(2014) 01 NCDRC CK 0068

In the National Consumer Disputes Redressal Commission

Icici Lombard Motor Insurance APPELLANT

Vs

Nikhil Syal RESPONDENT

Date of Decision : 17-01-2014

Acts Referred:

Citation : 2014 0 NCDRC 28 : 2014 1 CPJ 397

Hon'ble Judges : AJIT BHARIHOKE , SURESH CHANDRA J.

Advocate : YOGESH MALHOTRA , JAGVIR SHARMA

Judgement

1. CHALLENGE in this revision petition is to the impugned order dated 16.01.2012 passed by the State Consumer Disputes Redressal Commission, Union Territory Chandigarh (''the State Commission '', for short) in First Appeal No.180 of 2011 whereby the State Commission has upset the finding returned by the District Forum vide its order dated 16.06.2011 in Consumer Complaint No.345/2010 by which the District Forum had non suited the claim of the complainant/respondent herein and dismissed his complaint filed against the OPs, who are the petitioners. Vide its impugned order, the State Commission has granted the following relief to the respondent/complainant: - i) The respondents/ Opposite Parties are directed to pay Rs.7,18,411/ - to the appellant, being the insured value of the vehicle, after deducting the depreciation value, as per the terms and conditions of the Insurance Policy. ii) The respondents/Opposite Parties are also directed to pay Rs.20,000/ - to the appellant/complainant as compensation on account of mental agony and physical harassment. iii) The respondents/Opposite Parties are also directed to pay Rs.10,000/ - to the appellant/complainant as costs of litigation.

2. THE factual matrix relevant for the disposal of this revision petition may be stated thus. The respondent/complainant got his Honda Civic Car bearing registration No.HR -68 -B(T) 0003 insured with the petitioners/OPs for the period from 22.08.2008 to 21.08.2009. As per the allegation, the said vehicle caught fire during the early hours of 19.02.2009 when the vehicle was parked outside the residence of the complainant. The vehicle got damaged because of the fire. A

DDR bearing No.14 dated 19.02.2009 was lodged with the local police station and an insurance claim for reimbursement was filed with the petitioner insurance company. The insurance company failed to decide the claim in six months which led the complainant/respondent serve a legal notice upon it but without any avail. Consequently, alleging deficiency in service and unfair trade practice on the part of the insurance company, the respondent/complainant knocked the door of the District Forum by filing a complaint U/s 12 of the Consumer Protection Act, 1986. On notice, the insurance company resisted the complaint by filing a written statement. It was stated by the insurance company that it had insured vehicle with registration no.HR -68 -B -0003 and not the car bearing registration no.HR -68 -B(T) 0003. Besides this, it was stated that the claim of the respondent had been rightly repudiated on the ground that the car was burnt purposely which according to the insurance company was evident from the Forensic Report dated 14.07.2009 of the Directorate of Forensic Science, Govt. of Gujarat to whom the sealed sample of the burnt material from the car in question had been sent for analysis and report. It was the contention of the insurance company that the loss caused was attributable to burning of the car by sprinkling of petroleum product and that there was no accidental fire. Thus, it was pointed out that it was a case of arson which was not covered under the terms and conditions of the insurance policy. Denying any deficiency in service or unfair trade practice on its part, the OP insurance company prayed for dismissal of the complaint. The parties led the evidence in support of their respective claims. After hearing the parties and going through the evidence and record of the case, the District Forum held that the car burnt was not insured with the OP insurance company vide the policy in question and it was further held that the loss was not covered under the terms of the policy. Aggrieved of the order of the District Forum, the respondent carried the matter before the State Commission by filing an appeal against this order. As stated above, the State Commission accepted the appeal and reversed the order of the District Forum and granted relief in terms of the impugned order reproduced above.

3. WE have heard learned Shri Yogesh Malhotra, Advocate for the petitioners and Shri Jagvir Sharma, Advocate for the respondent.

