(2017) 07 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

Case No : 3407 of 2016

CHIEF MANAGER, ORIENTAL INSURANCE CO. LTD. — APPELLANT

Vs

A.G. FATS LTD. THROUGH ITS MANAGING DIRECTOR, SH. RAVINDER KUMAR — RESPONDENT

Date of Decision : 28-07-2017

Acts Referred:

Citation : (2017) 07 NCDRC CK 0022

Hon'ble Judges : V.K. Jain

Advocate : Abhishek Kumar, Anurag Pratap

Judgement

1. The complainant obtained an insurance policy from the petitioner company for the period commencing midnight of 02.4.2010 and expiring on midnight of 01.4.2011. The case of the respondent / complainant is that a truck carrying the insured goods left Kapurthala on 01.4.2011and met with an accident at 5.00 a.m. on 02.4.2011. After the accident had happened, the respondent / complainant obtained a Cover Note from the petitioner company at 12.00 noon of 02.4.2011.

2. The claim which the respondent / complainant had lodged with the petitioner company for the loss which happened at 5.00 a.m. on 02.4.2011 having been repudiated by the insurer, the complainant / respondent approached the concerned District Forum by way of a consumer complaint. The complaint was resisted by the petitioner company; primarily on the ground that the goods in question were not insured at the time they got destroyed at about 5.00 a.m. on 02.4.2011 since the policy taken by the complainant had already expired in the midnight of 1 / 2.4.2011.

3. The District Forum dismissed the complaint. Being aggrieved from the dismissal of the complaint, the complainant / respondent approached the concerned State Commission by way of an appeal. The said appeal having been allowed by the State Commission, the insurer is before this Commission by way of this Revision Petition.

4. The question involved in this petition is as to whether the goods destroyed at 5.00 a.m. on 02.4.2011 were covered under the insurance policy taken by the respondent / complainant or not. A perusal of the insurance policy which the complainant had obtained from the petitioner company would show that it was valid only till midnight of 01.2.2011. The goods having been destroyed at 5.00 a.m. on 02.4.2011 it is evident that the loss had taken place five hours after the insurance cover had expired.

5. The learned counsel for the complainant / respondent has pointed out that the cover note was issued on 02.4.2011 and has contended that the insurance given vide Cover Note date 02.4.2011 would be effective from midnight of 01 / 02.4.2011 and therefore, the loss sustained at 5.00 a.m. on 02.4.2011 shall be covered under the insurance cover. I however, find myself unable to accept the contention. There is absolutely no indication in the cover note issued at 12.00 noon of 02.4.2011 that it was valid with effect from midnight of 01/02.4.2011. In the absence of such an indication in the cover letter, it would be difficult to say that the goods destroyed at 5.00 a.m. on 2.4.2011 were covered under the said cover note, when there is no evidence of the insurer being aware of the loss of the goods at the time the cover note was issued. Though it has been alleged in the complaint that the loss of the goods was intimated to the insurer the time of the alleged intimation has not been given in the complaint, there is no evidence of the loss of the goods having been intimated to the insurer before 12.00 noon of 02.4.2011. Therefore, it cannot be said that the cover note was issued by the insurer after having already come to know of the loss of the goods at 5.00 a.m. on 02.4.2011.

6. Even otherwise, it is inconceivable that an insurer would issue a policy retrospectively covering loss which has already been happened before the issuance of the policy. In the absence of specific evidence it would be unacceptable that the cover note was issued by the petitioner company despite having come to know of the loss which had happened at 5.00 a.m. on 02.4.2011.

7. The learned counsel for the respondent / complainant relies upon the decision of the Hon''ble Supreme Court in New India Assurance Co. Ltd., Vs. Ram Dayal, Civil Appeal No. 1188-89 of 1987 decided on 20.4.1990 and a decision of this Commission in National Insurance Company Ltd. Vs. B. Arvindakshan Nair, II (2000) CPJ 412. In my view the aforesaid decisions are of no help to the complainant in the facts and circumstances of the case where the cover note itself indicates the time at which it is issued. The purpose behind indicating the time of insurance of the cover note obviously is to indicate that the insurance cover would be effective from that time alone. As noted earlier, the insurance cover itself did not indicate the time of commencement of the insurance. In these circumstances, the insurance cover, in my opinion became effective only from 12.00 noon of 02.4.2011. Since admittedly the loss had already happened at 5.00 a.m. on that date it was not covered under the said cover note issued by the insurer.

8. Even otherwise, a contract of insurance being based on utmost faith, the complainant which knew of the loss having been happened at 5.00 a.m. on 02.4.2011, ought to have disclosed it to the insurer before obtaining the cover note, that the goods being carried in a truck had already got destroyed at 5.00 a.m. on 02.4.2011. That having not been done, there is no escape from the conclusion that the cover note was obtained by fraud and concealment of a material fact. The said fraud and concealment, in my opinion would entitle the insurer to repudiate the claim on this ground alone.

9. For the reasons stated hereinabove, the impugned order cannot be sustained. The revision petition is therefore allowed and the order passed by the State Commission is set aside. The complaint is accordingly dismissed, with no order as to costs.

