(2013) 11 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

Kamal Kumar Paliwal APPELLANT

Vs

BRANCH MANAGER, NATIONAL INSURANCE COMPANY LTD RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Citation : 2013 0 NCDRC 803 : 2014 1 CPJ 71

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

Advocate : Amit Agarwal , NAMITA SHARMA

Judgement

1. PETITIONER /Complainant has filed this revision petition under Section 21(b) of Consumer Protection Act, 1986 (for short, ''Act '') challenging order dated 1.5.2012 passed by the State Consumer Disputes Redressal Commission, Rajasthan, Jaipur (for short, ''State Commission '') in First Appeal No.1267 of 2011.

2. BRIEF facts of the case are that the Petitioner/Complainant filed a complaint before District Consumer Disputes Redressal Forum, Bhilwara (for short, ''District Forum '') to the effect that his Mahendra Scorpio Car was insured with Respondent/O.P. from 6.6.08 to 5.6.09. One Mr. Amba Lal Raika, a person known to him requested him to carry some persons known to him from Bhilwara to Banswara. He sent his driver Kailash Mali with his aforesaid vehicle to drop the aforesaid persons to Banswara. The unknown persons were carried on 15.09.2008 by his driver in the aforesaid vehicle to Banswara and those persons gave some intoxicated food material to his driver and he became unconscious. Thereafter, those persons stole the vehicle. In this connection, FIR No.515/08 u/s 328 and 379 IPC was registered at P.S. Kotwali, Bhilwara. After investigation, police submitted a negative final report. After completing the required formalities, petitioner submitted his claim with the respondent which was rejected by it. Thereafter, he filed a complaint before the District Forum. Respondent in its written statement took the plea that claim of the petitioner was legally rejected as at the time of the incident, petitioner was using its vehicle for commercial purposes for hire and reward i.e. on rent, whereas the vehicle was

registered for private use and also insured for private use. Thus, petitioner has violated the terms of the insurance policy. Moreover, no information about the alleged incident was given to the police station, Banswara by the driver of the petitioner or the Hotel persons. The FIR was registered only on 15.9.2008 in Bhilwara. Thus, there is no deficiency on the part of the respondent.

3. DISTRICT Forum, vide order dated 17.5.2011, allowed the complaint and directed the respondent to pay a sum of Rs.3,24,000/ -.

4. BEING aggrieved by the order of the District Forum, respondent filed an appeal, which was allowed vide impugned order. Accordingly, the complaint of the petitioner was dismissed. Hence, the present revision petition.

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

6. IT has been contended by learned counsel for the petitioner that as per impugned order there was delay on the part of the petitioner in informing about the incidence. However, this issue was never raised before the District Forum nor the delay was the ground for repudiation of the petitioner ''s claim. Other contention is that, the petitioner could have lodged the FIR at any place either at Banswara or Bhilwara under the Code of Criminal Procedure and this is no ground for rejection of the claim. Further, even assuming for arguments sake that the vehicle was being used for commercial purposes, the same does not entitle respondent to fully escape its liability. On this point, learned counsel has relied upon a decision of Hon''ble Supreme Court in ''''National Insurance Company Ltd. Vs. Nitin Khandelwal (2008)11 SCC 259''''. On the other hand, it has been contended by learned counsel for the respondent that when vehicle was stolen at Banswara then why no FIR was lodged immediately at the place of incident, that is, at Banswara, either by the driver or the Hotel Authorities.

7. THE State Commission, while allowing the appeal observed; ''''7. We are in agreement with the arguments of the learned counsel for the appellant that neither the complainant lodged an FIR at Banswara itself where the offence had been committed nor any information was given about the commission of the offence at Banswara either by the driver Kailash Mali or by the authorities of the Hotel Ashoka, where the driver of the vehicle was staying and where the driver was allegedly administered with intoxicated food material. This act and conduct of the complainant and his driver cast a doubt on the whole story of the complainant. It is an admitted fact from the report of the surveyor and the affidavits of both the parties that the vehicle was being used for hire and reward as taxi and thus, there was fundamental breach of terms and conditions of the insurance policy. It is also an admitted fact that the matter was not reported to the concerned authorities immediately at Banswara but instead an FIR was lodged at Bhilwara. It is general principle of criminal law that an FIR can be lodged and investigated only at the place where the offence had been committed. The information about the theft of the vehicle was also not given

immediately to the Insurance Company.

