(2003) 01 NCDRC CK 0108

In the National Consumer Disputes Redressal Commission

JALMEDHA APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 08-01-2003

Acts Referred:

Citation : 2003 2 CPJ 100 : 2004 1 CLT 255

Hon'ble Judges : K.K.Srivastava , Devinderjit Dhatt , MajGenS.P.Kapoor J.

Final Decision : Appeal dismissed

Judgement

1. THE present appeal has been filed against order dated 2.9.2002 passed by the District Consumer Disputes Redressal Forum-II, U.T., Chandigarh (for brevity to be called as District Forum) in Complaint Case No. 500 of 1999, Ms. Jalmedha v. United India Insurance Company Ltd.

2. THE contextual facts narrated briefly are as under : THE car bearing No. HR-03B-750 owned by the appellant/complainant, Ms. Jalmedha was comprehensively insured vide Policy No. 110301/31/002/11/830/98 for the period 7.5.1998 to 16.5.1999 with the respondent/O.P. - Insurance Company and premium amounting to Rs. 8,131/- was received and stands confirmed by the respondent/O.P. vide Annexure C-2. As per averments, the aforesaid vehicle was extensively damaged on 18.5.1998 on Ambala-Jagadhari Road when the driver of the vehicle in a bid to save a cyclist hit a eucalyptus tree accidentally, which fell on the car and front windscreen and roof of car were damaged. The respondent/ O.P. was informed and the Surveyor deputed by the O.P.-Insurance Company told the appellant/complainant that the body shell of the vehicle was repairable and she was asked to get the vehicle dismantled. The appellant/complainant accordingly got the vehicle repaired but when the amount incurred on repairs was claimed by the appellant/complainant, the same was repudiated by the respondent/O.P.-Insurance Company on the ground that the car was damaged by a tree which fell on the car due to storm and since the risk of storm is not covered under the terms of Insurance Policy (Annexure C-10), the claim was rejected. The appellant/complainant has alleged that the repudiation of the claim

specifically after the repairs were got carried in accordance with the direction of the Surveyor is a deficiency in service on the part of the respondent/O.P. She has prayed for a direction to the respondent/O.P. to reimburse Rs. 78,295.97 spent on the repairs of car, Rs. 1,100/- per day for 15 days (1,100 x 15 = 16,500) on account of visits to various offices of O.Ps., further compensation of Rs. 70,000/- in addition of litigation expenses of Rs. 5,500/-. The above amounts have been claimed with interest @ 24% from due date till realization.

In the reply filed by the respondent/O.P. - Insurance Company, it is pleaded, inter alia, that the claim was repudiated since it was not covered under the terms and conditions of the policy. The allegation of deficiency in service has been denied. It was submitted that the repudiation was based on well-reasoned decision taken after the investigation. The respondent/O.P. further alleged that the appellant/complainant has not come to the Forum with clean hands as a copy of the DDR No. 9 of 1998 placed on record shows that the car was damaged as a eucalyptus tree fell on the car because of the storm (Annexure R-1). Further, the appellant/complainant in the Claim Form submitted that the accident took place due to storm as the vehicle was hit by eucalyptus tree, copy of claim form has been brought on record vide Annexure R-2. The respondent/O.P. further submitted that disputed questions of facts are involved which need examination and cross-examination and cannot be adjudicated in a summary trial by the redressal agencies under the Consumer Protection Act, 1986.

3. ON merits, the averments of the complainant regarding the damage to car having taken place while saving a cyclist was disputed and further it was submitted that since it was a damage due to falling of a tree which fell due to storm and the risk of floods/storm and cyclone was not covered under the insurance policy, the claim was rightly repudiated by the respondent/O.P. The respondent/O.P. further submitted that the Surveyor conducted the survey to assess the cause of accident to enable the respondent/O.P. to ascertain the facts and decide if the same was covered under the insurance policy or not. Further, the respondent/O.P. submitted that the loss assessed by the Surveyor was at Rs. 50,450/- (Annexure R-3). The claim preferred by the appellant being of amount of Rs. 78,295/- was rejected since not admissible. In evidence the complainant filed her own affidavit along with Annexures C-1 to C-13, whereas affidavit of Sh. Anil Grover, Branch Manager, United Insurance Co. Ltd. alongwith Annexure R-1, copy of DDR and Annexure R-2, copy of the claim form, were filed by the respondent/O.P.

4. THE District Forum dismissed the complaint on the ground that the complainant has intentionally and wilfully put forward a concocted version of the ground on which the claim was based and hence the allegation of deficiency in service on the part of appellant/O.P. could not be proved. Aggrieved against the order of the District Forum, the complainant filed the present appeal taking the plea that the District Forum based its order on pleadings and not on facts and documents and ignored the statements brought on record vide Annexures C-5 to

C-8. Further, the District Forum relied on the letter of the Surveyor, who was the authorized person of the Insurance Company and on whose direction the car was repaired. The appellant has further alleged that the District Forum did not take into account the connotations of storm and confused certain facts stated in the DDR lodged by the appellant. The order of the District Forum has also been assailed on the ground that even after dismissing the complaint, the District Forum proceeded to assess the loss at Rs. 50,035.30 which again is liable to be set aside. We have heard the learned Counsel for the appellant as well as the learned Counsel for the respondent and have gone through the record of the complaint case, evidence adduced therein and impugned order appealed against.

5. THE most vital document in the instant case is the terms of policy governing the case which has been brought on record vide Annexure C-11. Clause IMT 23 of the said terms runs as under : "IMT-23 Flood, Typhoon, Hurricane, Storm, Inundation, Cyclone, Hailstorm and Frost- In consideration of an appropriate discount allowed under the policy it is hereby understood and agreed that the words Flood, Typhoon, Hurricane, Storm, Inundation, Cyclone, Hail Storm, Frost, appearing in Section 1 (Item e) of the policy are hereby deleted and the Company shall not be liable for accidental loss of damage caused by or liability directly arising out of the above perils."

6. THE above quoted clause clearly proves that peril of storm was excluded from the Insurance Cover and the appellant/complainant had accepted the terms of policy inclusive of above clause at the time of taking the policy. THE DDR No. 9 dated 19.5.1998 lodged by the appellant/complainant clearly states that the accident occurred due to ''Toophan'' i.e. Storm. Further copy of the Claim Form, brought on record as Annexure R-1 at Serial No. 5 under the head of ''details of accident'' reads as "due to storm, vehicle was hit by a Safeda tree" which undisputedly proves that in both the documents mentioned above, which were the documents of the appellant/complainant herself, the cause of accident was storm, a peril, which was excluded from the terms of the policy. Consequently, the repudiation of claim on a ground not covered under the terms of policy, no finding of deficiency can be justifiably recorded against the respondent/O.P. The appellant/complainant has nowhere been able to prove from the material on record her averments and allegations against the Insurance Company. The order of the District Forum, which dismissed the complaint does not call for any interference and the same is upheld. Resultantly, the appeal filed by the appellant lacks merit and is dismissed with no orders as to costs. Copy of the order be supplied to the parties free of charges. Appeal dismissed.

