(2017) 03 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

Case No : 4218-4219 of 2011

ICICI LOMBARD GENERAL INSURANCE CO. LTD. — APPELLANT

Vs

JAFARBHAI DAUDBHAI SAMA — RESPONDENT

Date of Decision : 30-03-2017

Acts Referred:

Indian Penal Code, 1860, Section 114, Section 379 - Abettor present when offence is committed - Punishment for theft

Consumer Protection Act, 1986, <a href=3999-21>Sect

Citation : (2017) 03 NCDRC CK 0034

Hon'ble Judges : B.C. Gupta, S.M. Kantikar

Advocate : Shashwata Pandey, Shridhar V. Chitale, Vivek R. Mohanty

Judgement

1. These revision petitions have been filed under section 21(b) of the Consumer Protection Act, 1986 against the orders dated 09.08.2011, passed by the Gujarat State Consumer Disputes Redressal Commission (hereinafter referred to as ''the State Commission'') in cross appeals Nos. 1134/2010 and 1468/2010 between the parties, vide which, the appeal filed by the complainant was allowed, whereas the other appeal filed by the opposite party was dismissed and the Opposite party (OP) was directed to pay a sum of 6,22,544/- alongwith interest @6% p.a. for the theft of the vehicle of the complainant. Accordingly, the State Commission modified the order dated 24.06.2010, passed by the District Forum in consumer complaint No. 127/2009, vide which, the said Forum had allowed the claim of the complainant by awarding 75% of the claim on ''non-standard basis''.

2. The facts of the case are that the complainant Jafarbhai Daudbhai Sama was the owner of a Scorpio vehicle, bearing registration No. GJ-12AE-1434, which was insured with the OP insurance company for the period 23.04.2008 to 22.04.2009 for an insured declared value of 6,22,544/-. On the date of the incident, the driver of the vehicle, Aarif Bhai picked up two persons to be taken from Bhid Gate in Bhuj city to Sanchor. As stated in the FIR lodged by Aarif Bhai

with the Police after the incident, it was settled between the driver and the passengers that fair @9/- per km. will be charged for the journey. On that night, the driver, alongwith those passengers stayed at K P Guest House at Sanchor, and they had dinner together and went to sleep. As per the version in the FIR, when the driver woke up after one hour, he found that the said passengers had left the place with the vehicle at about 1:30 AM. The driver then lodged the FIR at Police Station Sanchor, as FIR No. 301 dated 14.10.2008 under section 379, 114 IPC. The insurance company was also intimated after the theft of the vehicle and claim was filed with them. The Insurance Company got an investigation conducted in the matter. However, when the claim was not settled, the complainant served a legal notice on the OP Insurance Company, in response to which, the Insurance Company repudiated the claim. The complainant then filed the consumer complaint in question, claiming a total sum of 7,12,544/- from the insurance company, including the IDV for the vehicle as 6,22,544/-.

3. The complaint was resisted by the OP Insurance Company by filing a written statement before the District Forum in which they stated that the complainant was using his Scorpio car as taxi for commercial purpose, and carrying the passengers for hire and reward and hence, he had committed breach of the terms and conditions of policy. Therefore, the claim had been rightly repudiated by the Insurance Company, based on the report of the investigator.

4. The District Forum, after considering the averments of the parties, decided the complaint on 24.06.2010 and allowed the claim on ''non-standard basis, saying that the insurance company was liable to pay 75% of the IDV to the complainant. The District Forum ordered that a sum of 4,66,908/- alongwith interest @9% p.a. from 29.10.2008 should be paid to the complainant with 3,000/- as cost of litigation. Being aggrieved against the said order of the District Forum, two cross appeals were filed before the State Commission, one by the OP insurance company and the other by the complainant. Vide impugned order dated 09.08.2011, the appeal filed by the insurance company was dismissed, whereas the appeal filed by the complainant was allowed and the OP Insurance Company was directed to pay the IDV of the vehicle, i.e., 6,22,544/- alongwith interest @6% p.a. with effect from 29.10.2008. Being aggrieved against the said order of the State Commission, the Insurance Company is before this Commission by way of the present revision petitions.

