

(1993) 11 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

Hanuman Prasad

APPELLANT

Vs

New India Assurance Co. Ltd

RESPONDENT

Date of Decision : 10-11-1993

Acts Referred:

Citation : 1994 1 CLT 443 : 1994 1 CPC 440 : 1994 1 CPJ 1 : 1994 1 CPR 21

Hon'ble Judges : V.Balakrishna Eradi , A.S.Vijayakar , Y.Krishan , B.S.Yadav J.

Final Decision : Revision allowed

Judgement

1. SHRI Hanuman Prasad, has filed this Revision Petition against the order dated 28.8.1992 passed by the Consumer Disputes Redressal Commission, Madhya Pradesh at Bhopal by which his appeal filed against the order of District Consumer Disputes Redressal Forum, Rewa was dismissed. The facts of the case are that he had purchased one Escort tractor in 1983. The Engine No. is 3109686 and Chasis No. B 0160668. For purchasing the tractor he had obtained loan from Punjab National Bank, Rewa Branch (No. 2 herein and who was No. 2 in the complaint). The tractor got registration No. MBA 7133. The tractor was insured with the present No. 1 New India Insurance Co. Ltd. (who was Opposite party No. 1 in the complaint). No. 3 SHRI Arshad Zafri was the Insurance Agent through whom the tractor was got insured. Insurance policy for the said tractor was taken by the Bank who had advanced the loan for its purchase and to whom it was hypothecated. However, the premium paid was debited in the loan account of the . At the time of taking the insurance policy correct particulars were recorded in the policy. At the time of renewal of the insurance policy from 26th April, 1984 to 25th April, 1985 also correct particulars of the tractor were recorded in the policy. However, in the renewed policy from 25th April, 1985 only the name and particulars of the complainant, the name and model of tractor and the code number was correctly given in the policy but wrong chasis No. and engine number were given. In the renewed policy which was valid from 6th May, 1986 to 5th May, 1987 even the name of the tractor was changed from Escorts to international make. In the last insurance certificate from 24th May, 1990 to 23rd May, 1991 the only correction that was made was about the actual make of

the tractor i.e. Escorts was entered. The claimant never inspected the insurance papers as the Insurance Agent, i.e., No. 3 herein used to take the renewal premium from the Bank.

2. ON 11th December, 1990 the tractor met with an accident and was damaged. The tractor was examined by the Insurance Company at the site of the accident. In respect of the damage to the tractor the Complainant filed claim under the Motor Vehicles Act as one truck had collided with the tractor. The Insurance Company got the spot survey done twice and asked the Complainant not to get the tractor repaired as the Bhopal office was to make additional enquiry. Later on the claim of the Complainant was rejected by the Insurance Company on the ground that the tractor was not insured.

During the period the tractor could not be repaired at the instance of the Insurance Company, as alleged by the complainant, he had to hire another tractor for his agricultural purpose and had to incur Rs. 17,140/- as costs. He also claimed Rs. 10,000/- as compensation for the loss incurred by him in his agricultural pursuit. Upon the above facts complainant Hanuman Prasad filed the complaint before the District Forum. The Insurance Company contested the claim. It was pleaded that Escort tractor bearing No. MBA 7133 was not insured with it. It was also pleaded that the tractor met with the accident in Satna District where the Complainant filed claim under the Motor Vehicles Act against the owner, driver and the Insurance Co. of the Truck and therefore, the District Forum at Rewa had no jurisdiction to hear the case as no part of cause of action had arisen there.

3. THE District forum dismissed the complaint on the ground that it has no jurisdiction to hear the case as the damage to the tractor had occurred in Satna District due to the negligence of the driver of the truck and in respect of which case under the Motor Vehicles Act was pending at Satna Feeling aggrieved of the order of the District Forum, the Complainant filed an appeal before the State Consumer Disputes Redressal Commission. The State Commission relying upon some decisions of this Commission held that when a case is pending in a Court in which full evidence is to be recorded the Forums constituted under the Consumer Protection Act; 1986 should not entertain the complaint with respect to the same cause of action. Accordingly the appeal filed by the Complainant was rejected.

4. STILL not being satisfied the Complainant has come before this Commission by way of this Revision Petition. After hearing the case, we are of the opinion that the District Forum as well as the State Commission have failed to exercise the jurisdiction vested in them. Of course in respect of the damage to the tractor the claim of the Complainant against the owner/driver of the offending truck and the Insurance Company which had insured that truck is pending before the Tribunal at Satna. In the present case the complaint of complainant is that he had been prevented by the officers of the Insurance Company from getting the tractor repaired for a considerable time and thus for his agricultural work he had to hire a tractor and also suffered some loss. The complaint filed before the

District Forum by the Complainant was not in respect of damage to the tractor but on account of deficiency in the rendering of service by the Insurance Company is not allowing the complainant to get the tractor repaired and finally rejecting his claim on the alleged wrong particulars in the policy. Thus the claim in the complaint was based upon totally different cause of action. As far as the question of jurisdiction is concerned the case of the Complainant is that he got the tractor insured from Branch Office of the New India Insurance Company located at Rewa. The remaining parties are also located in Rewa. Therefore, we have not been able to understand how the District Forum at Rewa had no jurisdiction to entertain the complaint.

5. THE grievance of the Complainant against the Bank is that it did not check the particulars given in the renewal forms and the policies issued thereafter and thus the mistake has occurred in the record of the Insurance Company about the particulars of insured tractor. In view of the above observations, we accept the present Revision Petition and set aside the orders of the State Commission and the District Forum and remand the case to the District Forum, Rewa for fresh disposal in accordance with law. We make no order as to costs. Revision allowed.