

(2011) 11 NCDRC CK 0029

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Khaitan Electricals Ltd

APPELLANT

Vs

National Insurance Co Ltd

RESPONDENT

Date of Decision: Nov. 23, 2011

Citation: 2012 1 CPJ 276

Hon'ble Judges: Ashok Bhan , Vineeta Rai J.

Final Decision: Revision Petition allowed.

Judgement

1. THIS revision petition has been filed by M/s. Khaitan Electricals Ltd. (Petitioner hereinafter) being aggrieved by the order of the West Bengal Consumer Disputes Redressal Commission, Kolkata in favour of the National Insurance Company Ltd. (Respondent hereinafter). In its complaint before the District Forum, the Petitioner-complainant had contended that it had been insuring its computers, monitors and printers etc. with the Respondent Insurance Company and had been regularly paying the premium. In 1994, the Petitioner Company as per orders of the High Court had amalgamated with M/s. Khaitan Electricals Ltd. which had also been insuring its computers, etc. with the Respondent Insurance Company and, therefore, after the amalgamation, Petitioner requested the Respondent to issue endorsements for renewing both the policies for 12 months ending on 31.7.1998 which the Respondent complied with. Thereafter the Petitioner sent a cheque to the Respondent in respect of the insurance policy for a sum of Rs. 5,167 as renewal premium.

2. ON 6.5.1999 a devastating fire broke out in the Petitioner's factory causing widespread damage including to its computers, etc. covered by the fire insurance

policy. Respondents were informed about this incident on the same day and the details of the estimated loss were also intimated to the Respondent. Respondent thereafter appointed a Surveyor to assess the loss but even after the Surveyor had given its report and despite several reminders the Respondent did not settle the Petitioner's insurance claim. Finally on 7.5.2001 the Petitioner on enquiry came to know that out of the two cheques which had been sent on the same date under separate covers to the Respondents for Rs. 5,167 and Rs. 36,410, only the cheque for Rs. 36,410 had been encashed by the Respondent and the second cheque for Rs. 5,167 had not even been sent for collection, even though the Petitioner had sufficient balance in his bank account. The Petitioner accordingly contacted the Respondent's regional office which informed that all the papers received from the Petitioner in respect of the insurance claim had been sent for settlement to the concerned division. However, since there was no response even thereafter, the Petitioner issued a legal notice and later filed a complaint with the District Forum on grounds of deficiency in service since even after having paid the premium due which was duly received by the Respondent, Respondent had failed to renew the policy and indemnify the Petitioner for the loss suffered in the fire. Petitioner requested that the District Forum direct the Respondent to settle its claim for Rs. 2,20,000 i.e. the loss assessed by the Surveyor with interest @ 18% from the date of loss as also Rs. 10,000 for mental suffering.

3. RESPONDENT on the other hand denied the above contentions and inter alia stated that the claim was not settled because it was not legally maintainable since the Respondent Insurance Company had not received the premium for the policy in question and further appointing of Surveyor does not necessarily mean that the Respondent had accepted the loss suffered by the Petitioner or that it had accepted that the insurance policy was valid on the day of the fire.

4. DISTRICT Forum after hearing both the parties and considering the evidence on record came to the conclusion that the complaint is not covered under the Consumer Protection Act, 1986 since a limited company is not a person within the meaning of the said Act and, therefore, it cannot file a complaint before the Consumer Fora. Therefore, while dismissing the complaint District Forum suggested that the Petitioner/complainant may approach the Civil Court for redressal of its

grievance, if so advised.

5. AGGRIEVED by this order, the Petitioner filed an appeal before the State Commission which after hearing the parties and going through the evidence on record came to the conclusion that the case of the Petitioner falls very much within the ambit of the Consumer Protection Act, by observing as follows:

"The learned Advocate for the Respondent has argued before us that the complainant was not a Consumer at all because admittedly he purchased the policy in question in respect of the articles which were the subject matter of his business and being thus governed by commercial motive he could not be categorized as a Consumer under the definition of the term as given in Section 2(1)(d) of the Consumer Protection Act, 1986. But we are not impressed by this argument. The amendment in the Consumer Protection Act under which a person having a commercial purpose in respect of any service will be debarred from being termed as a Consumer, came in force w.e.f. March, 2003 while this case was filed in the year 2001. The said amendment having not given any retrospective effect (this matter cannot be termed as a procedural one), this amendment obviously had no effect on the particulars of this case. So the point canvassed by the Respondent that the complainant was not a Consumer at all cannot be accepted."

