(2008) 01 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

GENERAL INSURANCE CO LTD — APPELLANT

Vs

ABHIJIT SAINI — RESPONDENT

Date of Decision : 18-01-2008

Acts Referred:

Citation : 2008 2 CPJ 483

Hon'ble Judges : J.D.Kapoor , Rumnita Mittal J.

Final Decision : Appeal dismissed

Judgement

1. RESPONDENT got his vehicle insured with the appellant through its agent respondent-3 covering the risk of damage and theft of vehicle. 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 the police report was lodged at Damtaal on the next date. Appellant was also informed about the accident. However, the claim of the respondent was repudiated firstly on the ground that agent had played a fraud by not depositing the premium with the appellant-company and secondly that the respondent has taken inordinately long time in informing the appellant-company. Feeling aggrieved the respondent filed the instant complaint before the District Forum.

2. WHILE holding the repudiation of the claim by the appellant unjust and illegal, the District Forum allowed the complaint vide impugned order dated 18. 9. 2007 giving the following direction to the appellant: (i) Appellants-1 and 2 will pay Rs. 6,90,488 to the respondent under the insurance and shall take the custody of the car with letter of subrogation. The respondent will inform the transport authority for transferring the title of the vehicle from the name of the respondent to the name of appellants-1 and 2 and after the payment the respondent will have no claim or title in this vehicle. (ii) On account of deficiency in service by not honoring the claim, appellants-1 and 2 will pay Rs. 50,000 as compensation on account of deficiency in service. (iii) Appellants-1 and 2 will pay Rs. 10,000 to the respondent as cost of litigation.

Through this appeal the appellant has assailed the impugned order mainly on the ground that the Insurance Company is not liable to indemnify the loss to the consumer or the insured in case the agent or sub-agent does not deposit the premium and further if the insured takes inordinately long time in lodging the report and filing the claim.

None of the aforesaid pleas raised by the appellant found favour with the District Forum. These pleas also do not find favour with us. 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.

3. 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 officers at every place, they shall incur corers of rupees by paying salaries to large number of employees and the establishment and any other wherewithal''s. 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 in spite of the fact that they appointed one Investigator Mr. G. B. Mathur.

4. 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. 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 mala fide or falsehood, the claim should be accepted. 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.

5. FOREGOING reasons persuade us to dismiss the appeal being wholly devoid of merit and misconceived.

6. APPEAL is dismissed. The impugned order shall be complied with within one month from the date of receipt of this order.

Bank Guarantee/fdr, if any furnished by the appellant, be returned forthwith.

7. A copy of this order as per the statutory requirements be forwarded to the parties free of charge and also to the concerned District Forum and thereafter the file be consigned to Record room. Copy be sent to Presidents of all the District Forums. Appeal dismissed.