

COROMANDEL ENGINEERING COMPANY LTD. Vs National Insurance Co. Ltd.

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Dec. 29, 1993

Citation: 1994 3 CPJ 254

Hon'ble Judges: S.A.Kader , Ramani Mathuranayagam J.

Final Decision: Complaint dismissed

Judgement

1. THIS is a complaint under Section 17 read with Section 12 of the Consumer Protection Act.

2. THE complainant is a company of Engineering Contractors. It has taken several workmen"s compensation policy from the Opposite Party to

meet the claims of compensation made by the workers. Policy No. 500200/8600085 E/ 85/015/85 was renewed for the period from 1.4.85 to

31.3.86. THE total premium was Rs. 2,92,239/which was paid in two instalments. THE first instalment of Rs. 2,18,318/- was paid on 28.7.86

and the balance of Rs. 73,849/- was paid on 16.6.87. THE complainant preferred three accident claims (1) in respect of an accident to a worker

by name Ravichandran on 23.1.86 for Rs. 26,564/- (2) in respect of an accident which took place on 20.12.85 in which one Sunil Holder was

injured for Rs. 20,000/- and (3) in respect of a fatal accident that took place on 27.1.86 in which one Durai died for Rs. 46,772/-. THE claims

were rejected by the opposite party for alleged violation of Section 64 VB of the Insurance Act. THE complainant, therefore, claims refund of the

premium of Rs. 2,92,239.00 with interest at 21% p.a. totalling Rs. 5,72,788.00.

The complainant has taken another policy No. 500200/8600085-E85007/86(R) which was renewed for the period from 1.4.86 to 31.3.87 and

the premium of Rs. 1,81,582/-was paid on 16.6.87 (wrongly mentioned in the complaint as dated 16.6.84). Three claims were made under this

policy.

(1) An accident which took place on 7.4.86 in which one Varan Krishnaiah died for Rs. 50,000/- (2) An accident which took place on 26/9/1986

in which one Raju was injured for a sum of Rs. 16,385/-. (3) An accident which took place on 21/3/1987 in respect of one Kapil Chaudhary for

Rs. 6,074/-.

These claims were also rejected by the Opposite Party, on the ground of violation of Section 64 VB of the Insurance Act. The Opposite Party is,

therefore, bound to refund the premium of Rs. 1,81,582/- with interest at 21% p.a. totalling Rs. 3,55,900.00. The complaint is, therefore, filed to

recover both these amounts totalling Rs. 9,28,688.00.

The claims is resisted by the Opposite Party. It is contended that there is no subsisting contract of insurance and that if the amount paid by the

complainant by way of premium should be refunded with interest. It is a simple claim for recovery of money which has to file in a competent Court

of civil jurisdiction and not before this Commission as the complainant is not a consumer. It is admitted that the first policy premium was paid in

two instalments on 28.7.86 and 16.6.87 after the expiry of the period of insurance, which was from 1/4/1985 to 31/3/1986. The first claim under

that policy in respect of accident which took place on 23.1.86 was received only on 20/6/1986, certain particulars were called for and were not

furnished. In respect of the second accident which took place on 20/12/1985, the intimation was given to the Opposite Party only on 27.1.87. The

particulars called for were not furnished. In respect of the third accident, the claim was rejected for non-compliance of the provision of Section 64

VB of the Insurance Act.

3. IN the second policy covering the period from 1.4.86 to 31.3.87 the premium of Rs. 1,81,582/- was paid on 16.6.87 and not on 16.6.84 as

stated in the complaint which is after the period of expiry. IN respect of the first claim under this policy, the particulars called for were not

furnished. IN respect of the second accident which took place on 26.9.86 the Opposite Party was informed only on 7.4.88 and particulars were

also not furnished. The third claim was repudiated for violation of Section 64 VB of the INsurance Act. IN any event, there was no deficiency of

service of negligence and the claim must fail.

Exhs. A1 to A11 and B1 to B13 are marked by consent. Mr. A. Neelakantan, Law Officers of the complainant company has filed a proof affidavit.

Mr. S. Ponraj, Senior Divisional Officer has filed a proof affidavit on behalf of the Opposite Party. No oral evidence has been let in.

4. THE points that arises for consideration are: (1) Whether the claim is maintainable ? (2) Whether the claim is barred by time? (3) To what relief,

if any, is the complainant entitled ?

Point No. 1: The complainant has taken two Workmen's Compensation policies with the Opposite Party. The first policy is for the period from

1.4.85 to 31.3.86 and the second is for the period from 1.4.86 to 31.3.87. The policies are not produced by the complainant. But there is no

dispute about the period or the premium or the dates of payment of premium of payment. For the first policy covering the period from 1.4.85 to

31.3.86 the premium of Rs. 2,92,239/- has been paid partly on 28.7.86 and partly on 16.6.87. Both these payments are after the expiry of the

period of policy. In respect of the second policy for the period from 1.4.86 to 31.3.87 the premium of Rs. 1,81,582/- has been paid on 16.6.87, 2

months after the expiry of the policy. Under Section 64 VB of the Insurance Act no insurer shall assume any risk in India in respect of any

insurance business, unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within

such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner. In

the instant case, the premium under both these policies have been paid after the expiry of the policy and hence there was on concluded contract of

insurance. The mere fact that the premium subsequently paid after the expiry of the period of policy was accepted by the Opposite Party does not

retrospectively validate the policy. The Opposite Party has, therefore, rejected the claims under these two policies merely on the ground of

violation of Section 64 VB of the Insurance Act. The complainant itself has accepted this and filed this complaint not for recovering the claim

amounts but only for recovering the premium paid on each policy with interest at 21% p.a. It is, therefore, clear that there was no concluded

contract of insurance in respect of both these policies. When there is no contract of insurance, the proposer cannot be said to be a consumer within

the meaning of Section 2(1)(d)(ii) of the Consumer Protection Act, as he has not hired the services of the Opposite Party for any consideration

under policy of insurance. The claim for refund of the premium as rightly contended by the Learned Counsel for the Opposite Party, is a pure claim

for money and has to be filed in a Court of competent civil jurisdiction. The complaint is not, therefore, maintainable.

Point No. 2: Assuming that the complaint is maintainable, the question is whether the claim is barred by time. The claim for refund of the premium is

only on the basis of mistaken payment. A suit for refund of money paid under mistake falls under Article 113 of the Limitation Act of 1963 and the

period is 3 years from the time when the right to sue accrues. Under Section 17(1)(c) of the Limitation Act of 1968 in a suit for relief from the

consequence of a mistake the period of limitation shall not begin to run until the plaintiff has discovered the mistake or could with reasonable

diligence have discovered it. Hence the period of limitation has to be reckoned from the date of discovery of the mistake or from the date when

with reasonable diligence the complainant could have discovered the mistake. When the complainant pays the premium after the date of expiry of

the period of insurance, it is a mistake known to it even at the time of payment and limitation has therefore, to be calculated from the date of

payment. The first instalment of the premium for the first policy has been paid on 28.7.86 and the claim for refund must be filed on or before

28.7.89; the 2nd instalment of the premium for the 1st policy has been paid on and the claim must have been filed on or before 16.6.90. The

premium for the 2nd policy has been paid on 15.6.87 and the claim must have been preferred on or before 16.6.90. But the claims herein have

been preferred in November 1992. They are hopelessly barred by time.

5. IN view of our findings in point Nos. 1 & 2 the complainant is not entitled to any relief.

6. IN the result, the complaint fails and is dismissed, but without costs. Complaint dismissed.