

(2010) 01 NCDRC CK 0004

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Mangal Chand Pawan Kumar

APPELLANT

Vs

Oriental Insurance Company Ltd

RESPONDENT

Date of Decision: Jan. 28, 2010

Citation: 2010 2 CPJ 118

Hon'ble Judges: Ashok Bhan , B.K.Taimni J.

Final Decision: R.P. disposed of

Judgement

1. MR. B.K. Taimni, Member-Petitioner was the complainant before the District Forum where he has filed a complaint against the respondents alleging deficiency in service.

2. UNDISPUTED facts of the case are that the petitioner purchased 152 bags of khandsari from M/s. Hina Sugar Industry, Bareilly, U.P. valued at Rs. 1,18,000. It was loaded on 7.3.2004 in a truck for delivery to its destination in Siliguri, by one Diamond Forwarding Agency, Bareilly. The said consignment did not reach its destination at Siliguri and was looted in transit. The matter was reported to the police station at Motipur which submitted a final report(FR). It is also not in dispute that the petitioner had an "Open Marine Policy" issued by the R-I Oriental Insurance Company, Bareilly. It is also not in dispute that the complainant declared the dispatch of the said 152 bags of khandsari vide its declaration No. 14 dated 7.3.1991. When the consignment did not reach the destination, the matter was reported to the Insurance Company which appointed a Surveyor and all material information was supplied to the Surveyor yet when the issue was not getting settled between the parties, a complaint was filed by the petitioner before the District Forum which

was dismissed by the District Forum, Siliguri Circuit Bench on the ground that the District Forum at Siliguri did not have the territorial jurisdiction to entertain the complaint.

3. AGGRIEVED by this order, the petitioner filed appeal before the State Commission which was also dismissed, and also held in para six of the impugned order as follows:

"However, though we find that the appellant is otherwise eligible for being compensated against the loss, I am inclined to say that since the complaint which was filed before the learned Forum prior to amendment of the C.P. Act 1986 (as amended in 2002) the appellant cannot claim himself to be a consumer within the meaning of the said Act in view of the above position, this appeal is not maintainable, therefore, the appeal be dismissed on contest without any order as to cost."

4. AGGRIEVED by this order this revision petition has been filed before us.

5. THE notice was issued to the parties. Since none was appearing on behalf of R-2, the directions was given to the petitioner to serve through publication which has been done and service is thus complete. None appeared for the Insurance Company despite notice having been issued on 9.12.2009 for today's date and notice has not come back unserved, hence notice would be deemed to have been served. They are proceeded ex parte.

6. PARTIES were heard. In our view the limited issue in this case is with regard to the jurisdiction of the DF Siliguri to entertain the complaint filed by the petitioner/complainant?

7. AFTER hearing the parties and perusal of the record we are left with no doubt that the petitioner/complainant located in Siliguri had obtained an "Open Marine Policy" from the respondent Insurance Company. It is also not in dispute, that the Declaration under the "Open Marine Policy" was issued by the petitioner from Siliguri itself. It is also not in dispute that the consignment was to be delivered to the complainant at Siliguri. In the aforementioned circumstances we like to reproduce Section 11 of the Consumer Protection Act which reads as follows:

"11. Jurisdiction of the District Forum-(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees twenty lakh. (2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or [carries on business or has a branch office or] personally works for gain, or (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or [carries on business or has a branch office], or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or [carry on business or have a branch office], or personally work for gain, as the case may be acquiesce in such institution; or (c) the cause of action, wholly or in part, arises.

8. WE like to state here that both the lower Fora have relied on Section 11(2)(a) and (b) but have not dealt with the provision of Section 11(2)(c) which reads as follows:-

"the cause of action, wholly or in part, arises"

(Emphasis supplied)

9. IF we go through facts of the case, as stated earlier, it is not in dispute that the policy was issued to the policy holder who is located in Siliguri, and more importantly, the Declaration of the consignment was issued by the insured from Siliguri to the Insurance Company, thus in our view, "cause of action in part" arose in Siliguri. It also needs to be appreciated that as per catena of judgments of the Supreme Court and this Commission, it has been severally held that the interpretation of clauses of C.P. Act has to be done liberally in favour of the consumer.

10. AS far as observations of the State Commission in para six of the order is concerned, we are unable to appreciate the merit of this paragraph. We are quite clear that before amendment to the Consumer Protection Act in 2002, complaints against the Insurance Company was covered under 2(l)(d)(ii) of the C.P. Act. After the amendment to the C.P. Act in 2002 this Commission has also held in the case of Harsolia Motors v. National Insurance Company, I (2005) CPJ 27 (NC), FA 159 of 2004, that even after amendment carried out in 2002, by which explanation to Section 2(l)(d)(ii) was added, despite this, the complaints against the insurance companies would continue to be entertained by the C.P. Act. In view of the above we see no merits in this finding of the State Commission.

11. AS discussed above cause of action in part arose in Siliguri, by virtue of which we are unable to sustain the order of both the lower Fora which are set aside and case is remanded back to the District Forum to decide the case on merits as per law, following the provisions of Section 13 of the Consumer Protection Act. R.P. disposed of.