

(1990) 03 NCDRC CK 0010

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

JOGENDRA NARAYANA
PRASAD

APPELLANT

Vs

DIVISIONAL
MANAGER, ORIENTAL
LIFE INSURANCE CO.
LTD

RESPONDENT

Date of Decision: March 10, 1990

Citation: 1991 0 CPC 559 : 1991 1 CPJ 236 : 1993 1 CLT 16

Hon'ble Judges: V.Balakrishna Eradi , A.S.Vijayakar , Y.Krishan , Rais Ahmed J.

Advocate: V.Gourisankara Rao , V.P.Chaudhary

Judgement

1. -BRIEFLY, the case of the complainant is that his hotel "Chaya" at Vijayawada in Andhra Pradesh as looted and burnt on 26.12.1988. In the disturbances in the wake of the murder of a Congress (I) M. L. A. of Vijayawada. The complainant had insured his hotel with the Opposite Party, Oriental Insurance Co. Ltd. , for a sum of Rs. 23.70 lakhs (Hotel only Rs. 4 lakhs, Air Conditioners Rs. 3 lakhs other properties Rs. 16.70 lakhs). The actual loss incurred by the complainant was assessed by him at Rs. 24.40 lakhs. The Executive Engineer nominated by the Government of Andhra Pradesh assessed the loss sustained by the commercial establishments, cinema houses, theatres, etc., due to the arson on 26.12.1989. On the basis of the Executive Engineer"s assessment. Revenue Divisional Officer/Sub-Collector. Vijayawada, certified on 21.2.1989, that the complainant had, sustained an actual loss of Rs. 22.40 lakhs in respect of hotel "Chaya" during the disturbances in the last week of December, 1988 and that the party had been insured at Nine lakh rupees lakhs and "finally persuaded me to accept the settlement of Rs. 15.00 lakhs against my will, free consent and satisfaction". He further alleged that he was persuaded to accept his signature on typed consent letter in which the amount of loss to be paid by the Insurance Company was kept blank. The complainant has alleged "the opposite party has taken my signature on a blank figured letter, so that the opposite party

may fill that blank with the amount which they may like." The Divisional Manager for the opposite party) on 8.8.1980 however agreed to settle the complainant's claim at Rs. 5,57,140/- which according to the complainant, "was against the oral settlement arrived on 5.5.1989 at Rs. 15 lakhs." On the complainant's protest in September 1989 the opposite party enhanced the settlement amount by Rs. 20,922/-. The complainant signed the "Form of Discharge" for Rs. 5,57,140/- on 11.8.1989 and had given an undated note in writing that he agreed to the assessment of loss at Rs. 5,88,108/- in full and final settlement after discussion.

2. NOW the complainant has pleaded that he was threatened that if he did not accept the settlement at Rs. 15 lakhs, the matter, would be prolonged for years to come and in the meanwhile he would have to pay interest on the loans taken by him from the Andhra Pradesh Financial Corporation and in consequence he would not be in a position to re-construct his hotel. The complainant has averred that "under this pressure, influence, false representation, threat, under utter confused statement of mind, I was forced to give my acceptance even against my own will, free consent and satisfaction." He claims that the acceptance letter under these circumstances has no validity in law and cannot bind him.

The opposite party has stated, that the surveyors appointed by it had observed that "at the time of loss the insured property has been under-insured and the amount of loss given by the complainant is highly excessive and has no proportion to the actual loss." It is seen from the certificate issued by the R. D. O. /Sub-Collector on 21.2.1989 already referred to above that the hotel "Chaya" was insured for Rs. 9 lakhs only. The opposite party has also objected to the complaint on the ground that the insured has given discharge for the claim settled by the insurer. It has also denied that it ever coerced and threatened the insured into accepting the settlement and that if the insured complainant felt that the amount offered by the Insurer/opposite party was not sufficient fair, it could have sought arbitration as provided in the policy of Insurance.

We have carefully gone into the matter perused the record and heard Counsel for the complainant. There is not evidence to establish that the Complainant had not given valid discharge to the Insurer or that the Insurance Company had coerced the complainant into accepting the settlement unwillingly and involuntarily. Not only the undated note written by the complainant in his own handwriting stated that he agreed to the assessment of loss at Rs. 5,88,108/- after due discussion and in full and final settlement but his letter dated 10.8.1989 to the Divisional Manager of the Insurance Company leaves no room for doubt that he had, after discussion, freely

and voluntarily agreed to accept the sum of Rs. 6.50 lakhs. (The amount actually paid was Rs. 5.78 lakhs. The difference is, however, not relevant for the purpose of this complaint). In fact this letter speaks of an amount of Rs. 6.50 lakhs settled and agreed to by both the parties on 5.5.89.

3. EVEN if, it is assumed that the complainant was coerced into giving his consent, then it will not be a mere case of deficiency in service by the opposite party, but also a case of fraud for which the complainant can seek redress from the appropriate Court.

The complaint is therefore dismissed with costs of Rs. 500.00 to be paid to the opposite party within thirty days from today. Complaint dismissed.