

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

"An aware consumer is an asset to the nation"

Website : www.advantageconsumer.com

VOLUME – XXXV

MAY 2023

ADVANTAGE - V

Queries & Answers through the Web

(www.advantageconsumer.com) is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

Insurance Company directed to pay the Claim amount to the insured, as the Group Insurance premium had been paid, as per the terms of the Policy, well in time.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6731 OF 2022

Smt. Sulakshna...Appellant(s)

Versus

Oriental Insurance Co. Ltd.& Anr....Respondent(s)

JUDGEMENT

M.R.SHAH,J.

1. Feeling aggrieved and dissatisfied with the impugned judgement and order dated 04.02.2016 passed by the National Consumer Disputes Re-dressal Commission, New Delhi (hereinafter referred to as the National Commission) in Revision Petition No. 2675 of 2015, the original complainant as preferred the present appeal.
2. There was an agreement between respondent No.1 and respondent No. 2 herein regarding issuance of insurance cover. It was a group insurance. That a sum of Rs.4,000/- was deposited with respondent No.2 towards premium on 31.12.2006. Respondent No.2 issued a cover note on the very day ie on 31.12.06.

The husband of original complainant died on 17.02.2007 in a road accident. However, it appears that respondent No. 1 - insurance company issued policies for the period from 09.03.2007 to 08.02.2008 on the ground that respondent No.2 credited the amount of premium on 09.03.2007. Therefore, respondent No. 1 - Insurance company refused to pay the amount and refused to settle the claim. Therefore, the complainant filed Complaint Case No. 132/10 before the District Consumer Disputes Redressal Forum, Rohtak (here in after referred to as the District Forum). In the said complaint, a statement was made on behalf of the counsel appearing for respondent No. 1 - Insurance company that they will settle the claim of complainant within time period of one month if the complainant submits required document to the company. Accordingly, the District Forum disposed of the said complaint vide order dated 14.10.2010. However, thereafter, the claim was not settled and therefore, the appellant herein - original complainant again approached the District Forum being Complaint No.278. By order dated 13.01.2015, the District Forum allowed the said complain the District Forum allowed the said complaint and directed respondent No.1 to pay the sum insured in the respective policies amounting to Rs. 2,50,000/-and Rs. 2,00,000/-along with interest@ 9% per annum.

2.1 Feeling aggrieved and dissatisfied with the order passed by the District Forum allowing the complaint, respondent No. 1- Insurance company preferred the appeal before the State Consumer Disputes Redressal Commission (hereinafter referred to as the State Commission) being First Appeal No. 169 of 2015. The State Commission dismissed the said appeal. Thereafter,

respondent No. 1 preferred revision petition before the National Consumer Disputes Redressal Commission. By the impugned judgment and order, the National Commission has allowed the said revision petition preferred by respondent No. 1 herein and set aside the order(s) passed by the District Forum and State Commission, which has given rise to the present appeal at the instance of the original complainant.

3. Having heard learned counsel appearing on behalf of the respective parties at length and having gone through the judgment and order(s) passed by the District Forum, State Commission and National Commission and the relevant material on record and the certificate dated 01.12.2005 issued by the Divisional Manager, it can be seen that respondent No. 2 herein was authorised to accept the premium for and on behalf of respondent No.1- insurance company. Thereafter, it was for respondent No. 2 to recover the amount of premium for and on behalf of respondent No.1-insurance company and was required to remit the same to respondent No.1-insurance company and the policy was required to be issued by the insurance company. It is the case on behalf of the complainant and that the deceased husband paid the amount of premium of Rs. 4,000/- with respondent No. 2 on 31.12.2006 and therefore the insurance cover would commence from the completion of the fifteen (15) days of payment of premium. It may be true that respondent No. 2 might have remitted the premium with the insurance company belatedly. However, for the same insured cannot be made to suffer. Under the circumstances, the insured shall be entitled to the amount insured under the policies for which the amount of premium was already paid prior to the death of the insured. Under the circumstances, the National Commission has committed a very serious error in allowing the Revision petition and setting aside the orders passed by the District Forum as well as the State Commission. The impugned judgment and order passed by the National Commission is unsustainable.
4. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the National Consumer Disputes Redressal Commission in Revision Petition No. 2675 of 2015 is hereby quashed and set aside.

