(2011) 11 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

Aggarwal Agencies APPELLANT

Vs

UNITED INDIA INSURANCE COMPANY LTD RESPONDENT

Date of Decision : 01-11-2011

Acts Referred:

Citation : 2012 1 CPJ 365

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Revision Petition No. 1034/2007 dismissed. Revision Petition No. 1035/2007 allowed.

Judgement

1. REVISION Petition No. 1034/2007 wherein M/s. Aggarwal Agencies is the Petitioner and United India Insurance Co. Ltd. and Another, are the Respondents, and Revision Petition No. 1035/2007 in which M/s. Fateh Chand Vinod Kumar is the Petitioner and United India Insurance Company and Another., are the Respondents, have been filed against the single order of the State Consumer Disputes Redressal Commission, Uttar Pradesh (hereinafter referred to as the "State Commission") in Appeal Nos. 1397/2004 and 1398/2004. Since both revision petitions are related to the same incident in which the Respondents are also common, they are being disposed of by this single order.

2. THE facts of the case are that Petitioners had taken money-in-transit insurance policies for the safety of their firms from the Respondent/Insurance Company for Rs. 3 crores each which were valid from 31.3.2000 to 30.3.2001. On 13.11.2000, one Mr. Mukesh Kumar Aggarwal, Partner of Petitioner in R.P. No.1035/2007 was carrying Rs. 5,31,000 out which Rs. 4,31,000 belonged to Petitioner''s firm (M/s. Fateh Chand Vinod Kumar) and Rs. l lakh to his wife''s firm M/s. Aggarwal Agencies i.e. Petitioner in R.P. 1034/2007, for depositing the same in the Bank of India when some miscreants snatched the above amount from him. He immediately lodged an FIR on the same date and the police recovered Rs. 2,21,000 of this amount which is also subsequently returned under a Court order. However, the rest of the money including Rs. l lakh which belonged to M/s. Aggarwal Agencies (Petitioner in R.P. No. 1034/2007) could not

be recovered because of which claims were filed for Rs. l lakh by M/s. Aggarwal Agencies and for the remaining amount of Rs. 2,10,000 by M/s. Fateh Chand Vinod Kumar. Respondent/Insurance Company rejected both the claims. So far as the claim for Rs. l lakh filed by M/s. Aggarwal Agencies was concerned, the same was repudiated on the ground that Mr. Mukesh Kumar Aggarwal was not an authorized person to carry this amount under the Money-in-Transit Insurance Policy as per the terms and conditions of the policy. The claim of M/s. Fateh Chand Vinod Kumar in R.P. No. 1035/2007 was rejected primarily on the ground that on the date of the incident i.e. 13.11.2000, the amount of Rs. 3 crores had been exceeded by Rs. 19,10,066 and therefore, the claim was not admissible.

3. AGGRIEVED by the repudiation of their claims, both parties filed complaints before the District Forum which allowed the same and directed the Respondent/ Insurance Company to pay the Petitioner (in R.P. No. 1034/2007) Rs. 1 lakh along with interest @ 9% per annum w.e.f. 1.6.2001 and Rs. 1,000 as litigation cost and Rs. 2,10,000 along with interest @ 9% per annum w.e.f. 1.6.2004 and Rs. 1,000 as litigation cost to the Petitioner R.P. No. 1035/2007.

4. AGGRIEVED by the order of the District Forum, Respondent/Insurance Company filed appeals before the State Commission which allowed the appeals by observing that in the first case (R.P. No. 1034/2007) Mr. Mukesh Kumar Aggarwal was not only carrying the money of the Petitioner (M/s. Fateh Chand Vinok Kumar) but also carrying Rs. l lakh of his sister concern which is against the conditions of the insurance policy taken by that concern and therefore, the claim was rightly rejected. Regarding the second case (R.P. No. 1035/2007), the State Commission did not accept the contention of the Petitioner that there was no negative balance and that the limit of Rs. 3 crores for which it had been insured, was not exceeded because as per the insurance policy, Cash-in-Transit visits between Dealers and Bank was not included. On the other hand, the Respondent/Insurance Company claimed that as per the proposal form submitted by the Petitioner itself, it was very specifically proposed that Cash-in-Transit made by Dealer to Bank was included. Hence, the Cash-in-Transit from Dealers to Bank amounting to Rs. 37,87,525 was rightly included thus leaving a negative balance of Rs. 19,10,066. Since the required amount under the policy was not there at the time of the incident, after considering the Investigator''s report, the claim was closed as "no claim". The State Commission further observed that in fact the whole incident of reported robbery itself is suspect, since the Petitioner on whom there was onus to do so, had not filed either a copy of the FIR or any other documentary evidence regarding the incident and recovery of any amount by the police or any order of the competent Court in this connection.

