

**(2010) 08 NCDRC CK 0028**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

United India Insurance Co. Ltd

APPELLANT

Vs

Joy Hukil, S/o Shri Ashok John  
Hukil

RESPONDENT

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**Date of Decision:** Aug. 26, 2010

**Citation:** 2010 0 NCDRC 148 : 2010 3 CPJ 466

**Hon'ble Judges:** R.C.Jain , Suresh Chandra J.

**Final Decision:** Appeal is partly allowed

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**Judgement**

1. AGGRIEVED by the order dated 18.07.02 passed by the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow (in short, the State Commission) in case No. 47/SC/92, the United India Insurance Company has filed the present appeal. By the impugned order, the State Commission has partly allowed the complaint filed by the complainant, Joy Hukil and has directed the appellant insurance company to pay a sum of Rs.1,50,000/- along with interest @ 18% p.a. from 18.09.88 till the date of payment, besides costs of Rs.3,000/-.

2. THE facts and circumstances on which the complaint was filed before the State Commission are that the above named complainant has established fishery by taking financial assistance to the tune of Rs.1,31,000/- from the Bank of India, Hardoi. He started the fishery by purchasing fish seeds worth Rs.48,750/-. In order to safeguard its interest, Bank had taken an insurance policy from the appellant company for the period from 1.02.88 to 31.01.89 by paying premium of Rs.3,750/-. It was alleged that while the process of growing fishes was on, in the night intervening 17/18.06.88 there was heavy rain to the extent of 7cms. thereby causing a breach in

the nearby bandh which flooded the fishery of the complainant as a result of which the fishes were either swept away or died. THE Bank as well as the insurance company were informed of the occurrence on 18.06.88. THE Insurance Company appointed the Surveyor/Loss Assessor, Rakesh Aggarwal to assess the loss. However, vide letter dated 16.06.89 the insurance company repudiated the claim. Accordingly, the complaint was filed which was contested by the insurance company on a variety of grounds. One of the grounds put forth by the insurance company to deny deficiency in service or settlement of the claim was that the loss occasioned to the complainant on account of flood etc. was not covered under the terms of the policy. Yet another plea raised on behalf of the insurance company was that the complaint was barred by limitation, the complaint having been filed on 06.03.92, i.e., after a lapse of three years from the date of repudiation and if calculated from the date of cause of action it was four years. It was further contended that filing of such complaint was hit by clause 12 of the terms and conditions of the policy.

The complaint was earlier answered by the State Commission vide order dated 22.03.01 and accepting the above plea of the insurance company in regard to complaint being barred by limitation, the State Commission dismissed the complaint. Aggrieved by the said order passed by the State Commission, the complainant filed First Appeal No. 96/01 before this Commission which was disposed of by an order dated 23.11.01 with the following observations:- The only ground on which the claim was rejected by the State Commission was Clause 12 in the insurance policy and the judgment of the Supreme Court in M/s. National Insurance Co. Ltd. Vs. Sujir Ganesh Nayak & Co., II (1997) CPJ 1 (SC). Clause 12 of the insurance policy is as follows:- It is also hereby further expressly agreed and declared that if the company shall disclaim liability to the insured for any claim hereunder and such claim shall not, within 12 calendar months from the date of such disclaimer have been made the subject matter of a suit in a Court of law then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter recoverable hereunder. This Commission had an occasion to consider the question of limitation and had come to the conclusion that such a clause after the amendment of Sec.28 of the Contract Act could not override the provision of law. The amendment to Sec.28 was not brought to the notice of the Honble Supreme Court when that Judgment was rendered and its scope has consequently not been discussed therein. In view of our judgment in Real Laminates (P) Ltd. s. M/s. New India Assurance Co. Ltd., First Appeal NO.450 of 1995, this appeal is accepted and the matter is remanded to the State Commission to determine the quantum of claim of the Petitioner on merits. A copy of this order passed by this Commission in First Appeal No.450 of 1995 be also sent to the State Commission.

On remand, the State Commission vide order dated 18.07.02 allowed the complaint, this time by negating the plea of the insurance company in the above manner. Aggrieved by the said order, the insurance company filed the present First Appeal No. 289/02 which was disposed of by this Commission vide order dated 19.09.02 by

observing as under:- In this case challenge has been thrown to the impugned order whereby the claim of the Complainant was decreed to the extent of Rs.1.50 lakhs with interest @ 18% and costs of Rs.3,000/-. The only argument raised by the counsel before us is that quantification of the amount is not precise. In this case, it is admitted that the Surveyor was firstly appointed late and then he visited the site after two months. Survey Report has not been placed on record. The Respondent arguing the case himself has pointed out that the Surveyor had reported loss of over 69,000 fishes, each weighing about 2-3 kg. Furthermore, after the submission of the report also the insurance company took about a year to repudiate his claim. Such a long delay is in itself a deficiency. Apart from that we do not find any merit in this appeal. It is dismissed subject to one variation that the rate of interest appears to be on the higher side and it is reduced from 18% to 12% p.a. Another question is raised regarding limitation. That need not be considered as the applicant has failed on merits.

