
(2002) 04 NCDRC CK 0057

In the National Consumer Disputes Redressal Commission

GENERAL MANAGER, UNITED INDIA INSURANCE CO. LTD.	APPELLANT
Vs	
MOHMADBHAI SAYEDIBRAHIM BAPORIA	RESPONDENT

Date of Decision : 08-04-2002

Acts Referred:

Citation : 2002 3 CPJ 199

Hon'ble Judges : M.S.Parikh , M.K.Joshi J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal arises from order dated 19.4.2001 rendered by the learned Consumer Disputes Redressal Forum, Surat in Case No. 359/1996. The learned Forum has directed the opponent Insurance Company to pay to the complainant Rs. 3,31,000/- with interest @ 12% p.a. from the date of application (27.12.1993) till payment.

2. IT was the complainant's case that his truck bearing registration No. GJ-5-T-2760 was insured with the opponent Insurance Company as per the particulars of insurance set out in the complaint and it was used for carting sand and grit at Rander, District Surat. IT was the complainant's case that on 21.9.1992 it was stolen from Rander. The complainant's maternal uncle lodged FIR on 22.9.1992 at C.R. No. 445/1992 under Section 379 of the Indian Penal Code. The concerned police officer of the Rander police station made search of the truck for around 4 months but could not recover it and could not also trace out the person alleged to have stolen the truck. He, therefore, filed "A" Summary Report before the learned Judicial Magistrate on 9.11.1993 under Section 173(1)(B) of the Criminal Procedure Code and closed the investigation. The complainant registered the claim with the opponent Insurance Company but no satisfactory explanation or reply was given for a long period resulting into the complainant writing letter dated 24.6.1993 which was replied by the opponent Insurance Company on 6.7.1993. The complainant, therefore, approached the opponent Insurance Company but it did not co-operate with the complainant. He, therefore, prayed for the amount of claim of Rs. 4,51,000/- with compensation in the sum of Rs.

51,000/- and cost of the complaint. IT appears that the complaint was registered as Case No. 442/1993 initially. Notice was issued to the opponent Insurance Company but as the opponent Insurance Company did not file affidavit-in-reply, right to file the same was closed and the matter was decided on 2.1.1995 ex parte against the opponent Insurance Company resulting into filing of Appeal No. 135/1995 in this Commission. That appeal was decided on 24.1.1996 and the matter was remanded to the learned Forum. IT appears that the complaint was given fresh number. The opponent resisted the complaint inter alia on the ground that the Forum did not have jurisdiction to entertain the complaint, that the truck was insured for risk of theft but the person lodging the complaint namely Umarali Akbarali neither filed the complaint nor filed affidavit in support of the complaint, that the truck in question was in possession of said Umarali Akbarali who stated in the police statement that the truck was purchased by his sister's son for him, that the case of theft was concocted, that the truck in question was used for illegal purpose, that it was reported in the local Gujarat Samachar of 3.8.1995 and 23.8.1993 that the truck in question was used for transporting RDX and deadly weapons and it was sold to one Mohmad Lajporia, that number plate of the truck in question was changed for using it for transporting RDX and deadly weapons from Jamnagar to Surat and Surat to Jamnagar, that Jamnagar police were still in search of the truck in question but it could not be traced out and that the existence of the truck was terminated by separating the parts and body thereof near Dhulia. IT was, therefore, the case of the opponent Insurance Company that the story of theft of truck in question was concocted. When the Investigator of the opponent Insurance Company went to Gujarat Samachar, he was informed that as six months were over the evidence and the information collected by the reporter of the newspaper were destroyed. Upon appreciation of the facts of the case and material placed on record, the learned Forum came to the conclusion that on account of police report as aforesaid consequent upon FIR for theft of the truck, the complainant should be treated to have established the complainant's case of theft of the truck whereas on account of the opponent Insurance Company having failed to place any evidence on record with regard to illegal use of the truck in question and with regard to existence of the truck in question having been wiped out, the complainant was entitled to the amount of insurance to the extent the relief was granted by the learned Forum. The opponent Insurance Company has challenged the impugned order before this Commission.

