

(2014) 09 NCDRC CK 0059

In the National Consumer Disputes Redressal Commission

Ceo, Cholamandalam Ms General Insurance Company Ltd.

APPELLANT

Vs

Abhijat Saini

RESPONDENT

Date of Decision : 29-09-2014

Acts Referred:

Citation : 2014 0 NCDRC 666

Hon'ble Judges : V.B.GUPTA , SURESH CHANDRA J.

Advocate : S.M.TRIPATHI , BISHWAJIT KUMAR SHAHI

Judgement

1. PETITIONER S /Opposite Parties No.1 and 2 being aggrieved by the impugned order dated 18.01.2008 passed by State Consumer Disputes Redressal Commission, Delhi (for short, "State Commission ")have filed the present revision petition under Section 21(b)of the Consumer Protection Act, 1986(for short, "Act ")

2. BRIEF facts are that Respondent No.1/ Complainant got his Safari LX Car insured with the petitioners for the period from 22.10.2003 to 21.10.2004, through their Agent -Respondent No.2/Opposite Party No.3. The vehicle met with an accident and fell into deep gorge while returning from Vaishno Devi to Delhi at Damtaal, Distt. Kangra, HP. The vehicle was towed and police report vide DD No.14 dated 6.11.2003, was lodged at Damtaal. The Petitioners were informed but despite insurance, they refused to get the vehicle repaired. After delaying the claim, petitioners appointed an investigator, Mr.G.B.Mathur who visited the accident site along with respondent no.1 on 19th and 20th April,2004. It was a case of total loss and respondent no.1 has claimed market value of the vehicle Rs.6,93,157/ -.

3. PETITIONER S in their written statement took the plea that claim of respondent no.1 was repudiated firstly, on the ground that the agent,(respondent no.2) had played fraud. He in collusion with the respondent no.1 issued cover note on or after 5.11.2003, the date of alleged accident. Secondly, respondent no.1 has taken inordinately long time in informing the Petitioners " Company. District Consumer Disputes Redressal Forum, New Delhi -I (for short, District

Forum ")allowed complaint vide its order dated 18.09.2007 and passed the following directions; ""1. OP 1 and 2 will pay Rs.6,90,488/ - to the complainant under the insurance and shall take the custody of the car with letter of subrogation. The complainant will inform the transport authority for transferring the title of the vehicle from the name of the complainant to the name of OP -1 &2 and after the payment the complainant will have no claim or title in this vehicle.

2. On account of deficiency in service by not honouring the claim, OP -1 and 2 will pay Rs.50,0000/ - as compensation on account of deficiency in service.

3. OP -1 and 2 will pay Rs.10,000/ - to the complainant as cost of litigation "".

4. AGGRIEVED by the order of the District Forum, petitioners filed appeal before the State Commission, which dismissed the same vide the impugned order.

5. HENCE , this revision.

6. RESPONDENT No.1 alone has contested this petition. Respondent No.2 was served by publication but he did not appear, hence was proceeded exparte.

7. WE have heard the learned counsel for the petitioners as well as counsel for respondent no.1 and gone through the record.

8. IT is submitted by the learned counsel for the petitioners that it is settled principle of law that a principal is bound only by those acts done by his agent on his behalf in good faith and not by his fraudulent acts. Petitioners have never authorized respondent no.2,its agent to issue back dated cover note. If the agent has done so, petitioners cannot be held liable for the same. It is further submitted that there was delay on behalf of the respondent no.1 in informing the petitioners with regard to the accident. As such, there is violation of the terms and conditions of the insurance policy.

9. ON the other hand, it has been submitted by the learned counsel for respondent no.1 that cover note in this case was issued by the agent of the petitioners on 22.10.2003 whereas, the accident had taken place on 06.11.2003. Therefore, the cover note issued in this case is legal and valid. Lastly, it is contended that police was informed immediately about the accident and since the vehicle had fell into deep gorge, it was to be retrieved from the site of accident and thus there was delay in informing the insurance company.

10. THE District Forum, while allowing the complaint held; ""The report of investigator, G.B. Mathur and Co. is on the record. It mentions that accident occurred on 5.11.2003. We do not find any delay as the vehicle has fallen into 110 feet deep gorge and it is also mentioned that it is a case of complete loss. The taking of insurance is not denied by OP.OP has alleged collusion between OP -3 and complainant and has taken the plea that the cover note was issued by OP -3 on or after 5.11.2003 after the date of accident. We do not agree with OP -1 and 2. OP -3 is the agent of Op -1 &2 and they are bound by the acts of the

agent. It is alleged that the complainant did not cooperate with the investigator to provide all relevant and necessary information but the complainant had fully cooperated and had accompanied the investigator to accident site on 19th and 20th April, 2004. We do not agree with the OP that the complainant gave delayed information to the OP -1 and 2. The complainant had lodged the police report immediately on the next day 6.11.03. It should be imagined that at the time of accident the complainant was on way to Delhi from Vaishno Devi, it naturally took him few days to reach Delhi and inform the OP "".