The order passed by the District Forum confirmed by the State Commission is hereby restored. The appellant shall be entitled to the claim amount under the policies along with the interest as ordered by the District Forum to be deposited within a period of eight weeks from today. The present appeal is accordingly allowed. No cost.

NEW DELHI;
SEPTEMBER 23, 2022

.....J.
[M.R.SHAH]

.....J.
[KRISHNAMURARI]

-----***-----

Complaints with ‘highly disputed questions of facts’ cannot be decided by Consumer Disputes Redressal Commission/Forum: Supreme Court

Supreme Court quashed the original complaint and said that respondent miserably failed to discharge his burden to prove deficiency in service on part of the bank (C.A. No.-007289 / 2009).

By Ridhi

City Union Bank Ltd. Vs. R. Chandramohan

(Ms. Bela M. Trivedi J. – Order dated 27-03-2023)

Supreme Court: In an appeal challenging the National Consumer Disputes Redressal Commission (‘NCDRC’) dismissing the appeal against Tamil Nadu State Consumer Disputes Redressal Commission (‘SCDRC’) holding the bank liable for deficiency in service under Section 2(1)(g) of Consumer Protection Act, 1986, the Division Bench of Ajay Rastogi and Bela M. Trivedi, JJ. held that complaints involving highly disputed questions of facts could not be decided by NCDRC or SCDRC respecting the summary nature of proceedings under the 1986 Act.

The original complainant (‘respondent’ in the present matter) filed a complaint against the appellant bank before the Tamil Nadu State Consumer Disputes Redressal Commission (SCDRC) seeking directions against the bank to re-credit Rs 8 lakhs covering two demand drafts (‘DDs’) of Rs 5 lakhs and 3 lakhs in his Current Account. The respondent alleged that he was the Managing Director of ‘D-Cube Constructions (P) Ltd.’, and there were Directors of the said company.

A Current Account was opened in the name of respondent's company with the bank on 13-4-1995 and only respondent could operate the same. There was a misunderstanding between the respondent and one of the Directors after which he wrote a letter on 8-1-1997 to the bank restricting any withdrawal from the company's account.

The respondent claimed that an NRI had informed him of sending two DDs of Rs 5 lakhs and Rs 3 lakhs, total amount being Rs 8 lakhs which were not credited in the company's account. Later, it was found that another account in the name of 'D-Cube Construction' was opened, and the two DDs were credited in that account. The respondent approached SCDRC alleging collusion and negligence on part of the bank regarding the two DDs. SCDRC allowed the respondent's complaint with cost and directed the bank to pay the sum of Rs 8 lakhs with compensation of Rs 1 lakh. Appeal before NCDRC was dismissed which has been challenged in the instant appeal.

The Court pointed towards the summary nature of proceedings and considered the question of whether Consumer Disputes Redressal Commission/Forum could entertain the complaint involving highly disputed questions of facts or allegations of tortious acts? The Court noted the facts that the two DDs were issued in the name of 'D-Cube Construction' and not 'D-Cube Constructions (P) Ltd.', the second account in the name of company was opened by one of the Directors, the bank received a letter on 15-2-1997 from 'D-Cube Constructions (P) Ltd.' giving no-objection to opening another current account in the name of 'D-Cube Construction', and that there were ongoing disputes between the Directors of that company.

Looking at the circumstances of the instant matter, the Court observed that "it could not be said that there was any wilful default or imperfection or short coming so as to term it as the deficiency in service on part of the bank within the meaning of Section 2(1)(g) of Consumer Protection Act, 1986". The Court supported the bank's reliance upon **Ravneet Singh Bagga v. KLM Royal Dutch Airlines, (2000) 1 SCC 66** elaborating deficiency in service. The Court also relied on **Oriental Insurance Co. Ltd. v. Munimahesh Patel, (2006) 7 SCC 655** wherein the Court elucidated the proceedings before the Commission essentially being summary in nature restricting adjudication of issues involving disputed factual questions.

