(2016) 01 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

Case No : 1068 of 2015

GURNAM SINGH APPELLANT

Vs

NEW INDIA ASSURANCE CO LTD & ANR RESPONDENT

Date of Decision : 11-01-2016

Acts Referred:

Insurance Act, 1938, Section 64U, Section 64UC(1) - Establishment of Tariff Advisory Committee - Power of the Advisory Committee to regulate rates, advantages, etc

Citation : (2016) 01 NCDRC CK 0012

Hon'ble Judges : V K Jain, B C Gupta

Advocate : Brahm Prakash Sharma, Abhishek Shrotriya, V S Chopra

Judgement

1. Revision PETITION NO. 2479 OF 2015 The complainant who owned a truck dumper bearing No. RJ 23 GA 4786 got the same insured with the petitioner company for the period from 10.10.2010 to 09.10.2011. During the subsistence of the insurance policy, the vehicle was stolen between 06.6.2011 to 07.6.2011 and a report with the concerned police station was lodged on 07.6.2011 itself. The intimation to the insurance company however, was given only on 07.9.2011. The claim lodged by the complainant was however rejected by the insurance company on account of delayed intimation of the theft to it. Being aggrieved, the complainant approached the concerned District Forum by way of a complaint. The petitioner / opposite party resisted the complaint on the same ground, on which the claim had been rejected.

2. The District Forum vide its order dated 29.10.2014, allowed the complaint and directed payment of Rs.9,50,000/- to the complainant, along with interest on that amount @ 9% per annum from the date of filing of the complaint.

3. Being aggrieved from the order of the District Forum, the insurance company approached the concerned State Commission by way of an appeal. The said appeal having been dismissed vide impugned order dated 02.6.2015, the insurer is before us by way of this revision petition. REVISION PETITION NO. 1068 OF

2015

4. The complainant / petitioner purchased a vehicle and got the same insured with the respondent for the period from 16.01.2009 to 15.01.2010. The aforesaid vehicle was stolen on 28.09.2009, and could not be traced. An FIR was registered by the police on 06.11.2009. The intimation of the theft to the insurance company was given on 09.11.2009, after delay of 41 days. Since no claim was paid to him, the complainant approached the concerned District Forum by way of a complaint.

5. The complaint was resisted by the insurance company, primarily on the grounds that there was delay in lodging FIR as well as in intimating the theft of the vehicle to them. It was claimed by the insurance company that the complainant had contravened the terms and conditions of the policy by not lodging the FIR and not intimating them immediately after the occurrence.

6. The District Forum vide its order dated 26.09.2012 dismissed the complaint. Being aggrieved from the order passed by the District Forum the complainant/ petitioner approached the concerned State Commission by way of an appeal. The said appeal having been dismissed vide impugned order dated 25.7.2014, the complainant is before us by way of this revision petition.

7. As far as lodging of FIR with the police is concerned, the petitioner / complainant has filed a certificate issued by the Kotwali Rudrapur, District Udham Singh Nagar (Uttrakhand), certifying therein that a complaint dated 28.09.2009 was filed by Shri Gurjant Singh to the police station, Rudrapur on 28.09.2009 and FIR No.607/2009 has been registered on the basis of the complaint dated 28.09.2009. Since the theft of the vehicle took place in the night of 27.09.2009, there was no delay in intimating the theft to the police. Having intimated the theft to the police on 28.9.2009 itself, the petitioner / complainant could not have compelled them to register an FIR on the same date. Once the theft is reported to the police, there will be due compliance of the term of the insurance policy requiring intimation of the theft to the police. The fora below therefore, could not have rejected the complaint on account of the late registration of the FIR.

8. One of the conditions, subject to which the insurance policy was issued to the complainants, reads as under: "Notice shall be given in writing to the Company immediately upon the occurrence of any accidental loss or damage and in the event of any claim and thereafter the insured shall give all such information and assistance as the Company shall require. Every letter claim writ summons and / or process or copy thereof shall be forwarded to the Company immediately on receipt by the insured. Notice shall also be given in writing to the Company immediately the insured shall have knowledge of any impending prosecution Inquest or Fatal Inquiry in respect of any occurrence which may give rise to a claim under this policy. In case of theft or criminal act which may be the subject of a claim under this policy the insured shall give immediate notice to the police

and co-operate with the Company in securing the conviction of the offender".

