(2012) 03 NCDRC CK 0073

In the National Consumer Disputes Redressal Commission

Ashish Vishwakarma Prop. of M/s. Ashish Constructions APPELLANT

Vs

Branch Manager National Insurance Co. Ltd. RESPONDENT

Date of Decision : 09-03-2012

Acts Referred:

Citation : 2012 0 NCDRC 77 : 2012 1 CPR 406 : 2012 2 CPJ 169

Hon'ble Judges : Anupam Dasgupta , Suresh Chandra J.

Advocate : Sanjana Bali , Yogesh Malhotra , Satish Kumar

Judgement

1. THIS revision petition challenges the order dated 09.09.2010 of the Jharkhand State Consumer Disputes Redressal Commission, Ranchi (in short, ?the State Commission?) in First Appeal No.239 of 2008. By this order, the State Commission dismissed the appeal filed by the complainant (petitioner herein) against the order dated 28.05.08 of the District Consumer Disputes Redressal Forum, Hazaribag (in short, ?the District Forum?) in Consumer Complaint No.25/2007.

2. THE case of the petitioner before the District Forum was that Respondents No. 1 to 3 (the Insurance Company) were guilty of deficiency in service in repudiating the insurance claim for the petitioner?s motor vehicle (Tipper Truck) which got burnt in a fire on 17.05.06 during the period of validity of the insurance policy covering damage due to fire, etc. After considering the pleadings, evidence and documents produced by the parties, the District Forum dismissed the complaint. This led to the above- mentioned appeal being filed by the petitioner/complainant. We have heard Ms. Sanjana Bali, learned Counsel for the petitioner and Mr. Yogesh Malhotra, learned Counsel for respondents No. 1 to 3.

The short point for consideration is whether the State Commission erred in dismissing the appeal of the petitioner on the ground that the motor vehicle in question had been purchased for a commercial purpose and, therefore, the petitioner/complainant could not be treated as a "consumer" (in accordance with the definition of the terms in section 2 (1)(d)(ii) of the Consumer Protection Act, 1986). In this context, Ms. Bali has pointed out that this Commission, in the case of M/s. Harsolia Motors v National Insurance Company Ltd. [I (2005) CPJ 26 (NC)] has held that a contract of insurance is a contract of indemnity and, therefore, there is no question of commercial purpose in obtaining insurance coverage. It has also been held that the insured could not trade or carry out any commercial activity with regard to the insurance policy, being barred to do so under section 3 of the Insurance Act, 1938.

3. THE point urged by Ms. Bali is valid, as was fairly conceded by Mr. Malhotra, learned Counsel for respondents No.1 to 3. In view of the foregoing, the impugned order of the State Commission cannot be sustained and is accordingly set aside in toto. The matter is remanded back to the State Commission for fresh consideration and decision after hearing the parties. For this, the parties shall remain present before the State Commission on 02.04.2012.