The Court observed that based on facts of the matter, "there was no wilful fault, imperfection, shortcoming or inadequacy in the discharge of duty on part of employees of bank to be termed as 'deficiency in service' under Section 2(1)(g) of 1986 Act." The Court held that complaints involving highly disputed questions of facts, or cases involving tortious acts or criminality like fraud or cheating could not be decided by SCDRC or NCDRC respecting the summary nature of proceedings.

The Court further clarified that the burden of proving deficiency in service under Section 2(1)(g) of 1986 Act would always be upon the person alleging it. The Court said that the respondent miserably failed to discharge his burden to prove deficiency in service on part of the bank employees. The Court, therefore, dismissed the original complaint, quashed and set aside the orders passed by the State and National Consumer Disputes Commission.

(Courtesy : SCC Online)

IRCTC took swift action against a tea vendor and returned Rs. 10/- to a journalist after he shared his ordeal on Twitter while travelling on a train.

In a praiseworthy incident, IRCTC acted swiftly after a Twitter complaint against a tea vendor and returned the money back to a journalist after he narrated his ordeal of getting conned while taking a train journey. The journalist was travelling on an Indian Railways train when he asked for a cup of tea from a vendor. While the cup of tea costs Rs 10, the man paid the vendor a Rs 20 note. The tea seller said he doesn't have change and will return Rs 10 in a while, but failed to return back the money to the journalist. When chased for money, the journalist was informed by other vendors that this tea seller has a habit of conning people on the trains in the name of returning back the money. Since it's a small amount, travellers usually gave up the chase.

One of the tea vendors then asked the journalist to involve RPF and complain to the IRCTC about the incident. Following which, he narrated the matter on the Twitter, tagging IRCTC (@IRCTCofficial).

He was travelling on train no. 12312 Netaji Express from Ghaziabad to Howrah, on the 13th Jan., and the incident happened just ahead of Prayagraj Junction. After the incident was posted on the Twitter, IRCTC's official Twitter handle asked for his mobile number and PNR details. Upon sharing them, Pritam did receive his money back in a short time.

Not only did IRCTC take prompt action and returned the remaining amount to the journalist at his seat itself, a manager of the IRCTC personally came to meet Pritam Saha, the journalist and brought the said tea vendor with him, asking Saha to identify him.

The vendor then accepted his fault in front of the IRCTC manager, RPF and other passengers, following which, he was asked to get down from the train at the Prayagaraj Junction.

Courtesy : Zee News

Support Your Cause

Consumer Protection Council, Rourkela is a registered voluntary organization, espousing the cause of the consumer. To a great extent, for its sustenance it depends on the good will of its donors like you. We solicit your support for sustaining the multifarious activities of the council. Donation to the council is eligible for tax exemption under Section : 80-G(5) (iv) of the IT Act. Donation may please be contributed through cash or crossed cheque / DD, drawn in favour of "**Consumer Protection Council, Rourkela**".

Editor : Sri B Pradhan

Editorial Committee : Sri A.K. Goswami
Sri Rajib Ku. Nayak
Sri A. Samantray
Sri Amitava Thakur

Circulation Manager : Sri B.D. Tripathy

Remittance for subscription may be sent to the Secretary, Consumer Protection Council, B/90, Sector-7, Rourkela-769003, through crossed D.D/M.O or Cheque (local only), payable in favour of

'CONSUMER PROTECTION COUNCIL, ROURKELA'.

For tariff and other details regarding advertisement, contact Editor

Printed & Published by Sri B Pradhan, Consumer Protection Council, Rourkela at B/90, Sector-7, Rourkela – 769003
E.mail : bpradhan.cpcrkl@gmail.com
(or) vaidya@advantageconsumer.com

ADVANTAGE CONSUMER
ENGLISH MONTHLY

MAY 2023

To

If undelivered, please return to :
Consumer Protection Council, Rourkela
B/90, Sector-7, Rourkela -769003. Odisha