(2018) 03 NCDRC CK 0120

In the National Consumer Disputes Redressal Commission

Case No : Revision Petition No. 2317 Of 2017

Adseh Kumar APPELLANT

Vs

National Insurance Co. Ltd RESPONDENT

Date of Decision : 26-03-2018

Acts Referred:

Citation : (2018) 03 NCDRC CK 0120

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Dinesh Dahiya

Final Decision : Dismissed

Judgement

V.K. JAIN, J.

1. The complainant / petitioner owned a vehicle bearing No. DL-1Y-A-2518 which he got insured with the respondent. On 21.5.2009, at about 12.15

a.m. i.e. at midnight, the person driving the aforesaid vehicle gave lift to two boys who wanted to go to Palam Vihar. As per the FIR lodged by the

Driver, before reaching Toll tax, he parked his car on the side and went to bathroom. When he came back, he found that those two boys had run

away with his car. The FIR was lodged on 23.5.2009. Since the vehicle could not be traced, the petitioner / complainant sought reimbursement of his

loss, in terms of the insurance policy which he had taken from the respondent.

2. The claim was repudiated by the respondent vide letter dated 9.3.2010 which to the extent it is relevant reads as under:

â??Subject : Theft claim No. 2009-10/21, vehicle No. DL-1Y-A-2518 A/C Adesh Kumar In reference to above, you had preferred theft claim of

your vehicle DL-1YA-2518. As per the statement of Sh. Pintoo Gupta your driver he had left the keys in vehicle in which passenger were sitting (two

boys to whom he had given lift). He was supposed to take proper care of his vehicle and should have locked the vehicle and taken the keys with him.

His this act was a gross negligence on his part. As per the condition No.5 of the policy, you or your representative was supposed to take reasonable

step to safeguard the vehicle from loss or damage.Hence on the act of gross negligence of your driver, your claim is repudiated on violation of policy

conditionâ??.

Sd/-

Branch Manager

3. Being aggrieved from the rejection of the claim, the complainant approached the concerned District Forum by way of a consumer complaint. The

complaint was resisted by the insurer primarily on the ground on which the claim had been repudiated.

4. The District Forum having ruled in favour of the complainant, the insurer approached the concerned State Commission by way of an appeal. The

appeal was allowed and the complaint was consequently dismissed, holding that there was a breach of Condition No.5 of the insurance policy, which

required the insured to take all reasonable steps to safeguard the motor vehicle from loss or damage. Being aggrieved the petitioner / complainant is

before this Commission by way of the present revision petition.

5. Thus, the only question involved in this petition is as to whether the driver of the vehicle had failed to safeguard the vehicle against any potential loss

or damage, or not. As noted earlier, according to the driver, he had given lift at midnight to two unknown persons. Those persons were travelling in the

car with the driver at the time he allegedly parked it on one side of the road and went to the bathroom. This was not the statement of the driver in the

FIR that the vehicle was very much in his sight and was visible to him at the time he was answering to call of the nature. In fact, using the words

â??I had gone to bathroomâ?, clearly indicates that the driver was answering the call of the nature inside a bathroom, from where the vehicle could

not have been visible to him. Moreover, had the vehicle been visible to him at the place where he was answering the call of the nature, he would

immediately have raised alarm on seeing unknown boys running away with his car.

This was not his statement in the FIR that he had raised an alarm having seen the boys running away with the car. His Statement in the FIR was that

when he came back to the spot where the car had been parked, he found that the boys had already taken away the vehicle. It is therefore, evident

that the driver had failed to safeguard the vehicle against the potential theft by going away to the bathroom, leaving the keys of the car in the ignition.

The negligence becomes more serious when viewed in the light of the fact that two unknown persons were present in the car at the midnight. No

prudent person would leave the keys in the ignition when two strangers are inside the car and go to the bathroom where from he cannot keep an eye

on the vehicle.

6. The learned counsel for the petitioner relies upon the decision of this Commission in New India Assurance Company Ltd. & Anr. Vs. Girish Gupta,

III (2014) CPJ 663 (NC) , where the following view taken in National Insurance Co. Ltd. V. Kamal Singhal, IV (2010) CPJ 297 (NC), was relied

upon:

â??True it is that, had there been such evidence, the discrepant statement made by passengers of the insured as quantum of hire and reward was not

a significant, issue. Repudiation of claim made by Insurance Company was also found to be invalid for the reason that since driver was not expected

to carry key of the vehicle with him while getting down from the vehicle to answer natureâ??s call, particularly, when the vehicle was within his

sightâ??.

The above referred decision is clearly inapplicable to the present case since the vehicle was not within the sight of the driver at the time it was stolen

by two strangers, whom the driver had given the lift at midnight. The learned counsel for the complainant / petitioner also refers to the decision of the

Honâ??ble Supreme Court in National Insurance Company Ltd. Vs. Nitin Khandelwal (2008) II SCC 25. 9This judgement has absolutely no

applicability to a case like the present one where the insured had failed to take adequate safeguards to protect the vehicle against a potential theft.

7. The learned counsel for the petitioner also relies upon the decision of the Honâ??ble Supreme Court in Lakhmi Chand Vs. Reliance General

Insurance (2016) 3 SCC 100. This judgement would have no applicability to the factual situation prevailing in this petition where the driver was grossly negligent, he having left the vehicle on the road with key inside the ignition and two strangers inside the car.

8. In Arjun Lal Jat Vs. HDFC Irgo General Insurance Co. Ltd. & Anr., Revision petition No.3182 of 2014, decided on 28.8.2014, the driver of the

truck left the truck in start condition near All India Institute of Medical Sciences and went out to ease himself. When he returned after 10-15 minutes,

the vehicle was found missing. The claim having been rejected, the complainant approached the concerned District Forum by way of a complaint. The

District Forum held in favour of the complainant but the State Commission ruled against him. The matter was then agitated by the complainant before

this Commission. Dismissing the revision petition, it was interalia held that if the driver leaves the key in the ignition, he would be negligent and the

theft taking place on account of his negligence, the insurer cannot be made liable to reimburse the insured.

9. For the reasons stated hereinabove, I find no ground to interfere with the view taken by the State Commission. The revision petition, being devoid of

any merits, is hereby dismissed. No order as to costs.