9. It is contended on behalf of the complainants, that the following obligations on the part of the insured emerge from a careful analysis of the above-referred clause: (i) If there is any loss or damage due to an accident and the insured intends to lodge a claim for reimbursement of such loss or damage with the insurer, he has to forthwith intimate the loss / damage to the insured, and if any information or assistance is sought by the insurer, the insured must provide the same to the insurer;

(ii) If the insured comes to know that any prosecution, inquest or inquiry in respect of any occurrence, which gives rise to a claim against the insurer is instituted or is likely, he has to give notice of the same to the insurer, irrespective of the nature of the occurrence, be it accidental or otherwise;

(iii) In the case of a theft or any other criminal act, the insured must forthwith report the matter to the police and then cooperate with the insurer in conviction of the offender, if he is prosecuted.

(iv) No report to the police is necessary in a case of loss or damage due to an accident, unless a criminal act is also involved.

10. It was however contended by the learned counsel for the insurer that in every case of claim, irrespective of whether the loss occurs due to accident or theft or in any other manner, immediate intimation to the insurer is necessary.

11. In Oriental Insurance Company Limited Vs. Parvesh Chander Chadha, Civil Appeal No.6739 of 2010, decided on 17.08.2010, the car in question was stolen between 18.01.1995 and 20.01.1995. The FIR was lodged with the police on 20.01.1995 but intimation of the said theft was given to the insurance company only on 22.5.1995. The claim having been repudiated on the ground of the breach of the conditions of the policy, a complaint was filed by the insured before the concerned District Forum, seeking compensation along with interest. The complaint was resisted by the insurance company on the ground that he had violated the conditions of the policy by not intimating the alleged theft for almost five months. The District Forum, State Commission as well as National Commission, having ruled in favour of the complainant, the matter was agitated by the insurance company before the Hon''ble Supreme Court. Allowing the appeal filed by the insurance company, the Hon''ble Supreme Court inter-alia held as under: "Admittedly, the respondent had not informed the appellant about the alleged theft of the insured vehicle till he sent letter dated 22.5.1995 to the Branch Manager. In the complaint filed by him, the respondent did not give any explanation for this unusual delay in informing the appellant about the incident which gave rise to cause for claiming compensation. Before the District Forum, the respondent did state that he had given copy of the first information report to Rajender Singh Pawar through whom he had insured the car and untraced report prepared by police on 19.9.1995 was given to the said Shri Rajender Singh Pawar, but his explanation was worthless because in terms of the policy, the

respondent was required to inform the appellant about the theft of the insured vehicle. It is difficult, if not impossible, to fathom any reason why the respondent, who is said to have lodged First Information Report on 20.1.1995 about the theft of car did not inform the insurance company about the incident. In terms of the policy issued by the appellant, the respondent was duty bound to inform it about the theft of the vehicle immediately after the incident. On account of delayed intimation, the appellant was deprived of its legitimate right to get an inquiry conducted into the alleged theft of vehicle and make an endeavour to recover the same. Unfortunately, all the consumer foras omitted to consider this grave lapse on the part of the respondent and directed the appellant to settle his claim on non-standard basis. In our view, the appellant cannot be saddled with the liability to pay compensation to the respondent despite the fact that he had not complied with the terms of the policy.

In the result, the appeal is allowed, the impugned order as also those passed by the District Forum and the State Commission are set aside and the complaint filed by the respondent is dismissed".

12. Since the terms and conditions of the insurance policy, which the insured had issued to the complainant in Parvesh Chander , had not been reproduced in the order of the Hon''ble Supreme Court, we perused the order passed by this Commission in the above referred case. However, the terms and conditions of the policy were not reproduced even in the judgment of this Commission. It however, became evident from a perusal of the judgment that the insurance policy was issued for the period from 17.1.1995 to 16.01.1996. On further examination of the issue, we found that standard form for private car policy was prescribed by the Tariff Advisory Committee from time to time, which is binding upon all the insurance companies. The relevant clause of the insurance policy, applicable at the time the complainant in Parvesh Chander took the insurance policy, reads as under: "Notice shall be given in writing to the company immediately upon the occurrence of any accident or loss or damage and in the event of any claim and thereafter the insured shall give all such information and assistance as the Company shall require. Every letter, claim, writ, summons and/or process or a copy thereof shall be forwarded to the Company immediately on receipt of the insured. Notice shall also be given in writing to the company immediately the insured shall have knowledge of any impending prosecution, Inquest or Fatal Inquiry in respect of any occurrence which may give rise to a claim under this policy. In case of theft or criminal act which may be the subject of a claim under this policy the insured shall give immediate notice to the police and cooperate with the company in securing the conviction of the offender".

The standard form of the insurance policy applicable to Motor Vehicles was amended by the Tariff Advisory Committee with effect from 01.07.2002 and the revised policy contains the clause extracted in para-8 hereinabove.

13. Section 64 U of the Insurance Act, 1938 provides for establishment of a Committee to be called the Tariff Advisory Committee to control and regulate the

rates, advantages, terms and conditions that may be offered by the insurers in respect of general insurance business. Section 64 UC (1) of the Insurance Act, 1938 to the extent it is relevant, reads as under:

64UC. Power of the Advisory Committee to regulate rates, advantages, etc.