We have heard the learned Advocates appearing for the parties. It may be noted here that without prejudice to the contentions of the parties, we made a suggestion to the opponent Insurance Company for settling the claim at Rs. 2,80,000/- with interest @ 9% p.a. but, since the opponent Insurance Company was not agreeable to settle the matter at all, we were required to proceed with consideration of the submissions of the learned Advocates and dictation of this order.

3. IT has been submitted on behalf of the opponent Insurance Company that the

facts concerning the truck in question bear a serious complexion. The learned Forum ought to have examined the matter basically from the stand point of deficiency in service on the part of the opponent Insurance Company. Needless to say that the opponent Insurance Company was required to render its services for processing the claim as per the terms and conditions of the policy of insurance in question. On 24.9.1992, admittedly, the complainant gave written information about accidental loss of the truck in question during the period between 11 o'clock on 21.9.1992 and 8 o'clock on 22.9.1992. The place near which the incident occurred is stated to be Gymkhana Road, Rander. We have furnished a xerox copy of said intimation given by the complainant. There was a news item in Gujarat Samachar, a Gujarati daily dated 23.8.1993 reporting that the truck in question (truck bearing registration No. GJ-5-T-2760) was being used in the lawful occupation of carting sand and grit, but during night time it was used for transportation of RDX and deadly weapons being brought inside the city of Surat. Another truck which was referred to was truck bearing registration No. GJ-5-T-2838. Detailed facts are set out with regard to how the truck bearing registration No. GJ-5-T-2838 was left unclaimed near Olpad and seized by the police and how the truck in question was dealt with. IT was recited in the news item that the truck in question was dismantled and its spare parts and body were separated. IT has also been mentioned that its existence accordingly was wiped out. Both the trucks were referred to as belonging to one Umar Ashraf. In view of such facts, the opponent Insurance Company was required to hand over the matter to its Investigator M/s. Claims Minimization Bureau. ITs report dated 11.1.1996 was placed before the learned Forum. We would like to reproduce the report in its entirety. "We extend our gratitude for entrusting us with the investigation of the above mentioned claim. This being the subjudiced case advised us to contact only to the Police Department and Newspaper Office, etc. Our Investigator met the concerned persons and collected essential details required. We present our Report as under : (1). Investigation We perused the papers given to us along with letter of entrustment. IT was revealed that the following Authorities may prove to be the source of information : (i) Anti-terrorist Squad P.S.I. (ii) Gujarat Samachar Newspaper (iii) District Superintendent of Police, Jamnagar (i) Anti-terrorist Squad P.S.I. : As desired by your office we contacted Anti-terrorist Squad P.S.I. Shri Subbersing Yadav and also gave him the written application. Please find enclosed the xerox copy of the Application given to him. We visited his office and discussed with him and also shown him the Newspaper cuttings of Gujarat Samachar dated 3.8.1995 and 23.8.1993. After revealing the necessary papers the Anti-terrorist Squad P.S.I. gave the reply dated 30.9.1995, which reveals as under : (a) As per Newspaper cuttings they are not having any such information. They have investigated the case of tyre theft of Truck No. GJ-5-T-2838 and the complainant is one Mr. Umar Ashraf. (b) They are not having any information about the use of Truck No. GJ-5-T-2760 in illegal activities. (c) The Central Excise and Customs Department are investigating the role of Mr. Umarali Ashraf in smuggling activities. Hence advised to contact Customs Authority for further details. (ii) Gujarat Samachar : On the

