

NATIONAL INSURANCE COMPANY LTD.

v.

SEHTIA SHOES

(Civil Appeal No. 1602 of 2008)

FEBRUARY 26, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Consumer Protection:

Shopkeeper insurance policy – Respondent-insured lodged claim and received amount in settlement thereof – Thereafter lodged consumer complaint seeking further amount on ground that he had signed the said settlement under coercion – District Forum allowed the complaint – Order upheld by both State Commission and National Commission – On appeal, held: Filing of complaint was not barred; but it had to be proved that the settlement was signed under coercion – This relevant factor was not specifically considered by any of the fora below – Matter remitted to District Forum for fresh consideration.

Respondent had obtained a shopkeeper insurance policy. The insured articles got destroyed in fire. Respondent lodged insurance claim and received a sum of Rs.2.72 lacs in full and final settlement of the claim. But thereafter he lodged a complaint before the District Consumer Forum contending that his insurance claim was Rs. 9 lacs and hence he should be idemnified to the extent of Rs. 9 lacs less Rs.2.72 lacs. Respondent alleged that the so called settlement was signed by him under coercion. Appellant objected to the complaint stating that since the Respondent had accepted the amount of Rs.2.72 lacs without any protest, no further claim survived and the complaint was not maintainable. The District Forum allowed the complaint and awarded a sum of Rs.4.95 lacs. The order was upheld by the State

A Commission as well as the National Commission.

In appeal to this Court, the Appellant contended 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. The Appellant submitted that in the instant case this vital aspect was lost sight of by all the consumer fora below.

C Allowing the appeal, the Court

HELD: Filing of a complaint is 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. The matter is remitted to the District Forum for fresh consideration. [Para 8] [456-E-G]

F *United India Insurance. v. Ajmer Singh Cotton & General Mills and Ors. (1999) 6 SCC 400 – relied on.*

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1602 of 2008.

G From the Judgment and Order dated 2.2.2005 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 29 of 2005.

Joy Basu and B.K. Satija for the Appellant.

Gagan Gupta (for M/s. Saharya & Co.) for the Respondent.

H The Judgment of the Court was delivered by

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

A 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
 B 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.

C 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
 D 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
 E 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,
 F 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
 G 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
 H each case. The mere execution of the discharge voucher

would not always deprive the consumer from preferring A
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 B
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 C
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 D
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 E
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 F
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 G
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 H

A 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
B 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
C 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*
D *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.”

E 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
F 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
G 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.

H B.B.B.

Appeal allowed.