(2013) 05 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

JAI PRAKASH — APPELLANT

Vs

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD , Bajaj Allianz General Insurance Co. Ltd. Ge Plaza Airfort Road, Yerwada, Pune — RESPONDENT

Date of Decision : 17-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 432

Hon'ble Judges : V.B.GUPTA , Rekha Gupta J.

Advocate : S.S.DAHIYA , APARNA DAS

Judgement

1. IN this revision petition, there is challenge to order dated 9.12.2010, passed by Haryana State Consumer Disputes Redressal Commission, Panchkula (short, "State Commission ").

2. BRIEF facts are that petitioner/complainant got insured his vehicle i.e. Santro Car bearing No.HR-47T-0440 with the respondent/opposite party for the period from 24.9.2007 to 23.9.2008. Unfortunately, during the subsistence of the insurance policy, the vehicle in question was stolen on 17.2.2008. Petitioner lodged the FIR in the concerned police station on 18.2.2008. Intimation in this regard was given to the respondent but it failed to settle the claim submitted by him. Thus, alleging it a case of deficiency in service, petitioner invoked the jurisdiction of the District Forum. In the written statement, respondent took the plea that the vehicle in question was stolen on 17.2.2008, whereas, petitioner informed it with respect to alleged theft on 12.9.2008 i.e. after a period of 207 days from the date of alleged theft. Since, petitioner failed to inform the respondent well in time, he has violated the terms and conditions of the insurance policy. Therefore, he is not entitled for any insurable benefits. Denying any kind of deficiency of service, it was prayed that complaint merit dismissal.

3. DISTRICT Consumer Disputes Redressal Forum, Rewari (short, "District Forum) vide order dated 13.3.2012, allowed the complaint and passed following order ; "This complaint is hereby allowed with a direction to the opposite parties

to pay insured amount of Rs.3,32,000/- to the complainant with interest @ 12% from the date of theft i.e. 17.2.2008 till payment. The complainant is also allowed damages to the tune of Rs.10,000/- for harassment and litigation expenses of Rs.1,100/-. The complainant shall however, place on record duly filled form no.29, 30 and 35E and subrogation letter etc. which may be collected by the opposite parties, so that in case at any stage which is found then the ownership thereof may be got changed by the insurance company in its own name. "

4. BEING aggrieved by the order of District Forum, respondents filed appeal before the State Commission which allowed the appeal and consequently, dismissed the complaint of the petitioner. Hence, the present revision petition. Along with it, an application seeking condonation of delay of 31 days has also been filed.

5. WE have heard the learned counsel for the petitioner and gone through the record.

6. THE State Commission while dismissing the complaint of petitioner held ; "Undisputedly, the vehicle in question was stolen on 17.2.2008 for which FIR was registered by the complainant on 18.2.2008. The complainant has failed to establish on record that he informed the insurance company about the alleged incident well in time. The complainant in his complaint has intentionally not mentioned the date of giving information to the insurance company whereas it was specifical stand of the insurance company that the information regarding theft of the vehicle was given to the company after 207 days from the date of alleged theft and the same was not rebutted by the complainant. Since, the complainant has given information to the insurance company on 12.9.2008, i.e., after a period of 207 days from the date of alleged theft, thus, there is violation of the terms and conditions of the insurance policy and as such, the complainant is not entitled for any insurable benefits, in view of the observation made by the Hon ''ble Apex Court in case cited a Suraj Mal Ram Niwas Oil Mills (P) Ltd. Versus United India Insurance Co.Ltd. and another, 2011 CTJ 11 (Supreme Court) (CP) case (supra) as under :- "22. Before embarking on an examination of the correctness of the grounds of repudiation of the policy, it would be apposite to examine the nature of a contract of insurance. It is trite that in a contract of insurance, the rights and obligations are governed by the terms of the said contract. Therefore, the terms of a contract of insurance have to be strictly construed, and no exception can be made on the ground of equity. 24. Thus, it needs little emphasis that in construing the terms of a contract of insurance, the words used therein must be given paramount important, and it is not open for the Court to add, delete or substitute any words. It is also well settled that since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risk covered by the policy, its terms have to be strictly construed to determine the extent of liability of the insurer. Therefore, the endeavor of the court should always be interpret the words in

which the contract is expressed by the parties. " The facts and circumstances of the instant case are fully attracted to Suraj Mal Ram Niwas Oil Mills (P) Ltd. case (supra). The District Consumer Forum has not appreciated the factual position on record and committed great error while accepting the complaint of the complainant and as such, the impugned order under challenge is not sustainable in the eyes of law. Accordingly, this appeal is accepted, the impugned order is set aside and the complaint is dismissed. "

The only ground on which condonation of delay has been sought states; "3. That the petitioner could not file the Revision Petition in time as because the petitioner received FIR copy lately from the police station. The ld. counsel received the certified copy of FIR on 25.2.2013. After that the ld. counsel for the petitioner take few days '' time for translation of FIR from Hindi into English. Due to this, the delay has been caused in filing the Revision Petition. On account of procedural compliance such as translation of documents there is a delay of 31 days and the same deserves to be condoned in the interest of justice and equity. "

7. AS per petitioner ''s case, the certified copy of the FIR was received only on 25.2.2013. The impugned order was passed on 9.10.2012 and copy of the same was despatched to the petitioner on 31.10.2012. Revision petition was filed only on 1.3.2013. We fail to understand as to where was the need for the petitioner to have applied for the certified copy of FIR at this belated stage since he had already mentioned about the FIR dated 18.2.2008, in his complaint filed before the District Forum. Be that as it may, certified copy of FIR has not been filed before this Commission, till date.

8. IT is well settled that "Sufficient Cause " for condoning the delay in each case is a question of fact. Under the Consumer Protection Act, 1986 (short, ''Act '') a special period of limitation has been provided to ensure expeditious disposal of cases. Complaint has to be disposed of within 90 days from the date of filing where no expert evidence is required to be taken and within 150 days where expert evidence is required to be taken.

9. APEX Court in case Anshul Aggarwal Vs. New Okhla Industrial Development Authority, IV (2011) CPJ 63(SC) has observed ; "It is also apposite to observe that while deciding an application filed in such cases for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if this Court was to entertain highly belated petitions filed against the orders of the consumer foras ".

10. THUS , no ground whatsoever for condoning the delay is made out. Accordingly, application for condonation of delay stand dismissed. Consequently, the present revision petition, being barred by limitation is hereby dismissed. No order as to cost.