basis of Newspaper cuttings we prepared one detail letter enclosed with Newspaper cuttings and submitted the same to "Gujarat Samachar", Surat. Please find enclosed the xerox copy of our letter Ref. No. 9557/Guj./95 dated 28.9.1995 for your perusal and record. On our visit at Gujarat Samachar, Surat; we were advised that for any News published in their Paper they keep the supporting documents and/or information up to six months from the date of publication. Here also the exercise of getting information proved futile. (iii) D.S.P., Jamnagar : On the basis of News reported in Gujarat Samachar, we prepared one application bearing Ref. No. 9557/Guj./95 dated 18.9.1995 and sent the same by Regd. A.D. Post to D.S.P., Jamnagar. Please find enclosed the xerox copy of our letter dated 18.9.1995 for your perusal and record. Please note that till date we have not received any reply of our letter from D.S.P., Jamnagar. During the personal discussions with different Government Officers, we were advised by them to lodge a complaint with C.I.D. Crime Branch then only the different Government Agencies will part with the information and documents in respect with Umarali Ashrafali and use of truck No. GJ-5-T-2760. Please note that this is just our suggestion advised by the well wishers of Insurance Company. We are returning herewith your papers along with our Memo of Expenses and Professional Charges for your kind consideration."

It has been submitted from the aforesaid report that the opponent Insurance Company had made legitimate inquiry about the truck in question and considering the facts concerning the said truck, there was passage of considerable time. It has, therefore, been submitted that neither for dishonouring the claim nor for delay in processing the claim the opponent Insurance Company can be legitimately held as deficient in rendition of service. If that is so, the proceeding before the learned Forum ought to have ended in favour of the opponent Insurance Company.

4. IT has also been submitted that assuming that the complaint could be entertained by the learned Forum, under the peculiar facts and circumstances noted above, it was for the complainant to establish several facts by producing cogent evidence. The complainant has not established loss of truck in question by theft. What the complainant has shown before the learned Forum is about lodging of FIR and filing of report by the police to the effect that the truck in question could not be traced out and to the effect that no person could be spotted so as to connect the alleged theft of the truck in question. The learned Forum ought to have first insisted upon evidence in support of alleged theft of truck in question instead of diverting the burden of proof about the use of the truck in question for criminal/illegal activity as stated above and resultant wiping out of the existence of the truck in question. IT has been submitted that the evidence which could have been available to the opponent Insurance Company was destroyed by the newspaper personnel after passage of six months from the date on which the news was published. Under such circumstances, the newspaper evidence ought to have been taken into consideration as prima facie evidence of at least raising a grave suspicion about the manner in which the

truck in question was dealt with. In reply it has been submitted on behalf of the original complainant that the truck in question was used for legal transportation business, that it was stolen on 21.9.1992 and complaint was lodged at C.R. No. 445/1992 in Rander on 29.9.1992, that after strenuous efforts police could not detect the real culprits and closed the file filing summary under Section 173(1) (b) of the Criminal Procedure Code, that the opponent Insurance Company was deficient in repudiation of service for having not settled the claim, that the opponent Insurance Company has not been able to place single document in support of the allegations regarding the illegal/criminal use of the truck in question as stated above, that the learned Forum received a report from the Assistant Commissioner of Customs, Surat stating that there was no such vehicle involved in customs case as per the available records, that there was a report received from the Police Officer, Jamnagar stating that no investigation was done regarding involvement of the truck in question or that Mr. Umarali Ashraf was interrogated as witness or that he was arrested as the accused and that under such circumstances no evidence was required to be given by the Police Officer in the matter before the learned Forum. It has also been submitted that Police Sub-Inspector, local Crime Branch, Surat on September 13, 1998, informed the learned District Forum that Umar Ali Ashraf was complainant in another matter which was investigated by them but they did not find any evidence regarding illegal activities of the said person. A reference has been made to the cross-examination of the complainant but no favourable aspect could be obtained by the opponent Insurance Company from such cross-examination. It has also been submitted that the honourable Supreme Court has in several cases decided and declared that news of newspaper is hearsay evidence and it cannot take place of proof. One of the documents on which the complainant seeks to place reliance is a news item dated 24.9.1993 making a reference to alleged theft of truck in question for which complaint was lodged by one Umarali Ashrafali, resident of Chacha Mohalla of Rander. Finally, reference has been made to the decision of this Commission in Abdul Gani Sadruddin & Ors. v. United India Insurance Co. Ltd., reported in 2 1993 GCD CP 81 (Guj.), where it has been held that there was deficiency in service on the part of the Insurance Company in not settling the claim by raising unnecessary issues. Reference has also been made to a decision of the National Commission in the case of M/s. Delkon (India) Pvt. Ltd. v. The Oriental Insurance Company Limited, reported in III (1993) CPJ 313 (NC)=1 1994 GCD CP 89, where it has been held that the Insurance Company could not deny the claim on the ground that police did not file final report and the complainant insured did what he could do or was required to do under the policy of insurance to maintain his claim. We have given out thoughtful consideration to the facts and circumstances of the case and the submissions made on behalf of the learned Advocates appearing for the rival parties. For the purpose of appreciating the first aspect of the matter whether the opponent Insurance Company was unnecessarily prolonging the settlement of the claim and thereby displaying deficiency in service, it would be appropriate to see the facts which came to the notice of the opponent Insurance Company. The facts are stated at