3. IT would appear that still not satisfied the United India Insurance Company Ltd. challenged the order of this Commission dated 19.09.02 passed in the First Appeal No. 289/02 by filing Civil Appeal No.9199/03 in the Supreme Court. The said appeal was finally answered by the Supreme Court vide order dated 05.05.09 observing as under:- This appeal has been filed against the impugned order dated 19.09.2002 of the National Consumer Disputes Redressal Commission, New Delhi. Heard learned Counsel for the parties. Ld Counsel for the appellant has submitted that he pressed at the time of hearing certain grounds mentioned in the Memorandum of Appeal before the National Consumer Disputes Redressal Commission. However, there is no mention of those grounds in the impugned order. The presumption in law is that if a point is not discussion in an order it was never pressed at all. IT often happens that in the Memorandum of Appeal, say, 10 grounds are mentioned, but at the time of hearing only three of them are pressed. The presumption therefore will be that the other seven grounds were given up. However, it is only a rebuttable presumption, and if a party is of the view that in fact those other points which have not been dealt with, were pressed at the time of hearing then the party will have to go to the same Court and not the Appellate Court by way of a suitable application, stating that these points were in fact pressed but they have not been dealt with. If the Court is satisfied that those points were in fact pressed, it may consider and deal with those points. Hence, while we dismiss this appeal, we leave it open to the appellant to approach the National Commission in this connection. The amount deposited by the appellant shall be refunded to the appellant.

Hence, the First Appeal is again before us. We have heard Mr. A.K. De, learned counsel for appellant insurance company and Mr. Chandra Mani, officer of the respondent no.2, Bank of India but had not the advantage of hearing the say of the respondent no.1/complainant as no one appeared from his side at the time of hearing of the appeal after it was remanded back by the Supreme Court.

4. MR. De, learned counsel for the appellant would assail the impugned order primarily on the strength of the clause 12 of the terms and conditions of the policy which reads as under:- It is also hereby further expressly agreed and declared that if the company shall disclaim liability to the insured for any claim hereunder and such claim shall not, within 12 calendar months from the date of such disclaimer have been made the subject matter of a suit in a Court of law then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter recoverable hereunder.

On the strength of above clause, the contention of Mr. De is that the complaint filed before the State Commission is hit by the said clause inasmuch as the complaint was admittedly not filed within 12 calendar months from the date of repudiation of the claim by the insurance company, the claim being repudiated by letter dated 16.06.89 and the complaint was filed only on 06.03.92. According to Mr. De, Clause 12 is binding on the parties and is inconformity with Section 28 of the Contract Act as it stood prior to amendment by the Amending Act I of 1997 w.e.f. 8.1.97.

There is no quarrel with this legal position because the clause 12 existed in the agreement prior to coming of the said amendment in Section 28 of the Contract Act. However, the important question is as to whether in the given facts and circumstances and on a true interpretation of clause 12 whether, the complaint filed on 6.03.92 can be said to be barred by limitation. Our answer is a big NO because the limitation of 12 calendar months for filing the claim after the disclaimer is only in relation to the proceedings in the nature of suit in a court of law. The suit in a court of law necessarily means a civil suit in a competent civil court under the Code of Civil Procedure, 1908. The question as to whether the proceedings before a consumer court can be said to be a suit and the consumer forum, a civil court has been considered by the Supreme Court in a recent case *E.I.C.M. Exports Ltd. v. South Indian Corpn. ( Agencies) Ltd. & Anr.* III (2009) CPJ 73 (SC,) though in connection with Indian Carriage of Goods by Sea Act, 1925. The relevant observations are as under:- Learned counsel for the appellant has contended that the National Commission has erred in dismissing the complaint as barred by limitation, applying the Indian Carriage of Goods by Sea Act, 1925 in which limitation of one year has been

provided. He further contended that this Act does not apply at all to the facts of the present case and instead Section 24A of the Consumer Protection Act, 1986 will apply. On a plain reading of the aforesaid provision, it is clear that the aforesaid provision will be applicable in the case where a suit is filed. In the present case, the appellant did not file any suit but filed a complaint before the Consumer Forum. The word suit has a technical meaning which denotes proceedings instituted under section 9 of the Civil Procedure Code, 1908. All legal proceedings in the country are not suits. There are petitions / complaints / applications before various Tribunals or authorities but they are not suits as per section 9 of the CPC. In our opinion, a complaint before Consumer Forum is not a suit, and hence, the Indian Carriage of Goods by Sea Act, 1925, is not applicable to the facts of the present case and the Consumer Protection Act, 1986, will only be applicable.

5. IN view of the legal position explained in the above referred decision there is no escape from the conclusion that the complaint filed by the complainant before the State Commission beyond the period of 12 calendar months after the repudiation of the claim was maintainable before the consumer forum. Whether the complaint filed before the consumer forum was barred by limitation, we may observe that before the incorporation of Section 24A by Amending Act 15 of 1993, the Consumer Protection Act did not prescribe any period of limitation and ordinarily the complaints were being entertained within three years from the date of cause of action. Complaint in this case was filed on 06.03.92, i.e. before the incorporation of section 24 A in the Consumer Protection Act, 1986 and, therefore, limitation period of three years should apply in this case. Computing the period of limitation from the date of repudiation, i.e., 16.6.89, the complaint was filed well within time.

6. MR. De did not dwell on any other ground least the compensation awarded by this State Commission in this case. The State Commission has observed that though the damage suffered by the complainant was to the tune of Rs.13,89,500/- as assessed by the surveyor but as the policy was only in the sum of Rs.1,50,000/-, the award of compensation has been restricted to the amount of policy. In our opinion, the order passed by the State Commission so far as awarding the sum of Rs.1,50,000/- is justified in the facts and circumstances of the case. However, we find that the award of interest @ 18% p.a. is on higher side and we would like to reduce it

to 12% so as to make reasonable.

In the result, the appeal is partly allowed, the finding of the State Commission so far as it has held the appellant insurance company guilty of negligence in service in settling the claim of the complainant as also the award of compensation of Rs.1,50,000/- is hereby upheld but the stipulation in regard to payment of interest @ 18% p.a. is modified to 12% p.a. from 18.09.88 till the date of payment. The parties are left to bear their costs throughout.