(2012) 05 NCDRC CK 0071

In the National Consumer Disputes Redressal Commission

Bajaj Alianz General Insurance Co. Ltd APPELLANT

Vs

Shri Mehfooz Mirza S/O Shri Bashir Mirza RESPONDENT

Date of Decision : 10-05-2012

Acts Referred:

Citation : 2012 0 NCDRC 310 : 2012 2 CPJ 574

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

Advocate : Kanika Areja , A.Sushashini

Judgement

1. PETITIONER Insurance Company which was the Opposite Party before the District Forum has filed this Revision Petition against the order and judgment dated 29.10.07 passed by the State Consumer Disputes Redressal Commission, Delhi (in short, ''the State Commission'') in appeal No.A-379/04 whereby the State Commission reversing the order of the District Forum partly allowed the complaint filed by the Respondent and directed the Petitioner Insurance Company to pay Rs.28,000/- to the Respondent towards the repair of the vehicle. Rs.5,000/- were awarded as compensation and cost of litigation.

2. FACTS:- Complainant/Respondent got his vehicle Daewoo Matiz Sd. 2000 insured with the Petitioner Insurance Company for the period valid from 19.02.02 to 18.02.03. Respondent issued a cheque on 10.02.03 for Rs.5,035/- for renewal of the policy. On 10.08.03, the said vehicle met with an accident and was damaged. Respondent lodged the claim. On receiving intimation, Petitioner appointed a Surveyor to assess the loss who assessed the loss at Rs.31,000/-. Rs.28,000/- were spent on the repair of the vehicle. However, Petitioner repudiated the claim of the Respondent on the ground that the cheque issued by the Respondent was dishonoured and there was no privity of contract between the Petitioner and the Respondent. Respondent, being aggrieved, filed the complaint before the District Forum.

3. DISTRICT Forum dismissed the complaint holding that no contract of insurance had come into existence as the cheque issued by the Respondent had been dishonoured. That there was no privity of contract between the parties.

4. RESPONDENT, being aggrieved, filed the appeal before the State Commission. State Commission allowed the appeal by observing thus:- " The contention of the counsel for the respondent that the cheque was presented on 18.02.03 and was received back dishonoured on 24.02.03, the intimation of which was given on 26.02.03 does not inspire confidence at all as no convincing documentary evidence has been produced by the respondent to show the intimation of the dishonouring of the cheque. The factum of dishonouring of the cheque was not in the knowledge of the insured and as such he has been habouring under the belief that the cheque given by him had been duly encashed. Act of omission on the part of the respondent - company in not informing the insured about the dishonouring of the cheque for such a long time itself amounts to deficiency in service and calls for compensation."

5. PETITIONER, being aggrieved, has filed the present Revision Petition. Counsel for the parties have been heard. Cheque issued by the Respondent for renewal of the policy was presented to the bank on 18.02.03 and was received back dishonoured on 24.02.03. Petitioner sent an intimation to the Respondent about the dishonouring of the cheque and requested the Respondent to remit the premium in cash immediately to assume the risk from the date of fresh collection subject to the confirmation that there has been no loss or damage to the vehicle so far. State Commission has held that the intimation sent on 26.02.03 by the Petitioner to the Respondent did not inspire confidence as no convincing documentary evidence had been produced by the Petitioner to show the intimation of the dishonor of the cheque. Petitioner has produced the copy of the letter sent by it which reads as under:- "Sub: Dishonour of premium cheque against your policy no. OG-03-1101-1801 -00005795 Please note that cheque for payment of premium against covernote NO.276987/Policy No. OG-03-1101-1801-00005795 (cheque no.430826 dt. 10.02.03 On Janta Sahakari Bank Ltd. Pune Bank, Darya Ganj) has been returned to us uncleared for reasons given under as advised by the Bank. Insufficient Fund (fill in reason given by the bank for cheque dishonor) Please note that the policy stands cancelled since inception and we are not on risk in respect of the above covernote/policy certificate of insurance. In case you want to take fresh insurance cover, please remit us immediately the premium in cash to enable us to assume the risk from the date of fresh collection subject to your confirmation that there has been no loss so far. Please bring the vehicle to our office for physical verification. You are advised to return the covernote certificate of insurance and policy to our office immediately."

6. THIS letter was sent by the Petitioner in day to day discharge of its functions. We assume that this letter was sent by the Petitioner which was duly received by the Respondent. The finding of the State Commission that omission to intimate the Respondent about the dishonour of the cheque for a long time amounted to the deficiency in service called for compensation, is conjectural and without any basis. The cheque was sent by the Respondent on 10.02.03. On receiving the cheque, Petitioner presented the same for encashment on 18.02.03. It was

dishonoured and received back by the Petitioner on 24.02.03. Immediately on receipt of intimation from the Bank regarding the dishonour of the cheque, Petitioner informed the Respondent vide letter dated 26.02.03 that the cheque sent by him has been dishonoured. Respondent was requested to remit the premium in cash to enable to the insurance company to assume the risk which the Respondent failed to do. The accident took place on 10.08.03. As on the date of accident, there was no insurance cover. As no insurance cover was in existence on the date of accident, the Insurance Company was not liable to reimburse the loss suffered by the Respondent. For the reasons stated above, the Revision Petition is allowed, order of the State Commission is set aside and that of the District Forum is restored. No costs.