(1993) 09 NCDRC CK 0067

In the National Consumer Disputes Redressal Commission

JAYANTILAL KESHAVLAL CHAUHAN — APPELLANT

Vs

National Insurance Co.Ltd — RESPONDENT

Date of Decision : 14-09-1993

Acts Referred:

Citation : 1994 1 CPR 396 : 1994 3 CPJ 64

Hon'ble Judges : P.M.Chauhan , R.K.Shah J.

Final Decision : Complaint dismissed

Judgement

1. THIS is second complaint, the first filed by Jagdish Keshavlal Chauhan, Power of Attorney Holder of Hotchand Pesumal Keshvani having been dismissed by this Commission on November 12, 1992 holding that the complainant had no right to file the complaint as the General Power of Attorney Holder of Hotchand Pesumal Keshwani as Hotchand Pesumal Keshwani had already expired when the complaint was filed.

2. THE has claimed the amount of Rs. 2,96,149.29 which include Rs. 1,74,025.99 for the insurance amount and Rs. 1,22,123.30 for the interest @ 13% from 8.3.89 to 30.1.93 contending inter-alia that Hotchand Pesumal Keshwani was the owner of the passenger bus RNY 2223 and he had secured insurance for the said has from the -THE National Insurance Company. That the said bus was given to Hotchand Pesumal Keshwani by the complainant jayantilal on hire purchase agreement and subsequently when Hotchand was not keeping good health he had given the vehicle to the complainant for plying and had executed one nominee writing and according the complainant was in possession and had interest in the vehicle as the hypothecation holder. THE entries were made in the record of the RTA and in the registration book. Hotchand had executed the general power of attorney in favour of the complainant. THE vehicle was insured with the for the period from 26.5.88 to 25.5.89 and the insured amount was Rs. 3,00,000/-. THE vehicle met with the accident nearby Kherwada in Rajasthan on 8.3.89 and was damaged. THE vehicle was got repaired and repairing expenses were Rs. 1,74,025.99. THE then claimed the said amount and produced the bill

but the claim is repudiated as Hotchand has no insurable interest in the vehicle. The Opposite Party by reply contended that the complaint filed by the present complainant is not maintainable as he has not insured and the policy was in the name of Hotchand Pesumal Keshwani and, therefore no deficiency in service was committed by the Opposite Party. The policy being in the name of Hotchand, the present complainant cannot claim any benefit of the policy and has no right to file the complaint as no deficiency in service to the present complainant was committed by the Opposite Party. It is also contended that the vehicle did not stand in the name of Hotchand and, therefore, he had also no insurable interest in the vehicle and, therefore, no deficiency of service was committed. In the record of R.T.O. the name of Hotchand was entered and vehicle being movable property could not have taken the insurance of the vehicle. It is also specifically contended that no person by name Hotchand existed and the insurance was fraudulently taken by somebody in his name and during the investigation carried out by the Opposite Party, no such person was available at the given address. The contention about the jurisdiction of this Commission is also raised as the accident had occurred within the jurisdiction of Rajasthan State Commission. The complainant is not the insured but even according to the complainant Hotchand was insured and in the policy the name of the insured is Hotchand, S/o Pesumal Keshwani, 110-Indira Bazaar, Jaipur, Rajasthan. The complainant Jayantilal Keshavlal Chauhan is neither the insured nor the nominee of the insured. The insured or his legal heirs can claim the insurance amount and not the third party. The complainant realising that fact had filed the previous Complaint No. 96/92 as power of attorney holder of Hotchand but that was disposed of as even according to the complainant Hotchand had expired. In that order it was made clear that the heirs of the deceased can file the complaint if the cause of action survives and is permitted under law. The complainant is not the heir of the deceased. The complainant has produced the agreement for hypothecation in which it is clearly stated that Hotchand Pesumal Keshwani was the owner of the vehicle and by that agreement for hypothecation in favour of Jayantilal Keshavlal Chauhan, on the terms and conditions that Jayantilal Keshavlal Chauhan had advanced Rs. 300,000/- to Hotchand @ 18% interest p.a. and against that Hotchand had "placed the vehicle bearing Registration No. RN Y 2223 of Ashok Leyland Mec. of 1986 model for security on the hypothecation basis thus, in case of my default in repayment of the said amount Jayantilal Keshavlal Chauhan will have right to sale a vehicle for realisation of his dues and Jayantilal Keshavlal is entitled to recover any claim or compensation with respect to the said vehicle. In case of accident etc. of vehicle then executed further irrevocable power of attorney in favour of Jagdishbhai Keshavlal Chauhan for the said purpose". The agreement for hypothecation only gives right to the complainant to sell the vehicle for the realisation of the dues as it was given for security and to claim the compensation with respect to the said vehicle. The agreement for hypothecation does not pass on the interest as owner of the vehicle in favour of the complainant and the ownership of the vehicle remains with Hotchand. The agreement for hypothecation creates only security for realisation of the amount advanced but does not create the ownership right was no such right which will enable the person in whose favour the hypothecation is executed to realise the insurance amount. He, therefore, cannot be considered to be the beneficiary for the insurance claim.

The complainant is not the consumer as defined in Section 2(1)(d) of the Consumer Protection Act, 1986. The complainant had not brought the vehicle for consideration and was not the user of such vehicle. The complainant had also not hired or availed the services for consideration which was paid or promised or partly paid or partly promised. The complainant was not the beneficiary of such services other than the insured Hotchand. The hypothecation by itself would not create such interest in the vehicle so that the complainant can assert his right for insurance amount and, therefore, he cannot be considered to be beneficiary for such services.

3. THE complainant as defined in the Act must be consumer or such other person as "defined in Section 2(1)(b) of the Act. THE complainant can file a complaint against the Insurance Company for the deficiency in service. THE service should be of any description which is made available to the potential users and includes the provisions of the facilities in connection with the insurance but does not include the rendering of any service free of charge or under the contract of personal service, hotchand has availed of the services of the Insurance Company as he had paid the consideration for that and he was the user of the service and the present complainant was not the user of the service of insurance and the Insurance Company was not bound to render services to the present complainant. THE deficiency of service as defined in Section 2(1)(g) means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by the person in pursuance of a contract or otherwise in relation to any service. Hotchand had entered into contract with the Insurance Company and, therefore, in pursuance of that contract, the Insurance Company was required to perform the services in favour of Hotchand and not in favour of the complainant and, therefore, also there is no deficiency in services committed in favour of the complainant and the complainant has no right to file the present complaint under the provisions of the Act. The contention of the Opposite Party is that the person having the name Hotchand Pesumal Keshwani never existed and the bogus documents are produced for getting illegal compensation and the documents are forged. The investigation was carried out by the Opposite Party but Hotchand or any person connected with him at the given address was not available. The complainant had fraudulently and malafidely tried to extort money. In our view the contention does not appear to be without any substance. As fraud is alleged, it is desirable that the complainant should be directed to Civil Court as investigation about such fraud is required to be done. For that reason the complainant should be directed to the Civil Court. ORDER The complaint is dismissed. The complainant, if advised, may file civil suit for asserting the right, if any, against the Opposite

Party. Parties to bear their own cost of this complaint. Complaint dismissed.