(1994) 01 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

C.L. RAIZADA APPELLANT

Vs

DIVISIONAL MANAGER, NEW INDIA ASSURANCE CO. LTD RESPONDENT

Date of Decision : 31-01-1994

Acts Referred:

Citation : 1994 2 CPJ 57

Hon'ble Judges : R.N.Mittal , S.Brar , A.N.Saxena J.

Advocate : Vivek Sharma

Judgement

1. -BRIEFLY the facts of the case are that the complainant had purchased a Maruti 1000 CC Car from M/s. Competent Motors, New Delhi on 15.5.92. He got the car insured with the respondent''s Insurance Company under "Third Party Risk " for a period of six months w.e.f. 14.5.92. The respondent-Company thereafter issued the insurance certificate No. 0507083. The said car was purchased under Taxi Quota and was assigned registration No. DH-1Y- 0643. However, the said car could not be used as a taxi due to non-availability of a competent and reliable driver and the complainant therefore continued to use it for his personal conveyance. The complainant possessed a valid and a proper driving licence, for driving the car. During the period the car was under insurance as "Third Party Risk" the complainant got it converted into a comprehensive policy on 17.8.92 by paying a premium of Rs. 13,190/- and the respondent in consideration of this payment issued a fresh policy certificate No. 567519.

2. THE said car while it was parked outside the residence of the complainant on Lucknow Road (Off Mall Road) Delhi, was hit by a truck on the forenoon of 28.8.92 and was badly damaged. THE complainant who was not present at the time of the accident, on knowing about the accident lodged a report with the Timarpur Police Station -vide DD No. 8A dated 20.8.92. As the vehicle had been damaged the complainant on 22.8.92 got it towed to the garage of M/s. Competent Motors, Mehrauli, New Delhi, who are the authorised garage of the respondent-Company. THE M/s. Competent Motors assessed the cost of repairs at Rs. 96,021/- and agreed to undertake the repairs on behalf of the respondent.

Accordingly the complainant submitted his claim-form on 24.8.92 with the respondent, in accordance with the estimate given by M/s. Competent Motors. It has been stated by the complainant that this repair estimate was approved by the respondent on 7.10.92 with regard to the validity of the comprehensive policy. It is stated by the respondent that during the scrutiny of the claim papers, filed by the complainant, the respondent-Company had observed that the complainant while seeking comprehensive insurance had made a short payment of Rs. 1,278/- and asked him to make good the amount to procure the claim. Since this amount was paid by the complainant, the comprehensive policy did not suffer from any defect.

It is alleged by the complainant that on 17.10.92, Mr. S.P. Mangla was appointed as the Surveyor by the respondent''s-Company and that he directed M/s. Competent Motors to carry out the necessary repairs. There was undertaken by M/s. Competent Automobiles. However, to give the delivery of the car they were demanding a payment of Rs. 96,021 /-. The fact was brought to the notice of the respondent''s-Company. However, they did not make the payment to the garage and the complainant took the delivery of the car by making payment himself. He, therefore filed the present complaint and demanded the following amounts from the respondent.

3. THE respondent''s-Company in their reply have inter-alia stated that according to the Surveyors report the cause and nature of accident did not tally with the damages observed as stated in the claim-form submitted by the complainant. In their view this fact casts a shadow of suspicion on the claim and also establishes a want of bona fide on the part of the complainant. THE complainant had initially taken a "Third Party Risk" insurance cover and got it changed to a comprehensive insurance policy on 17.8.92 just three days prior to the accident that is 20.9.92 and this fact does not augur well with the claim. That no FIR was filed by the complainant and only a report filed at Timarpur Police Station for entry in daily diary. It is further alleged that no eyewitness had been produced by the complainant even though the time of accident was 9.30 a.m. THE respondent''s-Company, therefore, got the matter examined by the investigator and there was no delay on their part in processing the claim. It is alleged that the complainant failed to satisfy the Surveyor and the investigator by not responding to the information sought by them. That this fact was brought to the notice of the complainant vide respondent letter dated 26.3.92 and has also been stated in the report of the Surveyor. Also that the Surveyor''s report further observed that the claim preferred by the complainant was highly inflated. It is stated that the respondent''s-Company had appointed M/s. Mehra Associates as the investigator subsequent to the report of the Surveyor and they had observed in the report that the cause of accident did not match/correspond with the damage caused to the vehicle and the claim.