5. HENCE, the present revision petitions.

6. COUNSEL for both parties were present and made oral submissions. So far as R.P. No. 1034/2007 is concerned, Counsel for Respondent brought to our notice the specific terms and conditions of the policy which clearly states that "only paid employees" would be permitted to carry the cash. In the instant case, Mr.

Mukesh Kumar Aggarwal was not a paid employee of the Petitioner M/s. Aggarwal Agencies and, therefore, the claim was rightly repudiated. Counsel for Petitioner when specifically asked by us conceded that it is a fact that Mr. Mukesh Kumar Aggarwal was not a paid employee of the Petitioner but that he had a general power of attorney.

7. WE have considered the submissions of both learned Counsel in this case and have gone through the evidence on record. It is clear from the terms and conditions of the insurance policy which is a contract between the two parties that only paid employee can carry the cash amount for the purpose of the insurance cover and Counsel for Petitioner himself accepts that Mr. Mukesh Kumar Aggarwal who was carrying Rs. 1 lakh, was not a paid employee of the Petitioner. Therefore, in terms of the insurance policy which is a contract between the two parties, we agree with the order of the State Commission that the claim was rightly repudiated and uphold the same. Revision Petition No. 1034/2007 is, therefore, dismissed with no order as to costs.

8. SO far as R.P. No. 1035/2007 is concerned, Counsel for Respondent reiterated that as per the calculations which were on record, Rs. 3 crores for which the insurance cover had been taken had been exceeded and therefore, the claim was rightly rejected. Counsel for Petitioner on the other hand contended that Dealer to Bank Cash-in-Transit were not included in the policy and, therefore, if the amount of Rs. 37,87,525 being the money carried from Dealer to Bank is deducted, there is no negative balance and the claim could not, therefore, has been repudiated on these grounds. In this connection, Counsel for Petitioner brought to our notice, the statements filed in evidence indicating all the case transactions that had been taken during the policy period which was in evidence before the Fora below. Counsel for Petitioner further brought to our notice, the insurance policy wherein it was clearly stated as follows: "Give below the address between which money will be carried. From fertilizers, pesticides and seeds Dealer of State (U.P.) to our shop and 15/240 Sheikh Sarai and Civil Lines Opp. Marriage Home S.B.I. Gali Bulandshahr."

It is thus clear from the above that Dealer to Bank transactions were not covered under the said insurance policy.

9. WE have heard the learned Counsel for both parties and have gone through the documents filed in this case by both parties. We note that as per the insurance policy, the Money-in-Transit was insured for Rs. 3 crores with a loss arising out of any one event limited to Rs. 5 lakh. These facts are also not disputed by either of the parties. While, in the proposal form of the Petitioner, money-in-transit from Dealer to Bank has been included, this does not form a part of the actual insurance policy since it does not include Money-in-Transit from the dealer to the Bank. Since, it is the insurance policy and not the proposal form which constitutes a contract between the two parties, the Respondent/Insurance Company erred in including the money-in-transit between Bank and the Dealer while tabulating the annual limit of Rs. 3 crore by relying on the proposal form.

Counsel for Respondent/Insurance Company when asked by us to clarify why this conditions in the proposal form made by the Petitioner was not included in the insurance policy, he fairly conceded that it appears to have been through an oversight on the part of the Respondent/Insurance Company. Since, it is not in dispute that the money involved in transit between the Dealer and the Bank is Rs. 37,87,525 therefore, once this amount is excluded, then there will be no negative balance and the Money-in-Transit of Rs. 3 crores would be covered by the insurance policy. Therefore, the Respondent/Insurance Company in terms of the policy would be required to reimburse an amount of Rs. 2,10,000 which was snatched by miscreants and could not recovered by the police. It may be noted that the amount of Rs. 2,21,000 recovered by the police was handed over by the police to the Petitioner in terms of a Court order. The State Commission erred in not taking these facts into account while passing its order. We, therefore, have no option but to set aside the order of the State Commission and accept Revision Petition No. 1035/2007. Respondent/Insurance is directed to pay the Petitioner (M/s. Fateh Chand Vinod Kumar) the remaining amount of Rs. 2,10,000 in terms of the money-in-transit policy along with interest @ 9% per annum w.e.f. 1.6.2004 and Rs. 1,000 as litigation cost within a period of six weeks. Revision Petition No. 1034/2007 dismissed. Revision Petition No. 1035/2007 allowed.