4. LEARNED counsel for the petitioners has submitted that the State Commission has erroneously disturbed the finding of the District Forum and awarded the IDV of the vehicle by way of compensation to the respondent. Learned counsel further submitted that even though the claim came to be repudiated by the petitioner insurance company in the light of the report of the forensic sciences laboratory, which indicated presence of residues of hydrocarbons on the basis of which they confirmed ''''petroleum hydrocarbon '''' in the sample sent to it which led the insurance company to hold that the fire was caused by sprinkling of petroleum product over the body of the vehicle. Learned counsel clarified that right now the petitioners are pressing about the quantum of compensation, which should rightly be passed on the assessment contained in the surveyor ''s report and not the IDV of the vehicle. He, therefore, pleaded that the impugned

order be set aside and compensation, if at all, to be awarded should be passed on the surveyor ''s report which has assessed the value of the loss and damage to Rs.3,70,446/ -. Learned counsel also did not press the issue raised earlier by the petitioner insurance company regarding coverage of the incident in question under the terms and conditions of the policy. Per contra, learned counsel for the respondent has supported the impugned order and has submitted that it is passed on careful consideration of the related aspects of this case by the State Commission and hence deserves to be confirmed.

5. HAVING considered the rival contentions carefully and after perusing the record, we find that the State Commission has considered various issues raised by the OP insurance company in its impugned order and has rightly set aside the order of the District Forum which had gravely erred in concluding that the claim of the complainant was not payable as per the terms and conditions of the insurance policy. So far as the quantum of compensation is concerned, the State Commission while accepting the appeal and setting aside the order of the District Forum has recorded the following reasons which made it to grant relief to the complainant on total loss basis: - ''''..... Although in the forensic report, it was mentioned that the residues of petroleum hydrocarbons were detected in the contents of the exhibit, but that did not prove that the car was burnt deliberately, by the complainant, by sprinkling petroleum products, on the same. The sample which was sent to the forensic science laboratory for analysis, was taken from the petroleum vehicle, and the detection of the existence of residues of petroleum hydrocarbons, therefore, could not be ruled out. According to the complainant, he had parked his vehicle, outside his house, and when at about 5.30 a.m., he came outside his house, he found the vehicle burning from front and backside. Mr.Sachin Gulati, Investigator appointed by the Opposite Parties, in his report, at pages 38 and 39 of the District Forum record, held that the DDR lodged by the complainant was found to be genuine. He further confirmed that the incident was found to be genuine. No tangible evidence was led by the Opposite Parties, to rebut the findings of Mr.Sachin Gulati, Investigator. No evidence was also led by the Opposite Parties that the vehicle was burnt by the complainant but, at the same time, it cannot be ruled out that somebody other than the complainant, out of malice, burnt the vehicle. It is evident from the terms and conditions of the Insurance Policy at page 72 of the District Forum file, that damage to the vehicle, caused by terrorism, riots, strike or malicious act was covered thereunder. Since somebody other than the complainant, by malicious act, burnt the vehicle, by sprinkling the petroleum product on the same and completely damaged/destroyed the same, such act fell within the purview of the terms and conditions of the Insurance Policy. The complainant, was thus, entitled to indemnification on total loss basis. The District Forum was wrong in holding that the loss was not covered under the terms of the Policy. The findings of the District Forum, in this regard, being incorrect are reversed. ''''

6. WE agree with the view taken by the State Commission. It has to be appreciated that the car in question was 2006 Model and the incident in question

was on 19.02.2009. The surveyor ''s report undoubtedly demonstrates that the vehicle got extensively damaged in the incident of fire but for this, the loss/ damage would not have come to Rs.3,70,446/ - after making necessary adjustment done by the surveyor. Keeping in view the assessment done by the surveyor in monetary terms and also the fact that the damage to the vehicle was on account of fire, we are of the considered view that the State Commission was right in granting indemnification to the complainant on total loss basis. The State Commission has already directed that the compensation will be paid ''''after deducting the depreciation value, as per the terms and conditions of the Insurance Policy ''''. Thus, on the whole, we find that the order of the State Commission is fair and just in the given facts and circumstances and we do not find any reason to differ with the same. In the circumstances, the revision petition is liable to be dismissed and it is dismissed accordingly with the parties to bear their own costs.