4. IT is further alleged that the complainant was throughout reluctant to extend cooperation to the investigator in his investigation work and whatever the

investigator could gather places a needle of suspicion upon the claim of the complainant because it is inconsistent with those facts. IT is the bounden duty of the respondents-Company being a public body to take all steps to ascertain the veracity of the claim before taking a final decision. IT is further alleged that the facts gathered through the investigator and the Surveyor do not corroborate the claim of the complainant. The conduct of the complainant when seen in the background of the reports casts a shadow on the bona fide of the complainant by making a claim of the alleged accident. The amount of claim has also been challenged by the respondent. From a perusal of the pleadings of the parties it is evident that the complainant obtained the comprehensive insurance policy for a period of six months from 14-5-92 to 13-11-92. He has failed to show as to what prompted him to think of covering the car comprehensively w.e.f. 17-8-92. The car, it is not disputed, was taken under Taxi Quota, though alleged to have been put to personal use. Even if it was done so by him it was his duty to have kept the log book of the car. However, for reasons best known to him that has not been produced. It is further relevant to highlight that the accident is alleged to have taken place barely three days after it was comprehensively insured. No evidence except the bare statement of the complainant has been made as to how it took place. It was day time and alleged, to have taken place while the car was parked outside his residence. There are houses in close proximity of the complainant''s residence and no evidence regarding the accident has been produced. This places a doubt regarding the manner in which the accident is alleged to have taken place as well as the date of the accident. The Surveyor Sh. S.P. Mangla in his report has stated that the date of accident mentioned in the claim-form contained over-writing, indicating that the same had been changed subsequently. He further opined that the cause and nature of accident was found to be not tallying with the damages observed on the accidental vehicle. While the accident is alleged to have taken place when a truck while saving a school boy hit the car. Since the damages are on the front side, the truck should have come from the opposite direction. Thus the truck would have hit the parked car from an angular position thereby first hitting the front left/right side fender and the area of impact had to be on the front fender either on left or right side, but in the present case the centre of impact is near the centre of the radiator. In view of the aforesaid circumstances the Surveyor was of the view that the accident did not took place the way it is alleged by the complainant. He is also of the opinion that the car should have been hit by a smaller object like a tree and not a truck as stated in the claim-form.

5. IN view of the aforesaid circumstances the respondent got me matter invesrigated by Sh. O.P. Mehra, IPS retired by M /s. Associates Loss INvestigators and Traveller Aid, Paschim Vihar, New Delhi. Mr. Mehra, after considering the matter in detail, came to the conclusion as follows : - "(ii) INitially, the car was insured only for a period of six (6) months w.e.f. from 14.5.1992 through Sh. A.K. Batish, INspector attached to the Delhi Model Basti Branch of New INdia Assurance Co. Ltd., and working outside Transport

Authority, Rajpur Road, Delhi.

(iii) On 17.8.92, Sh. C.L. Raizada procured comprehensive insurance of his car through Sh. Amar Nath, INspector attached to Hemkunt House branch of N.I. Ass. Co. Ltd. vide Cover Note No. 567519 & lodged a claim on the INsurance Co. on 24.8.92 alleging damages to his car while parked on the Lucknow Road outside his house on 20.8.92. The accident was reported to the concerned Police Station (Timar Pur) on the same day i.e. 20.8.1992 with no follow up action.

(iv) INspector Amar Nath deposited the premium (Rs. 18190/-) towards the Comprehensive INsurance of Sh. Raizada''s car only on 24.8.1992 after learning about filing of motor claim by the insured. Except for the car of Sh. Raizada, in a number of other fresh and renewal cases, INspector Amar Nath is found to have deposited premium with the office between 17.8.1992 and 20.8.92, both days inclusive. (21st, 22nd and 23rd August, 1992 were holidays).

(v) INspector Amar Nath altered the dates in his own (2) copies of Cover Note from 17.8.1992 to 19.8.1992 as also the date of accident in the Claim Form and intimation letter of the insurer to bring it closer to the date of lodging of claim.

(vi) The contention of INspector Amar Nath that the insured handed over the claim papers to him on the afternoon of 24.8.1992 when he attended the office apparently is not convincing. Had this been so, the INspector would have also altered the dates in the insured''s copies of cover note available with him at that time.

(vii) Though there exist contradictory remarks in proposal form regarding inspection of the vehicle, actually the car ivas not repeat not subjected to physical checking by INspector Nath before or after the issue of aforesaid Cover Note No. 567519 on 17.8.1992.

(viii) It has came in evidence that Sh. C.L. Raizada had also approached S.Sh. A.K. Batish and K.L. Chadha, INspectors posted under Model Basti Branch Office of N.I. Assu. Co. Ltd. at their temporary place of work-outside Transport Authority, Rajpur Road, Delhi and both of them declined to oblige him without physical inspection of the car. Naturally, Sh. Raizada must have made this attempt on or before 17.3.1992 . Evidently, the car was not alright.