8. The Hon''ble National Commission in First Appeal No. 321/2005 titled New India Assurance Company Ltd. Vs. Trilochan Jane in its judgment dated 09.12.2009 has held that delay in reporting the matter of theft to the Insurance Company amounts to violation of terms and conditions of the policy and the matter of theft must be reported to the Insurance Company immediately after the theft so that the Insurance Company may get an opportunity to investigate the matter at the earliest. In the present matter, the theft of the vehicle was not reported to the Insurance Company immediately after the incident and as per judgment of the Hon''ble National Commission in the matter of Trilochan Jane, it amounted to fundamental breach of terms and conditions of the insurance policy and the claim of the complainant was liable to be rejected solely on this ground.

9. Therefore, for the aforesaid reasons, in our opinion, the District Forum ignored the facts available on record and erred in holding the Insurance Company liable to indemnify the complainant despite the fact that the matter of theft of the vehicle was not reported to it immediately which amounted to fundamental breach of terms and conditions of the insurance policy and thus also ignored the provisions of law . Lodging of the FIR about the theft of the vehicle at Bhilwara instead of Banswara, where the offence had been committed also creates suspicion and doubts about the incident and bonafides of the complainant and on this count also, the claim of the complainant deserves to be dismissed. Therefore, for the aforesaid reasons, the impugned judgment dated 17.05.2011 of the District Forum deserves to be quashed and set aside and the present appeal deserves to be allowed.''''

8. PETITIONER in the present case, for reasons best known to it did not mention the complete and true facts in its complaint. Had he mentioned the true and complete facts, the District Forum might have taken different view. Be that as it may, in the complaint petitioner has nowhere stated at all that his driver Shri Kailash Mali was called to a Hotel Room and was fed with the food in which some intoxicated substance was mixed and after eating the same his driver became unconscious and in the morning, he (driver) found himself alone in the room and the vehicle was also missing. Relevant English translated portion of the F.I.R. states as under; ''''That on 12.09.08 my driver Shri Kailash Mali resident of Baneda came to me and said that my acquintant Ambalal Raika s/o Shri Jhunjha Raika resident of Raika Ka Kheda Police Station Badnor Bhilwara called me and said that one party whose name is R.C. Goyal resident of A -64 Industrial Area G.T. Karnal, New Delhi whom I have myself taken previously to Gangapur and other tours and who is staying in Ashoka Hotel Sabun Marg Bhilwara ''s room no.32. He is my previously known. Who in connection with business has to be taken to Banswara and brought back to Bhilara. My vehicle in currently gone out. Therefore take them from aforesaid vehicle. That by believing and on the basis of information of my driver Kailash I permitted him to take the above said party to Banswara and to bring back. That after this Shri Kailash Mali which is my driver

in accordance with what was told by Shri Amba Lal Raika took Shri R.C. Goyal and his one friend from Room No.302 and set out for Banswara. That today on 15.09.2008 in the morning at about 7-8 ''o clock my driver Kailash Mali told me on the phone that in the night yesterday on 14.09.2008 above said party R.C. Goyal and his friend called me to the room and fed food in which some intoxicated substance was mixed, and after eating which I (Kailash Mali) became unconscious. In the morning when my driver regained consciousness he found himself alone in the room, and did not find R.C. Goyal or his friend. On this my driver checked Scorpio vehicle which was also missing. When he inquired he found out that above party R.C. Goyal and his friend had taken above vehicle scorpio in which original RC and original insurance were kept, and looted my driver ''s mobile sim whose number is 90015 -38209 and Rs.1100 in my driver ''s pocket. My driver tried to contact R.C. Goyal on his stated number 09711011873 which he could not contact and he closed his mobile. Like this above accused R.C. Goyal and his friend fed my driver intoxicating substance and looted my Scorpio Mahindra, original documents and its mobile sim and about R.1100 and committed offence. Therefore, it is requested that case be registered against above accused, order for arrest of the accused and to recover from their possession my Scorpio car with original documents. Dated 15.09.08 Bhilwara Application s/d Kamal Paliwal 94141-14723.''''

9. THUS , it is apparent from the above extracts of the F.I.R., that petitioner has only mentioned half baked version of his story which suited him. Further, there is no explanation as to why the victim,that is, Shri Kailash Mali-driver who was the best person and the eyewitness, did not lodge the F.I.R. There is no explanation also, that if the alleged incident had taken place in the Hotel premises, then why steps were not taken by the Hotel Management to lodge F.I.R. in such a serious matter. The entire story pleaded by the petitioner appears to be a cock and bull story and it does not inspire any confidence.

10. IT is well settled that under Section 21 (b) of the Consumer Protection Act, 1986 (for short ''Act''), the 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. The State Commission has rightly made the above quoted observations against the petitioner and we fully concur with reasoning given by it. We find no reason to disagree with the decision of the State Commission. Thus, there is no illegality or infirmity in the impugned order. Consequently, the present revision is not maintainable and same is hereby dismissed. Parties shall bear their own cost.