6. SO far as the deficiency in service on the part of the Respondent is concerned, the State Commission concluded that the Petitioner had not been able to produce even an iota of evidence like money receipt, etc. to support its claim that it had paid the premium for renewal of the policy. Therefore, in the absence of any concrete proof the State Commission observed that the District Forum had rightly concluded that the loss of articles in the complainant's factory were not covered by any policy of insurance on the date of the fire. The State Commission, therefore, dismissed the appeal with no order as to costs. Hence the present revision petition.

7. LEARNED Counsel for both the parties made oral submissions. Counsel for the Petitioner pointed out that the Fora below erred in concluding that there was no proof that Petitioner had paid the renewal premium in respect of its insurance policy. Petitioner stated that there was documentary evidence confirming that the Respondent/Insurance Company had through its official seal and signature acknowledged receipt of the cheque received by hand from the Petitioner. Under the circumstances there was no justification for the Insurance Company to repudiate the insurance claim because of its own failure to encash the duly received and acknowledge premium renewal cheque. Counsel for the Petitioner also brought to our notice several judgments including of the Hon"ble Supreme Court in Hanuman Industries v. New India Assurance Co. Ltd., AIR 1997 Del. 160, wherein the Apex Court has ruled that the risk in respect of an insurance policy would have to be assumed by the Insurance Company from the date on which the premium was paid by cheque to the insurer. In the instant case the premium cheque was paid (by the Petitioner) and received by the Respondent Insurance Company on 29.7.1998 and, therefore, the insurance claim was liable to be indemnified in respect of the losses incurred by the Petitioner on 6.5.1999 which were within the one year validity period of the insurance policy. Counsel for the Respondent on the other hand denied that the cheque had been received on the date stated by the Counsel for Petitioner and again reiterated that it had received only one cheque for Rs. 36,410, which had been encashed but not the second cheque for Rs. 5,167. Therefore, the question of encashing the cheque did not arise. Counsel for the Respondent however, was unable to explain the official seal of acknowledgement confirming receipt of the cheque for Rs. 5,167 in respect of the insurance policy in question.

8. -9. WE have heard learned Counsel for both parties and have carefully gone through the evidence on record. The point in issue is whether there is adequate proof that the Petitioner had sent a cheque for renewal of insurance premium on 29.7.1998. From the evidence filed before the District Forum, we note that there is a document on the letterhead of Khaitan Electricals Ltd. i.e. the Petitioner addressed to the Respondent's Divisional Manager which reads as follows:

"To, The Divisional Manager National Insurance Co. Ltd. Divn XVII, Fairlie Place Calcutta 700001 Dear Sirs Sub: Renewal of Electronic Equipment (Computer) Insurance Policy. (1) Policy No. 1015/44/93/60/00031 (2) Policy No. 1015/44/95/60/00059 Please find enclosed herewith cheque No. 538035 dated 29.7.1998 for Rs. 5,167 (Rupees five thousand one hundred and sixty-seven only) towards renewal of the above policy. Please acknowledge the receipt of the above payment and send your official money receipt and policy bond. Thanking You Yours

faithfully"

10. WE also note that this has been stamped with an official seal along with the signatures of the concerned official of the Insurance Company dated 29th July, 1998 that this cheque has been received "by hand". Therefore, the Respondent cannot take the plea that the cheque was not encashed because it had not been received. When Counsel for the Respondent was asked to explain this fact by us during his oral submissions, he was unable to do so. Therefore, having received the cheque, it was purely negligence and deficiency in service on the part of the Respondent in not renewing the insurance policy. As pointed out by Counsel for the Petitioner, it is well settled through various rulings including of the Hon"ble Supreme Court that the risk of insurance starts from the day when the premium is paid by cheque to the insurer. In the instant case, the premium was paid by cheque on 29.7.1998 and, therefore, the Respondent was bound to have renewed the insurance policy and indemnified the claim. The State Commission erred in not taking cognizance of this important piece of documentary evidence while arriving its conclusions. WE therefore, set aside the orders of the State Commission and allow the revision petition. The Respondent Insurance Company is directed to pay the Petitioner a sum of Rs. 2,20,000 as assessed by the Surveyor with 9% interest from the date of filing of the complaint till realization. Revision petition is disposed of on the above terms. Revision Petition allowed.