5. It was submitted by the learned counsel for the petitioner during arguments that the State Commission while passing the impugned order had relied upon an order passed by this Commission in "Niharika Maurya vs. New India Assurance co. Ltd. & Ors." [RP No. 3687 of 2010 decided on 21.04.2011] , but the facts in the present case were entirely different from the facts in that case. In "Niharika Maurya vs. New India Assurance co. Ltd. & Ors." (supra) , the vehicle was snatched by the miscreants at gunpoint, after administering wine to the driver, because of which, he became unconscious. The facts of the present case made it clear that the driver and the passengers stayed together at a common guest

house and they had dinner together, meaning thereby that there was nexus between the driver and the persons who had allegedly stolen the vehicle. The learned counsel argued that as per the terms and conditions of the insurance policy, an insurer is expected to take reasonable care of the property insured, but in the present case, the driver was hand in glove with the miscreants and hence, the theft had taken place. The learned counsel argued that these facts were confirmed from the version given by the driver himself in the FIR recorded with the local police.

6. The learned counsel for the complainant/respondent stated, however, that there was no nexus between the driver and the miscreants. It had been made clear that the driver was standing at Bhid Gate in Bhuj city, when two persons contacted him and informed that they wanted to go to Sanchor immediately, and they were unable to find any other vehicle. Since the driver found that the persons were in difficulty, he decided to take them to Sanchor in his vehicle, and he did not inform the owner also before taking them to Sanchor. The learned counsel further stated that there had been delay of about 50 days in filing this petition and hence the petition deserved to be dismissed on this ground alone. The order passed by the State Commission as per which, 100% claim had been allowed to the complainant, was in accordance with law and should be upheld.

7. We have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us.

8. The facts of the case make it clear that the private vehicle belonging to the complainant was being used as a taxi for commercial purpose in violation of the terms and conditions of the insurance policy. The version given by Aarif Bhai driver at the time of lodging the FIR, makes it very clear that he picked up two passengers for transporting them from Bhid Gate in Bhuj City to Sanchor and settled a rate of 9/- per km. payable to him by those passengers. It is also clearly brought out that the said driver and the persons who had allegedly stolen the vehicle, stayed together at a common guest house and also had dinner together. It is evident that nexus between the driver of the vehicle and alleged miscreants cannot be ruled out. We fully agree with the arguments of the learned counsel for the petitioner that the facts of the present case are entirely different from the facts of the case "Niharika Maurya vs. New India Assurance co. Ltd. & Ors." (supra) , relied upon by the State Commission. It is clear that the complainant or the driver appointed by him, have failed to take reasonable care of the vehicle, as per the terms laid down in the contract of insurance. They have also used the vehicle for commercial purpose in violation of the terms and conditions of the insurance policy. The order passed by the State Commission is, therefore, bad in the eyes of law and is liable to be set aside.

9. On the other hand, the District Forum, relying upon the orders of the Hon''ble Supreme Court in " Amalendu Sahu vs Oriental Insurance Co. Ltd. [II (2010) CPJ 9 (SC)] " and another case, " National Insurance Co. Ltd. vs. Nitin Khandelwal [2008 (7) SCALE 351] " stated that the claim should be allowed on non-standard

basis, and the petitioner was held liable to pay 75% of the claim in question. During the arguments, it came out that at some stage in the proceedings in the case, the petitioner had also agreed to settle the claim @75% of the IDV. We, therefore, find no ground to differ with the view taken by the District Forum, by which the claim has been allowed to be paid on non-standard basis. Further, the contention of the learned counsel for the complainant/respondent that there was delay in filing the present petitions, is not valid. The petitions are reported to have been filed within time, after deducting the time spent in obtaining copies of the impugned order. These revision petitions are, therefore, allowed and the order passed by the State Commission is set aside. The order passed by the District Forum is ordered to be upheld. There shall be no order as to costs.