length in the opening part of this order. They relate to the news item concerning the illegal/criminal activity against the interest of the nation being undertaken by use of the truck in question and resultant dismantling of the truck and wiping out the existence thereof. Therefore, there was material before the opponent Insurance Company to enter into the exercise of investigating the claim. It cannot, therefore, be said that the opponent Insurance Company displayed deficiency in service by entering into a prolonged exercise of investigating the claim. Two facts emerged. First, it was not in dispute that the truck in question was not available even on the date when the complainant lodged FIR for the alleged theft of the vehicle. The intimation which was given by the complainant to the opponent Insurance Company on 24.9.1992 was concerning some accident and at the foot of this communication there is a note against column of spot survey/final survey to the effect "Theft of Truck". It is true that the Investigators' report indicates that even at that stage viz. as on 11.1.1996 the Investigators were advised by the different Government officers to lodge a complaint with the CID Crime Branch and the Investigators made such suggestion to the opponent Insurance Company. It is true that even the efforts of the learned Forum to call for the reports from different authorities have resulted into no finding with regard to the truck in question having been used for aforesaid illegal activity or about the concerned person being involved in such anti-national activity. What is important to be noticed in the present case is whether there was any deficiency in service on the part of the opponent Insurance Company in not accepting the claim of the complainant. Despite the fact that the opponent Insurance Company was not in a position to pin-point the manner in which the truck in question was used and lost, the opponent Insurance Company still was within its right to call upon the complainant to prove the case of theft. The complainant failed to do so before the opponent Insurance Company and, therefore, it can hardly be said that opponent Insurance Company was guilty of deficiency in service in that respect also. In our, considered opinion, the matter before the learned Forum could have ended here itself. However, if the learned Forum wanted to give opportunity to the complainant to establish the complainant's claim it was for the complainant to prove his case. What the complainant has done before the learned Forum is to simply rely upon the affidavit of the complainant who was cross-examined before the learned Forum, true copy of the FIR (without the evidence of the informant in any manner), true copy of Panchnama (without the affidavits of the Panch witnesses) and the true copy of the police report under Section 173(1)(b) of the Code of Criminal Procedure. In the ordinary course of circumstances, it could be assumed that the complainant could have done nothing more than producing the true copy of the FIR, Panchnama and Summary Report under Section 173(1)(b) of the Code of Criminal Procedure. However, under the peculiar circumstances revolving round the non-existence of the truck in question, the complainant ought to have examined at least the person giving the FIR. He was complainant's close relative and there was no reason why he was not examined before the learned Forum. There was no reason why his affidavit was also not filed and not offered for cross-

examination before the learned Forum. What the preliminary report of the police indicated was with regard to the fact that the truck in question could not be traced and with regard to the person who had dealt with the truck in question resulting into its loss who could not also be traced. Under such circumstances, we are now required to verify further facts.

