

SUPREME COURT OF INDIA

Oriental Insurance Co. Ltd.

Vs.

Prem Printing Press

C.A.No.7398 of 2002

(V.S. Sirpurkar and R.M. Lodha JJ.)

28.01.2009

ORDER

1. We do not find any reason to interfere in the judgment passed by the National Consumer Disputes Redressal Commission, New Delhi (for short, 'the National Commission'). It seems that the National Commission has rejected the matter on the basis of their earlier view holding the concerned clause 7 in the policy to be void after the interpretation of Section 28 of the Contract Act, 1872 (for short 'the Act').

2. Learned counsel appearing for the appellant, Shri Mehra, tried to persuade us on the basis of few cases that the view taken on the interpretation of Section 28 is not correct. Learned counsel appearing on behalf of the respondent, however, points out that there is no necessity to consider Section 28 as the complaint before the consumer forum was filed well within the limitation indicated by the repudiation clause in the policy. The clause is 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 3 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 be recoverable hereunder."

According to the learned counsel there is enough material to suggest that even after the first repudiation by the appellant when the matters were taken up again by the respondent through the representations dated 12.4.1993, 12.5.1993 and 4.8.1993, the appellant- Insurance Company suggested by its reply dated August 06, 1993 that the matter of repudiation was being taken under fresh consideration. It is tried to be suggested before us by Shri Mehra that the first repudiation was confirmed by reply dated 28.2.1994. However, we find on record that there is a legal notice served on the appellant company, in answer to which again the appellant- insurance company promised to take up the matter for further consideration. As if that is not sufficient, our attention is invited to the affidavit of one Mr. U.S. Asthana dated 16.3.1996, which is a reply affidavit to the complaint before the District Consumer Forum. In that affidavit, in paragraph 9, it is reiterated as under :

" ...accordingly after thorough study the final decision as per advice of the Head Office of the oppo. party and the same was conveyed to the complainant vide letter dated 28.7.94."

3. This leaves us in no doubt that the final decision about the repudiation was conveyed on 28.7.1994 and till then, the appellant kept on dangling a carrot of hope before the respondent herein that the matter regarding repudiation of claim was being considered afresh. If that is so, then the complaint made on 6.8.1994 would be within three months of 28.7.94 which was a final answer and there would be no question of the general condition No. 7 coming into play. Therefore, viewing from this angle, the order of the National Commission need not be interfered with. We, therefore, find it not necessary to go into the question of Section 28 of the Contract Act. Be that as it may, we find that the matter has no bearing, no merit and the appeal is, accordingly, dismissed.