because surveyor has observed that even though the shoes were affected by water and smoke, yet the loss would be only 30% and thereafter reduced the assessment of loss, in our view this was unjustified.

Hence revision petition is dismissed."

5. Learned counsel for the appellant submitted that though a claim can be entertained even when there is a settlement to receive a particular amount, yet the same is subject to the condition that the earlier settlement was obtained under coercion and/or was not on account of free will. In the instant case it is submitted this vital aspect has been lost sight of by the District Forum, the State Commission and the National Commission.

6. In response, learned counsel for the respondent submitted that immediately after the so called settlement was arrived at grievance, was lodged with the authority stating that settlement was not free and fair.

7. In *United India Insurance. v. Ajmer Singh Cotton & General Mills and Ors.* (1999 (6) SCC 400), it was, inter alia, observed as follows:

"4. We have heard learned counsel for the parties and perused the record. It is true that the award of interest is not specifically authorised under the Consumer Protection Act, 1986 (hereinafter called "the Act") but in view of our judgment in *Sovintorg (India) Ltd. v. State Bank of India*, Civil Appeal No. 82 of 1992 decided on 11.8.1999, we are of the opinion that in appropriate cases the forum and the commissions under the Act are authorised to grant reasonable interest under the facts and circumstances of each case. The mere execution of the 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. 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 the circumstances which can be termed as fraudulent or exercise of undue influence or by misrepresentation or the like. If in a given case the consumer satisfies the authority under the Act that the discharge voucher was obtained by fraud, misrepresentation, undue influence

or the like, coercive bargaining compelled by circumstances, the authority before whom the complaint is made would be justified in granting appropriate relief. However (sic so), where such discharge voucher is proved to have been obtained under any of the suspicious circumstances noted hereinabove, the Tribunal or the commission would be justified in granting the appropriate relief under the circumstances of each case. The mere execution of the discharge voucher and acceptance of the insurance claim would not estop the insured from making further claim from the insurer but only under the circumstances as noticed earlier. The Consumer Disputes Redressal Forums and Commissions constituted under the Act shall also have the power to fasten liability against the insurance companies notwithstanding the issuance of the discharge voucher. Such a claim cannot be termed to be fastening the liability against the insurance companies over and above the liabilities payable under the contract of insurance envisaged in the policy of insurance. The claim preferred regarding the deficiency of service shall be deemed to be based upon the insurance policy, being covered by the provisions of Section 14 of the Act.

5. In the instant cases the discharge vouchers were admittedly executed voluntarily and the complainants had not alleged their execution under fraud, undue influence, misrepresentation or the like. In the absence of pleadings and evidence the State Commission was justified in dismissing their complaints. The National Commission however granted relief solely on the ground of delay in the settlement of claim under the policies. The mere delay of a couple of months would not have authorised the National Commission to grant relief particularly when the insurer had not complained of such a delay at the time of acceptance of the insurance amount under the policy. We are not satisfied with the reasoning of the National Commission and are of the view that the State Commission was justified in dismissing the complaints though on different reasonings. The observations of the State Commission in *Jivajeerao Cotton Mills Ltd. v. New India Assurance Co. Ltd.*, OP No. 52 of 1991 decided on 28.11.1991, shall always be construed in the light of our findings in this judgment and the mere receipt of the amount without any protest would not always debar the claimant from filing the complaint."

8. Filing of a complaint is, therefore, not barred; but it has to be proved that agreement to accept a particular amount was on account of coercion. In the instant case, this relevant factor has not been considered specifically by the District Forum, State Commission and the National Commission. Though plea of coercion was taken by claimant-respondent,

same was refuted by the appellant. There is no dispute that the discharge voucher had been signed by the respondent. There has to be an adjudication as to whether the discharge voucher was signed voluntarily or under coercion. We remit the matter to the District Forum for fresh consideration. It would do well to dispose of the matter as early as practicable, preferably by the end of September, 2008.

9. The appeal is allowed to the aforesaid extent. No costs.

JUDIS