

(2013) 12 NCDRC CK 0006

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**Case No:** None

M.L. Spinners Pvt. Ltd.

APPELLANT

Vs

UNITED INDIA INSURANCE
COMPANY LTD.RESPONDENT

Date of Decision: Dec. 16, 2013**Citation:** 2013 0 NCDRC 903 : 2014 2 CPJ 692**Hon'ble Judges:** V.B.GUPTA J.

Judgement

1. PETITIONER /Complainant being aggrieved by impugned order dated 24.5.2013, passed by Haryana State Consumer Disputes Redressal Commission, Panchkula (short/State Commission") has filed above revision petitions. Brief facts are that Petitioner/Complainant insured its building machinery and raw material, etc. with Respondent/Opposite Party for the period 2.3.2009 to 1.3.2010. On 10.5.2009, a fire broke in the insured factory. As per petitioner, it suffered heavy losses of building, machinery and raw material and finished goods to the tune of Rs. 5.00 crores approximately. On receipt of information from the petitioner, respondent deputed surveyor and loss assessor namely Rohit Kumar & Co., New Delhi who conducted the Survey. Respondent paid Rs. 1,00,00,000 to the petitioner in December, 2009 as an interim amount and Rs. 1,25,92,251 was paid through cheque on 13.10.2011. According to the respondent, cheque of Rs. 1,25,92,251 was received by the petitioner in full and final settlement of petitioner's claim and thus, payment of Rs. 2,25,92,251 (Rs. 1,00,00,000 + Rs. 1,25,92,251) was towards full and final settlement and a "Settlement Intimation Voucher" was signed by the petitioner without any protest. However, the petitioner took the plea that the respondent had obtained his signatures on certain blank printed papers and the aforesaid amount was received under protest. It was further stated that it was not a full and final settlement. Further, as per the norms, the claim was required to be paid, within one month from the date of submitting the papers as demanded by the respondent, which was submitted in all respects in May, 2010. Thus, petitioner was entitled to receive the claim amount up till 30.6.2010 but petitioner was paid the amount only on

13.10.2011. It was further stated by the petitioner that in case the respondent had paid the claim amount up till June, 2010, then petitioner would have deposited the same with its Bank. According to the petitioner, it suffered loss to the tune of Rs. 19,29,000. Thus, alleging it a case of deficiency in service and unfair trade practice on the part of the respondent, the petitioner invoked the jurisdiction of the District Consumer Forum seeking direction to the respondent to pay the amount of Rs. 19,29,000 along with interest @ 18% per annum from 14.10.2011, till its realization.

2. ON the other hand, respondent in its written statement inter alia took the plea that the petitioner had already been paid Rs. 1,00,00,000 in December, 2009 and Rs. 1,25,92,251 was paid through cheque on 13.10.2011 (total being Rs. 2,25,92,251) in full and final settlement of petitioner's claim and nothing more remained payable by the respondent. It was denied that the claim was to be paid, within one month from the date of submitting the papers, as alleged in the complaint. It was further stated that the collection of requisite papers by the surveyor alone was not sufficient to pass petitioner's claim finally, rather, it required several exercises on the part of the Surveyor and offices of the company till the claim was finally approved by the competent authority. So, there was no delay in processing petitioner's claim. Thus, denying any kind of deficiency in service on their part, respondent prayed for dismissal of the complaint.

On appraisal of the pleadings of the parties and the evidence adduced on the record, District Consumer Forum accepted the complaint and directed the respondent to pay interest @ 8% p.a. on the delayed amount of Rs. 1,25,92,251 from 1.8.2010 to 13.10.2011 within thirty days from the date of the order, failing which amount of interest will carry further interest @ 8% per annum from the date of filing the complaint till realization. Cost of litigation quantified at Rs. 2,200 was also be paid to the respondent.

3. NOT satisfied with the order of the District Forum, petitioner filed (Appeal No. 192 of 2013) before the State Commission on the ground that interest awarded by the District Forum is inadequate and same be enhanced. On the other hand, respondent also filed (Appeal No. 268 of 2013) for setting aside the order passed by the District Forum and dismissal of the complaint.

4. STATE Commission, vide impugned order, dismissed the (Appeal No. 192 of 2013) filed by the petitioner whereas (Appeal No. 268 of 2013) filed by the respondent was accepted and consequently, complaint was dismissed.

Hence, the revision petition.

5. WE have heard the learned Counsel for the petitioner and gone through the record.

6. IT has been argued by learned Counsel for the petitioner that petitioner has been claiming interest from the very beginning and after receiving the cheque on 13.10.2011, petitioner immediately protested on 14.10.2011. It further argued that full and final receipt issued by the respondent is not a binding document as petitioner had no option but to accept the amount which was offered by the Insurance Company due to financial necessity, as petitioner has raised loan from the Bank and was paying heavy interest on the same and his non -acceptance would have put in more trouble and suffered more losses.