5. IT is not in dispute that the complainant owned the truck in question and got it insured with the opponent Insurance Company. IT is in this light that the allegations of facts made in the FIR might be considered. One Umarali Ashraf, aged 32 years, occupation carting appeared before the police on 22.9.1992 and reported that the truck in question with particular engine number and particular chassis number was being used by him for the work of carting. He has asserted that his sister's son Mohmad Syed Ibrahim Baporla (complainant) had given him the truck in question for being used accordingly and was using the truck in question for around one and half years. He has asserted that the truck was parked in the compound located near Ashrafi Madrassa on Gymkhana Road and when he went to take the truck at around 8 o'clock in the morning he found that the truck was not there. He got the inquiry made with regard to the truck but he could not get any information regarding the truck and, therefore, he appeared before the police for lodging F.I.R. at 4.30 p.m. True copy of the Panchnama would indicate that there were no traces found with regard to notable signs at the places of alleged incident. True copy of the police report dated 9.1.1993 would indicate that neither the truck nor any fruitful information with regard thereto could be traced and, therefore "A" Summary was being filed under Section 173(1)(b) of the Code of Criminal Procedure.

6. IT might be noted from the aforesaid documents that although the truck could not be noticed in the morning, FIR was lodged at around 4.30 p.m. No particulars about how and from whom the inquiry was made by the aforesaid first information were placed before the learned Forum. The witness admitted having not taken any action against the aforesaid news report published in local daily Gujarat Samachar. He also admitted that he did not produce the Panchnama. He admitted the fact that the parking place was the compound near Ashrafi Madrassa. He admitted that he was not present at the time of the Panchnama and he was residing at Mumbai. He admitted that the compound was covered with wire fencing containing two wires. He also admitted that 3 to 4 trucks were parked in the compound. He admitted that the truck was with his maternal uncle for one to one and half years before the date of the incident. At the time when the complaint was given, one Salil and one another person were the drivers of the truck in question. He admitted that he did not mention the name of the driver in column 3 of the claim and that he did not produce the licence of the driver. He expressed that he was prepared to produce the original papers of the truck and insurance policy. He admitted that on 23.8.1993 there was the aforesaid news item in the Gujarat Samachar concerning his truck. He denied the fact that the truck in question was sold to one Ahmed/Mahmad Lajporla as stated in the news item and that as it was involved in criminal/illegal activities, it was

dismantled near Dhulia. He had admitted that the news item contained name of Umar Ashraf (his maternal uncle). He also did not enquire about other news item which appeared on 3.8.1995 inter alia stating that Salim Sheikh and Najib Ismail as also Mohd. Kalia were drivers of the truck in question. He admitted that the said news related to the truck in question as well as another truck of his maternal uncle. He admitted that he did not enquire about the news item. He finally admitted that he was carrying on business of transportation. In the background of the peculiar facts noted above, inaction on the part of the complainant regarding the news item and facts stated therein speak volumes. The complainant ought to have examined complainant's maternal uncle who lodged the complaint before the police. In the background of aforesaid facts, it could hardly be said that the evidence of FIR and the "A" Summary Report could have provided sufficient material to prove the risk of theft having actually attached to the loss of truck in question. Such peculiar facts and circumstances clearly distinguish the decisions referred to on behalf of the complainant and noted hereinabove. We have gone through the said decisions and in our considered opinion the same will not be applicable to the facts and circumstances of the present case. In the result, even if it is found that the matter could be proceeded with on evidence, the complainant failed to produce convincing and satisfactory evidence to show that the truck in question was parked on 21.9.1992 at the place stated in the FIR, that it was in fact not found in the morning of the next day, that the first informant made inquiry with regard to be having not found the truck in the morning and that, therefore, on the assumption that the truck was stolen he gave the complaint before the police.

In the result, the opponent Insurance Company could not be treated to have been deficient in service. We, therefore, pass following order : ORDER Impugned order dated 19.4.2001 rendered by the learned Consumer Disputes Redressal Forum, Surat in Case No. 359/1996 is hereby set aside. The complaint bearing Case No. 369/1996 filed by the complainant will stand dismissed with no order as to costs. This appeal is accordingly allowed, with no order as to costs. Copy of this order to be sent to the parties by Registered Post A.D. as well as under Postal Certificate. Appeal allowed.