(2016) 09 NCDRC CK 0153

In the National Consumer Disputes Redressal Commission

Case No : 903 of 2015

Iffco Tokio General Insurance Co. Ltd. APPELLANT

Vs

Suresh Hiraman Mahajan RESPONDENT

Date of Decision : 05-09-2016

Acts Referred:

Code of Criminal Procedure, 1973, Section 173 - Report of police officer on completion of Investigation

Consumer Protection Act, 1986, Section 21(b), <a href=3999-2>Sect

Citation : 2017 1 CPJ 484 : 2017 3 CPR 46

Hon'ble Judges : Anup K. Thakur

Advocate : S.M. Tripathi

Judgement

1. This Revision Petition No. 903 of 2015 has been filed against the order dated 11.12.2014, passed by Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Aurangabad (State Commission) in First Appeal No. 59 of 2013 by the petitioner/opposite party. 2. Very briefly, facts of the case as per the respondent/complainant-Shri Suresh Hiraman Mahajan are that he purchased a Bolero Jeep car of Mahindra and Mahindra Company in 2008 by taking a loan of Rs. 7,00,000 from Mahindra Auto Finance Company. On 1.6.2010, he had obtained insurance from the petitioner/ Insurance Company for the period 5.5.2010 to 4.5.2011 for an amount of Rs. 4,78,225, for which he paid the premium of Rs. 14,696. He had made a transaction in respect of the said Bolero car by executing a sale transaction receipt dated 28.6.2010 on stamp paper of Rs. 100 in favour of Shri Jamil Ahmed Ansari, residing at Machhi Bazar, Gali No. 7, Dhule, for Rs. 4,60,000. This transaction was however, not completed in RTO office at Dhule. Thereafter, since there were good mutual relations between the respondent and Shri Jamil Ahmed, the said vehicle was being used by Shri Jamil Ahmed also. On 30.10.2010, Shri Jamil Ahmed took the vehicle to Bhiwandi to attend a marriage ceremony. This vehicle, parked in the periphery of Abuji Complex Building, Patel Nagar, Bhivandi, was found missing on the next

day i.e. on 31.10.2010, at 7.00 hrs. A complaint was lodged by the driver at Police Station, Shandinagar, Bhivandi. The police made their enquiries but could not find the vehicle. Thereafter, the respondent submitted the required claim form in the office of the Insurance Company which however, by a registered notice dated 12.3.2011, informed the respondent that the claim could not be sanctioned. As the vehicle was still under the ownership of the respondent, the insurance amount was due to him. Hence, he filed a consumer complaint before the District Forum and prayed for the following relief: "To pass such an order that the complainant to get Rs. 5,00,000 from the opponent Insurance Company towards reimbursement of damages. The complainant to get the interest @ 12% p.a. on the reimbursement amount of damages from the date of preferring the application. To pass such an order for the mental harassment caused to the complainant by the Insurance Company. To pass an order that the complainant be given appropriate cost for the said application." 3. As per the petitioner/ opposite party, the complaint was false, frivolous and therefore the same could not be admitted. The said vehicle had been stolen at Bhivandi from the possession of Jamil Ahmed. As the ownership now lay with Jamil Ahmed, there was no agreement any longer between opponent/Insurance Company and the respondent/complainant. Therefore, the complainant had no right to file any complaint against the opponent. 4. District Consumer Disputes Redressal Forum, Dhule (District Forum) vide their order dated 4.1.2013, partly allowed the complaint and ordered as under: "The complaint application of the complainant is partly sanctioned The opponent party Iffco Tokio General Insurance Company Ltd., Dhule, within 30 days from receipt of this order: The complainant be paid Rs. 4,78,225 along with interest @ 9% p.a. from dated 12.3.2011, till payment of entire amount. The complainant be given Rs. 5,000 towards mental harassment and Rs. 2,000 towards cost of application." 5. Against this order of the District Forum, the petitioner/insurance Company filed an appeal No. 59 of 2013 before Maharashtra State Commission, Circuit Bench at Aurangabad. Vide their order dated 11.12.2014, the State Commission dismissed the appeal and ordered as under: "We have heard the argument of Advocate; Upadhye and perused the record. It is an admitted fact that complainant had obtained the ''Private Car Package Policy'' from the appellant. It is also an admitted fact that the vehicle was stolen by unknown person, during the currency of policy. The claim was repudiated by the Insurance Company on the ground that the vehicle was sold to Jamil Ansari. But it was found that said agreement to sell is only on stamp paper. It was not registered neither any entry about the ownership of vehicle was taken by the RTO authorities. As per RTO record vehicle was standing in the name of complainant only at the time of incident of theft. In our view therefore, complainant himself was the owner at the time of theft. It has also come on record that even thereafter, till 2011 complainant was paying the loan instalment. In our view,. therefore, complainant was owner at the time of incident of theft. District Forum rightly appreciated facts and evidence while allowing the complaint. We do not want to disturb the reasoning recorded by the Forum. Hence, the following order: The appeal is dismissed. No order as to cost."