State Commission in its impugned order has observed:

Taking into account, the aforesaid circumstances, in our view, the filing of complaint before the District Forum was an afterthought version which reflects the greed of the complainant to get more money. The contention raised on behalf of the complainant that the payment was received under protest is without any force in view of the evidence available on the record. It has been established on the record that the cheque of Rs. 1,25,92,251 was received by the complainant in full and final settlement of complainant's claim and, thus, the payment of Rs. 2,25,92,251 (Rs. 1,00,00,000 + Rs. 1,25,92,251) was towards full and final settlement and a "Settlement Intimation Voucher" dated 13.10.2011 was signed by the complainant without any protest. After receiving the amount of Rs. 2,25,92,251 (Rs. 1,00,00,000 + Rs. 1,25,92,251) to get more money, the complainant was under an obligation to prove that the aforesaid amount was paid by executing Discharge Voucher by fraud,

misrepresentation and coercion. Reference in this regard is made to case cited as United India Insurance v. Ajmer Singh Cotton & General Mills & Ors., Etc. : 1999 (2) CPC 601 (SC), wherein the Hon"ble Supreme Court has held:

Insurance claim - - full and final settlement - - where claim has been accepted without any objection, full and final settlement of claim was made by insurer, claimant cannot be allowed any further relief. But mere execution of discharge voucher cannot deprive the claimant of consequential relief particularly when such discharge voucher was obtained by fraud, misrepresentation or under coercion - -in the instant case complainant failed to prove any such reason, he therefore, was not entitled to any further relief - -even delay of few months taken in settlement of claim does not constitute deficiency in service order of State Commission restored - -order passed by National Commission set aside.

While deciding similar controversy, Hon"ble National Commission in case cited as Raj Kumar v. United India Insurance Co. Ltd., : III (2011) CPJ 354 (NC), observed that:

4. We do not find any infirmity or irregularity in the view taken by the State Commission in the impugned order. Learned Counsel for the petitioner/complainant has relied on the judgment of this Commission in the case of Singureddy Ramana Murthy v. National Insurance Co. Ltd. & Ors., : I (2003) CPJ 37 (NC). We have gone through this judgment by which this Commission after convincing itself that the consent letter for full and final settlement from the complainant was obtained by the Insurance Company by misrepresentation, fraud or coercion or by exercising undue influence and applying the law laid down by the Hon"ble Supreme Court in the case of United India Insurance Company v. Ajmer Singh Cotton & General Mills & Ors., : II (1999) CPJ 10 (SC) : VI (1999) SLT 590 : (1999) 6 SCC 400, allowed the claim of the complainant against the Insurance Company. We, however, find that the facts and circumstances of this case are different and as rightly observed by the State Commission in its impugned order, the petitioner has not been able to show that the discharge voucher in question was obtained by the Insurance Company by undue influence, threat or misrepresentation. In the circumstances, the ratio laid down by the Apex Court in the case of Ajmer Singh's case (supra) and the decision of this Commission based thereon in the case of Singureddy Ramana Murthy (supra), cannot provide any comfort to the petitioner. Having considered the submissions made by the Counsel for the petitioner, we do not find any reason to interfere with the well -reasoned and detailed order passed by the State Commission.

It is a case wherein the complaint was filed by the complainant after five months from the date of receiving the final payment. Even the legal notice dated 5.12.2011 (Annexure C -3) was served by the complainant after about one month and twenty days from the date of executing the discharge voucher. The silence of the complainant for a considerable period reflects that the complainant has cooked up a story in the shade of greed to get more money despite the fact that he had already

received the amount of Rs. 2,25,92,251 (Rupees two crores twenty -five lakh ninety -two thousand, two hundred and fifty -one only). In a similar situated case cited as National Insurance Co. Ltd. v. Vasanthi Marine Foods Ltd.,, 2010 CTJ 179 (CP) (NCDRC), Hon"ble National Commission has observed as under - -

Complainant engaged in the business of prawn culture took a certain number of Brakish Water Prawn Insurance Policies for covering its business against various perils set out therein - -prawns died in the tanks due to virus on different dates - -Insurance Company only partly allowed the claims - -Three complaints filed before the State Commission for a direction to the Insurance Company to make payment of the balance amount in each case with interest - -complaints allowed - -Insurance Company directed to reassess the loss on the basis of the survey reports and pay the balance amounts due to the complainant with 9% interest - -cost of Rs. 10,000 also ordered in each case - -Appeals - -Complaints made by the complainant after a considerable gap from signing the discharge vouchers - -No evidence brought to prove that the discharge vouchers were obtained by fraud, misrepresentation, undue influence or coercive bargaining - -Appeals allowed - -Complaints.