(ix) As per history of the accident, the car was parked on the extreme left side of Lucknow Road opposite to H.No. 41 facing Wazirabad Bridge and a speeding truck coming from the opposite direction rammed into it and disappeared. INtriguingly, the right head and parking light glasses of the car and its surrounding area including right fender were not affected in the accident.

(x) The presence of damages on the left front portion of the car indicate that the impact awas caused by an object much shorter in width than that of a normal H.T.V.

(xi) IN the absence of any eye witness to the accident, the insured was asked to furnish name and address of the persons who had seen the accidental car parked outside his house. Sh. Raizada has claimed that the car after the accident was removed to his house where it remained parked till it was towed with the help of a crane to the workshop of M/s. Competent Automobiles, Mehrauli, New Delhi. Not only Sh. Raizada failed to provide the above information, he was also unhelpful in identifying the place of hiring of crane and specifying how the car was removed from the site of accident to his house after it had become immobilised.

(xii) Dr. B.R. Seth, Consultant, Labour Laws and INdustrial Relations who resides in H. No. 41, Lucknow Road, just opposite to the alleged placed of accident has expressed ignorance of any such happening.

(xiii) Being a taxi, the insured under the rules is to maintain daily account of the movement of the vehicle. This he did not observe and thus we have been deprived of vital information which would have helped in tracing the accident.

(xiv) Last but not the least, the contention of the insured that he had cot a new stereo make'' Supra'' fitted in his car on 16.8.1992 (reference) to Cash Memo No. 1526 of Auto friend) does not help in proving the road worthiness of the vehicle as no accessory except two speakers were in the car when it was received at Competent Automobiles Workshop, Mehrauli, New Delhi on 22.8.1992."

6. FROM the forgoing conclusions it is evident that the complainant approached Sh. A.K. Batish, the Regional Insurance Agent to insure the car comprehensively but he refused to do so without inspecting the car. Thereafter he approached another Insurance Agent Sh. K.L. Chadha who also refused to do so without physical inspection of the car. After the two insurance agents refused, then he approached to Sh. Amar Nath who obliged him. It is interesting to note that Shri Amar Nath also made a remark in the proposal Form that the insurance would be subject to verification of the vehicle. These remarks are very significant and show that he did not inspect the car before using the comprehensive insurance cover. The complainant has also not produced the evidence as to whose crane was hired. The reports of the Surveyor/ inspector are detailed. They have given very cogent reasons for not accepting the claim of the complainant. In case those reports have been accepted by the Insurance Company it cannot be said that there has been deficiency in service on their part. All these matters require elaborate trial by the Civil Courts where the parties shall have ample opportunity to examine. cross-examine the witnesses, prove documents, issue Commissions etc. The aforesaid view followed by us in M/s. Rajdeep Leasing & Finance Delhi Pvt. Ltd. v. Asst. General Manager, New India Assurance Co. Ltd. & Others, I (1991) CPJ 302. That view was upheld by the National Commission in M/s. Rajdeep Leasing & Finance & Others v. New India Assurance Company Ltd. & Others, I (1992) CPJ 36 (NC).

In the aforesaid view we are fortified by the observations of the National

Commission in Junta Machine Tools v. Oriental Insurance Co. Ltd., I (1991) CPJ 508 (NC), the following observations may be read with advantage : - " From the facts disclosed by the record and particularly the averments contained in the counter affidavit filed by the first respondent it is seen that the Insurance Company had fully investigated into the claim put forward by the complainant, got surveys conducted and had finally come to the conclusion that the claim put forward by the complainant was false and accordingly informed the complainant that his claim was rejected. "The this is not a case where the Insurance Company did not take prompt and necessary steps for deciding the claim under the policies of insurance. It may be that the complainant is not satisfied with the said rejection of his claim by the Insurance Company. Having regard to the facts and circumstances of this case and the nature of the controversy between the parties we consider that this is a matter that should be adjudicated before a Civil Court where the complainant as well as the respondent will have ample opportunities to examine witnesses at length, take out Commission for local inspections etc. and have an elaborate trial of the case." Without prejudice to the right of the complainant to take resort to the remedy by way of civil suit before the proper Court. We dismiss this petition."

7. AFTER taking into consideration all the aforesaid circumstances we dismiss the complaint of the complainant subject to the observations that he may seek remedy in Civil Court, if so advised. No order as to costs. Complaint dismissed.