11. THE State Commission while dismissing the appeal observed; Contract of insurance is a contract of good faith. Whenever any service provider like the Insurance Companies or for that purpose airlines or railways adopt the mechanism of getting their business through their agents or sub -agents, they are directly liable for all acts of omission and commission of such agents or sub -agents and cannot take the plea of any kind whatsoever which goes against the consumer for denying the claim merely for wrongful or distrustful act of their agents or sub -agents. 5. It is common knowledge that these service providers avail the services of agents and sub -agents by employing them in almost every city so as to save their administrative expenses. If they start employing their staff or officer at every place, they shall incur corers of rupees by paying salaries to large number of employees and the establishment and any other wherewithals.

6. In the instant case, the accident was so serious that the vehicle fell into deep gorge and was towed out with great difficulty and the report was lodged with the police. On the face of it, the claim was wrongly repudiated inspite of the fact that they appointed one Investigator Mr.G.B. Mathur.

7. In our view the provisions of delay in informing the Insurance Company or lodging the report with the police are of little significance as these are of directory nature and not of the mandatory nature. What is relevant is whether any such accident or occurrence has taken place or not and whether the insured has played fraud or given wrong information to take undue benefit against he insurance policy. Once the report is lodged with the police may be in any form, the Insurance Company is barred from appointing any Investigator to investigate into the fact whether the theft or accident has taken place or not. Under the Code of Criminal Procedure only the police has the authority to investigate into the offence registered under the IPC and nobody else. If the Insurance Companies are allowed to appoint Investigator for going into the truthfulness of the occurrence then there will be two parallel investigations, one by the statutory authority and another by an authority which is incompetent to investigate into a criminal offence. We have also held that Insurance Companies have no option than to accept the report of the police with regard to accident or theft of a vehicle or loss of vehicle by way of any other incident or event.

8. To expect a person to immediately first rush to Insurance Company to inform about the accident when his vehicle meets a very serious accident or causing death is too much and is beyond the prudence of common man. In such a

situation, the Insurance Company should take a decision in respect of any event or in respect of any eventuality keeping in view the response by a reasonable and prudent man. Every decision taken by the service provider has to be tested on the anvil of the terms of the contract unless the occurrence or the information given by the insurer is found to be afflicted with a malafide or falsehood, the claim should be accepted.

9. The District Forum has returned the finding of fact in favour of the respondent and we do not perceive any reason to differ with the said finding. Contract of insurance is a contract for the benefit of the insured and therefore the interpretation or the view taken should be such that it should promote its object and serve the interests of the consumer and if there are two interpretations possible, the interpretation which favours the consumer has to be adopted and no other view or no other interpretation that hits at the interest of the consumer should be adopted.

10. Foregoing reasons persuade us to dismiss the appeal being wholly devoid of merit and misconceived. ""

12. IT is well settled that under Section 21(b) of the Act, scope of revisional jurisdiction is very limited.

13. UNDER Section 21 of Act, this Commission can interfere with the order of the State Commission where such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

14. THE Hon "ble Supreme Court in Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd. 2011 (3) Scale 654 has observed; ""Also, it isto be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21(b)of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora "".

15. THE main plea of petitioners is that their agent in collusion with the complainant has issued the cover note in the back date. Thus, petitioners are not liable for the acts of their agent. It may be pointed out that as per copy of the cover note placed on record, it was issued on 22.10.2003. However, there is

nothing on record to show that petitioners took any initiative for taking any criminal proceedings against respondent no.2, when it came to their knowledge that the cover note was forged one. Once it came to their knowledge, that its agent had issued a back dated cover note, then petitioners ought to have cancelled the so called forged cover note. There is nothing on record to show that petitioners cancelled the said cover note or took any other legal steps in this regard. Thus, this plea of petitioners falls on the ground that cover note issued to the insured was forged and was back dated.

16. IT is an admitted fact that the complainant had immediately informed the police about the accident. Though, there was some delay in informing the petitioners regarding the accident but as per the insurance policy no specific period has been mentioned. Further, the factum of accident and damages caused to the vehicle, has not been disputed by the petitioners.

17. IN the present case, there are concurrent findings of fact given by both the fora below. Thus, no jurisdiction or legal error has been shown to us to call for interference in the exercise of power under section 21 (b) of the Act, since the fora below have given cogent reasons in their order, which do not call for any interference nor they suffer from any infirmity or revisional exercise of jurisdiction.

18. IT is not that every order passed by the Fora below is to be challenged by a litigant even when the same is based on sound reasoning.

19. THUS , the present revision petition having no merits is hereby dismissed.

20. NO order as to cost.