(2012) 05 NCDRC CK 0073

In the National Consumer Disputes Redressal Commission

IFFCO TOKIO General Insurance Co. Ltd.,FAI Building APPELLANT

Vs

Ram Gopal Soni S/o. Shri Rejuram Soni RESPONDENT

Date of Decision : 31-05-2012

Acts Referred:

Citation : 2012 0 NCDRC 194 : 2012 3 CPJ 235

Hon'ble Judges : V.B.Gupta , Vinay Kumar J.

Advocate : Shantha Devi Raman

Judgement

1. IFFCO TOKIO General Insurance Co. Ltd., hereinafter referred to as RP/OP-1 has filed this revision petition challenging the order of Chhattisgarh State Consumer Disputes Redressal Commission, Raipur in Appeal no.173 of 2011. The State Commission has dismissed the appeal of RP/OP-1 and upheld the order of the Consumer Disputes Redressal Forum, Raipur, which had allowed the complaint of respondent No.1/Complainant, Ram Gopal Soni in CC No.165/2010.

2. THE revision petition has been filed with delay of 52 days. THE application filed on behalf of the RP/OP-1 seeking condonation of this delay, has been perused. THE delay is mostly explained on the ground of movement of papers between the Bhopal and Delhi offices of the petitioner on the one hand and counsel and the petitioner Co., on the other. Considering the explanation, the delay is condoned. The matter pertained to a Mahindra Scorpio Vehicle, owned by the Complainant which was comprehensively insured with RP/OP-1. During the currency of the insurance policy, the vehicle allegedly got stolen on 8.1.2009, while on a visit for Narmada Darshan. Allegedly, the vehicle was stolen by two persons, who had obtained a lift in the vehicle on the previous day. It was claimed that the driver had consumed some alcoholic drink with them, which had made him unconsciousness. The police search for the stolen vehicle did not lead to any recovery. Yet, the insurance company did not settle the claim. Therefore, a consumer complaint was filed on 26.3.2010.

The case of the RP/OP-1 before the District Forum was that in violation of the terms of the insurance policy, the vehicle was being used by the Complainant for hire or reward. In this behalf, the investigator appointed by OP-1 had given a detailed report. The vehicle had done 49019 kms. as on 29.12.2008, which was considered very high in relation to the date of its purchase. Therefore, an adverse inference was drawn by the investigator that the vehicle was being plied for hire or reward, on the date of the accident.

3. ON this point, the District Forum has made a clear observation that OP-1 was not able to produce any evidence, other than the report of the investigator, in relation to their claim that the vehicle was being used by the Complainant for hire or reward. The District Forum also observed that on the incident in which the vehicle was taken away from the driver after getting him drunk, a report had been lodged with Police Station Khatia, Mandla district, under Section 379/34 of IPC. The police had filed a closure report, after their efforts to recover the vehicle had failed. This itself showed that the vehicle was actually stolen. The State Commission has observed that the entire case of the insurance company/OP-1 rests on the report of the private investigator, whose report has been considered by the District Forum. In this report, the inference that the vehicle was being used for commercial purpose has been drawn by the investigator only on the basis of the fact that the vehicle had done about 50000 kms, in a short span of time. Like the District Forum, the State Commission also rejected this contention of the Insurance Company with the following observations:- "When Insurance Company wanted to take shelter of any exclusion clause of the Insurance policy then burden of proof to prove that exclusion clause totally shifted to the Insurance Company. Positive and cogent evidence was required to be led for discharging such burden, but in the facts of the present case, no such evidence has been adduced and so merely on the basis of long distance traveled by the vehicle, it cannot be held established that it was used for hire and reward."

4. A perusal of the grounds of challenge to the impugned order shows that the revision petitioner has chosen to completely ignore the view concurrently taken by the State Commission as well as the District Forum on the main contention before them. Both have held that beside the report of the investigator, OP-1/ IFFCO TOKIO General Insurance Co. Ltd., has not been able to produce any evidence in support of its claim that the vehicle was being used for hire or reward, in violation of the policy conditions. We have carefully perused the records, as produced by the revision petitioner and heard their counsel Ms. Shanta Devi Raman. The counsel explained that the insurance claim was kept pending because the insurance company had doubted the veracity of the claim of the Complainant. Learned counsel again relied upon the report of the investigator in support of the claim of the revision petitioner that the vehicle was used for hire or reward. However, learned counsel did accept that the vehicle had actually been stolen. Counsel for the petitioner has cited the decision of this Commission in New India Assurance Company Limited Vs. Trilochan Jane in FA No. 321 of 2005 decided on 9.12.2009. It was argued that the insured had the obligation to inform the insurance company ''immediately'' about the alleged theft. National Commission held that the word ''immediately'' has to be construed ''within a

reasonable time having due regard to the nature and circumstances of the case.'' In the case before us, the stand of the revision petitioner is different. As seen from the written statement before the District Forum, the stand of the OP/ revision petitioner is that immediately means within 24 to 48 hours. This amounts to modifying the import of the term ''immediately'' in the policy. Hence the plea is rejected.

5. FROM the examination above, it is clear that the revision petition is based on the issues of fact on which clear and concurrent findings have been reached by the District Forum and the State Commission. The revision petition does not bring out any case of jurisdictional error, illegality or material irregularity in the impugned order. We therefore, find no case to interfere with the impugned order, in exercise of the revisional jurisdiction. Consequently, the revision petition No.170 of 2012 is dismissed and the impugned order in Appeal No.173 of 2011, passed by the State Consumer Disputes Redressal Commission, Chhattisgarh is confirmed. No order as to costs.