6. Being aggrieved with this order of the State Commission, petitioner/insurance Company has filed this revision petition. 7. The case was heard on 12.8.2016 where the Counsel for the petitioner was present and submitted that all the submissions were already on record and that he did not wish to add any more points. 8. As for the respondent, records revealed that in the proceeding dated 28.1.2016, the Court, having noted that the respondent had filed written submissions against the revision petition in the Registry on 18.1.2016, and that no one had turned up on behalf of the respondent, had decided to proceed ex parte. 9. Written submissions filed by the respondent have been perused. They are in consonance with brief facts of the case outlined in para 2 earlier. In so far as his agreement for sale with Shri Jamil Ahmed on stamp paper of Rs. 100 for Rs. 4,60,000 is concerned, it has been explained that this agreement had been entered into as a matter of security in business with Jamil Ahmed, R/o Dhule. Further, this agreement of sale was never registered as a sale with the RTO office, Dhule as per Section 50 of the Motor Vehicles Act, 1988. In the event, as on the date of the incident as well as thereafter, it was the respondent who was the legal owner of Bolero Jeep Car bearing No. MH-18-W-3330. In other words, this vehicle, in legal terms had not been sold or transferred to anybody. The fact of this vehicle having been stolen was learnt at about 7.00 a.m. on 31.10.2010 by the driver who had driven Shri Jamil Ahmed to attend a marriage ceremony at Bhiwandi. As soon as it became known that the vehicle may have been stolen, the driver Shri Farhad Abdul reported the matter at Shantinagar, and a criminal case being C.R. No. 357/2010 was registered against some unknown criminals. After investigation and search, etc., the police filed "A" summary report in the Court of J.M.F.C., (Court No. 4), Bhiwandi, Maharashtra and after the police thus closed the investigation, respondent filed claim to the Insurance Company with certified copies of FIR, letter of police officer regarding summary report (i.e. accused is not found) dated 31.10.2010, final report under Section 173 of Cr. P.C. and other relevant documents. The Insurance Company vide their letter dated 12.3.2011 repudiated his legal claim. 10. The respondent, then approached the District Forum, Dhule and was awarded a favourable order directing the Insurance Company to pay Rs. 4,78,225 along with 9% interest p.a. till payment, as well as cost of Rs. 5,000 for mental harassment and Rs. 2,000 for litigation expenses. The State Commission also confirmed the order of the District Forum, vide its order dated 11.12.2014. 11. A plain reading of the narration above makes it abundantly clear that the petitioner/ Insurance Company, despite knowing that no transfer of ownership had taken place and that the vehicle continued to be legally registered under the respondent''s name denied the insurance claim of the respondent. The facts of the case were quite clear and bear no repetition. On the date of theft, policy was valid and the Insurance Company should have honoured the claim. Instead of doing that, the petitioner sought to take advantage of the information provided by the respondent himself that he had sold the vehicle for Rs. 4,60,000 to Shri Jamil Ahmed. Indeed, had the respondent not revealed this information, how would this have come to the knowledge of the petitioner? Instead of appreciating the

fact that the respondent had approached the Consumer Fora with clean hands, by not withholding any information, and further, supporting their insurance claim with valid, legal documents, the petitioner chose to play detective and to impute motives to the respondent. This does amount to deficiency in service. 12. Further, the Fora below have given detailed and reasoned orders which do not suffer from any apparent infirmity or erroneous exercise of jurisdiction or material irregularity, and therefore do not warrant any interference. 13. Accordingly, the revision petition is dismissed and the orders of both the Fora below are upheld. No order as to costs which the respective parties may themselves bear. Revision Petition dismissed.

