(2015) 12 NCDRC CK 0074

In the National Consumer Disputes Redressal Commission

Case No : 2731 of 2015

JABBAR SIDDIQUI APPELLANT

Vs

THE NEW INDIA ASSURANCE CO. LTD. & ANR. RESPONDENT

Date of Decision : 03-12-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21, Section 21(b) - Jurisdiction of the National Commission - Jurisdiction of the National Commission

Citation : 2016 1 CPJ 275

Hon'ble Judges : V.B. Gupta, Prem Narain

Advocate : Nikhil Jain

Judgement

1. Petitioner/Complainant being aggrieved by order dated 19.7.2015 passed by State Commission, Uttar Pradesh, Lucknow (for short, ''State Commission'') has filed present revision petition under Section 21(b) of Consumer Protection Act, 1986 (for short, ''Act'').

2. Petitioner''s case is that he is the registered owner of Truck No. U.G. L-465 which was insured with Respondent/Opposite Party, from 01.01.2000 to 31.12.2001. It is stated that while going to Peelibhit, the vehicle turned on Bareilly Peelibhit bye-pass road, while saving a motorcycle. In this process, nobody got hurt but the truck got damaged. Information was given at Police Station, Baradari District Bareilly. Respondent''s insurance company was also informed about the incident. Even after receiving the information, respondent did not send its surveyor to investigate the site till 18.7.2000. Therefore, as the truck was lying on the spot it was pulled to the workshop to save it from further damage. Its engine & body was repaired and other materials which were malfunctioned were also replaced. Thus, petitioner has to spent Rs.82,000/-. Since, respondent failed to settle his claim, petitioner fled a consumer complaint.

3. Respondent in its written statement has stated that vehicle was on IPA with Mahindra Installment Supply Ltd. As per terms of the policy, petitioner on its own

could not give a valid discharge in respect of the amount of the claim. Petitioner was paid jointly in full and final settlement. After the payment of the claim, no further claim was received by the respondent and as such the question of consideration of payment thereof does not arise.

4. District Consumer Disputes Redressal Forum, Bareilly (for short'' ''District Forum'') dismissed the complaint on the ground, that truck was not damaged and complaint has been filed on the basis of wrong facts.

5. Petitioner challenged the order of District Forum before the State Commission by filing appeal, which dismissed the same.

6. Hence, the present revision.

7. We have heard learned counsel for petitioner and gone through the record.

8. The District Forum in its order held; "The complainant has to prove that the questionable vehicle was damaged due to the incident on 15.7.2000 and the complainant has to spent Rs.82,000/- for its repair but it can be concluded from the facts presented that this complaint has been filed on wrong facts with an intention to gain insurance money."

It further held;

"The complainant has stated that the payment of Rs.82,000/- has to be paid to Pappu Body Maker but the receipt of payment/affidavit of Pappu Body Maker is not available with the annexure. The receipts of the parts installed in the truck and their description is also not available which were used at the time of repair. The complainant has not provided the description of the old parts. Under these circumstances, it is clear that no such repair was done by Pappu Body Maker.

The complainant has stated that he has presented the claim of Rs.82,000/- before the respondent''s insurance company but the bill kept in the sealed envelope is the original copy of the bill of Pappu Body Maker. If the complainant has presented the claim then the original copy of the bill will not be available with the complainant. This strengthens the side of the respondent''s insurance company that a matter of fact the complainant has not presented any claim with the insurance company and has straight forwarded filed the complaint that is why no such information regarding the incident was given so that investigation can be done as soon as possible.

On the basis of the above said investigation we conclude that as a matter of fact the truck was not damaged, the complaint was filed on the basis of wrong facts."

9. The State Commission also dismissed the appeal of the petitioner, holding that the order of the District Forum is legitimate and it is not necessary to interfere with it.

10. It is well settled that under Section 21 (b) of the Consumer Protection Act 1986, scope of revisional jurisdiction is very limited. Under Section 21 of the Act,

this Commission can interfere with the order of the State Commission where such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

11. Hon''ble Supreme Court in Mrs. Rubi (Chandra) Dutta vs. United India Insurance Company, 2011 (3) Scale 654 has observed; "Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view that what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that that the jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed. It was not a case where such a view could have been taken, by setting aside the concurrent finding of two fora."

12. Petitioner in its entire complaint has nowhere stated about the date of accident. Petitioner has also not mentioned in its complaint as to on which date he informed the police station. No document in this regard has been filed. Moreover, petitioner has not mentioned in the complaint, when he had informed the respondent company of the incident nor petitioner has stated in the complaint when the claim was lodged with respondent company. Even otherwise, no document with regard to repair of the truck has been filed. The present complaint is absolutely vague and does not lead us anywhere. Therefore, in the absence of any documentary evidence on record, we have no hesitation in holding that petitioner has no case at all.

13. From the examination above, it is clear that findings of fact reached by Fora below are based on correct appreciation of the evidence on record. The impugned order does not suffer from any illegality, material irregularity or jurisdictional error which should justify intervention in exercise of powers under Section 21(b) of the Act. Thus, present revision petition having no legal force, is hereby dismissed with cost of Rs.10,000/-(Rupees Ten Thousand only)

14. Petitioner is directed to deposit the cost by way of demand draft in the name of ''Consumer Legal Aid Account'' of this Commission within four weeks from today.

15. In case, petitioner fails to deposit the aforesaid amount within the prescribed period, then it shall also be liable to pay interest @ 9% p.a. till realization.

16. List for compliance on 8.1.2016 at 2 p.m.

