(2012) 04 NCDRC CK 0072

In the National Consumer Disputes Redressal Commission

Ashok Kumar Mittal Development Officer — APPELLANT

Vs

Shanti Devi — RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Citation : 2012 0 NCDRC 104 : 2012 2 UC 1110 : 2012 94 ALLLR 666

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

Advocate : S.K.Sharma , M.Alam , MdSohail Anwar , Yogesh Malhotra

Judgement

1. THIS revision petition is against the order dated 12.04.2007 of the Delhi State Consumer Disputes Redressal Commission, Delhi (in short, ''the State Commission'') in appeal no. 1527 of 2000 arising from the order dated 20.05.2000 of the District Consumer Disputes Redressal Forum (North-West), Shalimar Bagh, Delhi (in short, ''the District Forum'') in complaint case no. 1795 of 1999.

2. BY this order, the State Commission allowed the appeal filed by the National Insurance Company Ltd. (Respondent 2 in this revision petition) by observing inter alia as under: 4. ?In this regard the appellant appointed one retired Superintendent of Police as investigator and after thorough investigation he submitted a detailed report with the conclusion that ?had the issue of cover note on 30.09.1998 been genuine respondent no. 2 would have sent cash premium through Bank draft and since he could not tamper with the issue date of the Bank draft and telegram as was done in respect of courier service, so respondent no. 2 was responsible for issuing an ante-dated cover note?. 5. Respondent no.2 could not controvert the finding of the investigator who happened to be a person who remained Superintendent of Police. However, facts and figures regarding dispatch of cover notes issued by respondent no. 2 and received by the Branch Office of the appellant shows that on the next date copy of the cover note used to be received by the branch office but in case of respondent no. 2 the cover note was issued on 30.09.1998 and was received by the branch office on 07.10.1998., i.e., after the theft of the vehicle. There were few other cover notes

issued by respondent no.2 in respect of scooter and motorcycle on 30.09.1998 and were dispatched on 07.10.1998 but the cover notes were not accepted by the appellant branch. 6. Any consumer who does not come with clean hands and indulges in mal-practice or clandestine method of obtaining insurance cover note in connivance with the officer or officials of the insurance company is not entitled to any claim from the insurance company. 7. In the result we allow the appeal, qua the appellant but fix the liability of respondent no.2 to make payment of the insurance amount of Rs.1,70,000/- for having fraudulently issued by the insurance cover note?.

Respondent 1 in this petition was the complainant before the District Forum. She alleged that her motor car was insured for Rs.1,70,000/- with opposite party (OP) 1 with the help of OP 2 who was then a Development Officer with OP 1 (petitioner before us). She further claimed that for insurance of the car commencing from 30.09.1998, she paid a premium of Rs.4,333/- by cheque. However, her car was stolen on 04.10.1998, in respect of which she lodged an FIR no. 746 of 1998 the same day with the Police Station concerned and informed OP 1 of the theft on 05.10.1998. She also submitted the claim form and other documents to the office of OP 1 on 16.10.1998. However, after investigation into the alleged theft, OP 1 repudiated the claim on the ground that the cover note for the insurance policy had been drawn up and issued after the car had been stolen, i.e., ante- dating the cover note.

After hearing the parties and considering the evidence brought on record, the District Forum, partly allowed the complaint and directed OP 1 to pay to the complainant the amount of the insured sum with interest @ 9% per annum, in addition to compensation of Rs.5,000/- towards mental harassment of the complainant and Rs.1,000/- towards cost.

3. AGGRIEVED by this order, OP 1 went up in appeal before the State Commission which passed the order already excerpted above. We have heard Mr. S. K. Sharma, learned counsel for the petitioner, Mr. M. Alam, learned counsel for respondent 1 and Mr. Yogesh Malhotra, learned counsel for respondent 2 and considered the documents produced before us.

4. MR. Sharma emphasised that the order of the State Commission qua the petitioner was not based on any cogent analysis of the evidence and documents on record. While the State Commission held the complainant guilty of indulging in collusive and fraudulent activity and hence relieved the insurance company of the liability of indemnification of the alleged loss, it did not discuss the evidence and its reasons for coming to the conclusion and passing the award that it did. From a plain reading of the relevant paragraphs of the impugned order, (particularly, paragraphs 6 and 7) we are of the view that the interest of justice and equity would be better served if the matter is remanded back to the State Commission for fresh adjudication. Accordingly, the revision petition is partly allowed and the impugned order of the State Commission is set aside. The matter is remanded back to the State Commission for fresh adjudication in

accordance with law after hearing the parties.

5. THE parties are directed to appear before the State Commission on 29th May 2012 for further directions in this matter.