The Advisory Committee may, from time to time and to the extent it deems expedient, control and regulate the rates, advantages, terms and conditions that may be offered by insurers in respect of any risk or of any class or category of risks, the rates, advantages, terms and conditions of which, in its opinion, it is proper to control and regulate, and any such rates, advantages, terms and conditions shall be binding on all insurers.

Every decision of the Advisory Committee shall be valid only after and to the extent it is ratified by the Authority, and every such decision shall take effect from the date on which it is so ratified by the Authority, or if the Authority so orders in any case, from such earlier date as he may specify in the order.

(4) The decisions of the Advisory Committee in pursuance of the provisions of this section shall be final.

(5) Where an insurer is guilty of breach of any rate, advantage, term or condition fixed by the Advisory Committee, he shall be deemed to have contravened the provisions of this Act".

Thus, the terms and conditions prescribed by the Tariff Advisory Committee uniformly apply to all the insurance policies.

14. On a comparison of the Clause applicable in the year 1995-96 and the clause applicable in the subsequent policies, we find that whereas the previous clause required the insured to intimate the insurance company immediately ''upon the occurrence of any accident or loss or damage'', the later clause required him to give such intimation upon the ''occurrence of any accidental loss or damage''. Since theft of a vehicle is also a loss, the earlier clause obviously required immediate intimation of the theft of the vehicle to be given to the insurance company. Therefore, the question which arises for our consideration is as to whether there is any change in the obligation of the insured in this regard, considering that the expression ''accidental loss or damage'' is used in the clause contained in the later policies. If the clause contained in the later policies read in isolation, it may give an impression that the notice to the insurance company is required to be given only in the event of the loss or damage to the vehicle due to an accident as it is normally understood, if the insured intends to lodge a claim with the insurer for reimbursement of the loss or damage sustained by him. But, a deeper scrutiny of the later insurance policies, we are satisfied that even a loss or damage, due to theft of the vehicle, is required to be reported to the insurance company immediately after the theft is detected, in case the insured intends to lodge a claim with the insurer for reimbursement of the loss or damage sustained by him.

15. The revised standard form uses the term ''accidental loss'' at a number of places, as extracted herein below: Standard form for private car package policy

Whereas the insured by a proposal and declaration dated as stated in the Schedule which shall be the basis of this contract and is deemed to be incorporated herein has applied to the Company for the insurance hereinafter contained and has paid the premium mentioned in the schedule as consideration for such insurance in respect of accidental loss or damage occurring during the period of insurance.

"The Company shall not be liable under this Policy in respect of

Any accidental loss or damage and / or liability caused sustained or incurred outside the geographical area:

4 (i) Any accidental loss or damage to any property whatsoever or any loss or expense whatsoever resulting or arising there from or any consequential loss".

The term accidental loss or damage, wherever, it appears in the standard form of the insurance policy will have to be given the same meaning. If the aforesaid term is interpreted to exclude loss due to theft, as the contention of the complainant is, it would imply that the proposal submitted by the insured which forms the basis of the contract of insurance does not provide insurance against theft of the vehicle, and consequently the insurer is not liable to reimburse the insured for such a loss. This obviously is not the case either of the insurer or of the insured. Similarly, this could not have been the intention of the parties to exclude the consequential loss in case of loss or damage to property due to an accident while not excluding such a loss on account of theft of a vehicle. Hence, there is no escape from the conclusion that the substitution of the term ''accident or loss or damage'' in the old standard form by the term ''accidental loss or damage'' in the new standard form does not change the scope of the insurance policy issued in respect of a motor vehicle and therefore, the decision of the Hon''ble Supreme Court in Parvesh Chander would equally apply in respect of the insurance policies issued after 30.07.2002 when the revised standard form came into force.

16. For the reasons stated hereinabove, we have no hesitation in holding that the insured was under a contractual obligation to intimate the theft of the vehicle to the insurer immediately after the said theft came to his knowledge and mere intimating the police or lodging an FIR does not amount to sufficient compliance with the terms and conditions of the insurance policy. Since admittedly, there was substantial delay in intimating the theft of the vehicle to the insurance company in both these cases, the insurer was entitled to repudiate the claim on account of the aforesaid default on the part of the insured. Consequently, revision petition No. 2479 of 2015, filed by Reliance General Insurance Co. Ltd. is allowed and the complaint filed by the respondent / complainant Jai Prakash is hereby dismissed. Revision Petition No.1068 of 2015 filed by Shri Gurnam Singh against The New India Assurance Company Ltd. is hereby dismissed. No order as

to costs.