The facts of the instant case are fully attracted to the authoritative pronouncements mentioned herein before. No evidence has been produced by the complainant that his signature on the discharge voucher were obtained by fraud or misrepresentation. Mere pleadings without any corroborating evidence cannot take the shape of proof. The complaint was in the nature of recovery suit claiming interest from the date of occurrence till the date of payment which is not maintainable because the service was hired by the complainant only for the purpose of indemnification, contract of insurance being insurance contract of indemnity, which amount stood paid and accepted by the complainant rewards full and final payment and interest was not a part of the contract. The complainant has misused the process of the Consumer Protection Act. Thus, it is not a fit case where the complainant can be allowed to reopen his claim. District Forum has failed to take into account the facts and evidence of this case in its true perspective, which is supported with the settled principle of law by Hon"ble Apex Court. Hence, the impugned order cannot be allowed to sustain.

For the reasons recorded above, appeal No. 268/2013 filed by opposite party United India Insurance Co. Ltd. is accepted. Impugned order is set aside and the complaint is dismissed. Consequently, appeal No. 192/2013 filed by the complainant, M/s. M.L. Spinners Pvt. Ltd. stands dismissed.

7. LAW on this subject has been clearly laid down by Hon"ble Supreme Court of India in Ajmer Singh Cotton & General Mills (supra), in which it was held that, discharge voucher though signed as "full and final" may not be treated as final if the consumer can satisfy the Court that it was obtained through undue influence, fraud or misrepresentation. Hon"ble Court has observed:

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. There mere execution of discharge voucher and acceptance of the insurance would not stop 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. 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.

8. IN Bhagwati Prasad Pawan Kumar v. Union of India, : II (2007) CLT 293 (SC) : III (2006) ACC 1 (SC) : IV (2006) SLT 771 : (2006) 5 Supreme Court Cases 311, Apex Court has observed:

18. Section 8 of the Contract Act provides for acceptance by performing conditions of a proposal. In the instant case, the Railway made an offer to the appellant laying down the conditions that if the offer was not acceptable the cheque should be returned forthwith, failing which it would be deemed that the appellant accepted the offer in full and final satisfaction of its claim. This was further clarified by providing that the retention of the cheque and/or encashment thereof will automatically amount to satisfaction in full and final settlement of the claim. Thus, if the appellant accepted the cheques and encashed them without anything more, it would amount to an acceptance of the offer made in the letters of the Railways dated 7.4.1993. The offer prescribed the mode of acceptance, and by conduct the appellant must be held to have accepted the offer and, therefore, could not make a claim later. However, if the appellant had not encashed the cheques and protested to the Railways calling upon them to pay the balance amount, and expressed its inability to accept the cheques remitted to it, the controversy would have acquired a differed complexion. In that event, in view of the express non -acceptance of the offer, the appellant could not be presumed to have accepted the offer. What, however is significant is that the protest and non -acceptance must be conveyed before the cheques are encashed. If the cheques are encashed without protest, then it must be held that the offer stood unequivocally accepted. An "offeree" cannot be permitted to change his mind after the unequivocal acceptance of the offer.

19. It is well settled that an offer may be accepted by conduct. But conduct would only amount to acceptance if it is clear that the offeree did the act with the intention (actual or apparent) of accepting the offer. The decisions which we have noticed above also proceed on this principle. Each case must rest on its own facts. The Courts must examine the evidence to find out whether in the facts and circumstances of the case the conduct of the "offeree" was such as amounted to an unequivocal acceptance of the offer made. If the fact of the case disclose that there was no reservation in signifying acceptance by conduct, it must follow that the offer has been accepted by the conduct. On the other hand, if the evidence discloses that the "offeree" had reservation in accepting the offer, his conduct may not amount to acceptance of the offer in terms of Section 8 of the Contract Act.

In the present case, there is nothing on record to show that petitioner was compelled by the respondent at any stage to settle the claim at lesser amount than the claim made by it. There is also not an iota of evidence on record to show that any official of the respondent compelled the petitioner to settle the claim at lesser amount. Interestingly, petitioner after having received a sum of Rs. 1,25,92,251 as early as on 13.10.2011, had been enjoying the aforesaid money since then. The petitioner wants to have best of both the world, that is, it wants to "have the cake and eat it too." Now petitioner wants to repudiate the discharge voucher duly signed by it. This clearly shows mala fide intention on the part of the petitioner in filing the consumer complaint. Once petitioner has received the amount unconditionally and has also got the cheque encashed, under these circumstances,

petitioner ceases to be a "Consumer" as per "Consumer Protection Act, 1986" (for short, "Act"). The privity of contract or relationship of consumer and service provider between the parties if any, came to an end the moment petitioner accepted the refund unconditionally and also got the cheque encashed.

9. UNDER Section 21(b) of the Act, this Commission can interfere with the order of the State Commission where such State Commission has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

10. THERE is nothing on record to show that the order passed by State Commission is erroneous, or there is any illegality in the impugned order. The present petitions are absolutely meritless and the same being without any legal basis are dismissed with cost of Rs. 10,000 (Rupees ten thousand only). Petitioner is directed to deposit the cost by way of demand draft in the name of "Consumer Legal Aid Account" within four weeks from today.

In case, petitioner fails to deposit the aforesaid cost within the prescribed period, then it shall also be liable to pay interest @ 9% p.a., till realization. List the matter for compliance on 24.1.2014.