(2012) 11 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

Khanpur Kalan Co -Op Tpt Society Ltd APPELLANT

Vs

ORIENTAL INSURANCE CO LTD RESPONDENT

Date of Decision : 20-11-2012

Acts Referred:

Citation : 2012 4 CPJ 757

Hon'ble Judges : K.S.CHAUDHARI , SURESH CHANDRA J.

Final Decision : Petition dismissed

Judgement

1. THIS revision petition has been filed against the order dated 04.07.2011 passed by the learned Haryana State Consumer Disputes Redressal Commission, Panchkula (in short, ''the State Commission'') in F.A. No.1175/2005 Oriental Insurance Co. Ltd. Vs. Khanpur Kalan Co -op. Tpt. Society Ltd. by which while accepting appeal, order of District Forum was set aside and complaint was dismissed.

2. BRIEF facts of the case are that petitioner/complainant got his bus HR -46/5070 insured from the respondent/opposite party for 8.10.1999 to 7.10.2000. Bus was stolen during the intervening night of 12/13.5.2000. An FIR was lodged on 2.6.2000 with Police Station. The complainant filed claim with the opposite party and as per surveyor''s report, claim was repudiated, hence, complaint was filed. Opposite party contested the complaint and learned District Forum vide order dated 23.5.2005 allowed the complaint and directed opposite party to make payment of Rs.2,60,000/ - along with 12% interest per annum against which respondent filed appeal which was accepted by impugned order.

3. HEARD learned Counsel for the petitioner and perused record. Learned Counsel for the petitioner submitted that delay of 147 days was caused in filing revision petition due to non -availability of record of Complaint No. 168 of 2005 Sube Singh Vs. New India Assurance Co. Ltd., hence, delay may be condoned. The impugned order was passed on 4.7.2011 and copy of order was sent to the petitioner on 9.8.2011, but petitioner has mentioned in his application for condonation of delay that he received copy of order from the office of the

Counsel on 18.9.2011. It was further submitted that petitioner approached Counsel at New Delhi on 17.10.2011 who asked him to get copy of complaint titled Sube Singh Vs. New India Assurance Co. Ltd., but could not get record and, hence, ultimately contacted Counsel at Chandigarh and could get record of aforesaid case on 25.3.2012 and after obtaining record, this revision petition was filed on 3.4.2012. If it is presumed that petitioner got copy of impugned order on 18.9.2011, there is no reasonable explanation for filing this revision petition on 3.4.2012. He has not placed on record any application filed before District Forum for obtaining copy of complaint No. 168/2005 - Sube Singh Vs. New India Assurance Co. Ltd. He has also not mentioned in the application that from where he got copy of order passed in Sube Singh''s case and in such circumstances, in absence of satisfactory explanation, we are not inclined to condone delay of 147 days for filing revision petition and on this count alone petition is liable to be dismissed.

4. AS far as merits of the case are concerned, learned Counsel for the petitioner submitted that learned State Commission has committed error in dismissing complaint as there is no inordinate delay in lodging FIR as complainant was under treatment for a long period. Admittedly, theft was committed on the intervening night of 12/13.5.2000, whereas FIR was lodged on 2.6.2000 meaning thereby FIR was lodged after 19 days of theft. No explanation was given by the complainant regarding delay in lodging FIR. Learned Counsel for the petitioner simply argued that as the petitioner met with an accident before 5 to 6 months of the alleged theft, FIR could not be lodged immediately after theft. This argument is totally devoid of force as the petitioner has not produced any medical record by which it can be inferred that petitioner was not in a position to move at the time of theft. Learned State Commission has rightly allowed appeal and dismissed complaint on account of 19 days delay in lodging FIR.

5. LEARNED Counsel for the petitioner submitted that petitioner has not obtained any insurance policy from other Insurance Company but this policy was obtained by Financer. Even if this fact is true, petitioner was very well aware about the second insurance of the vehicle by Financer as premium must have been deducted from petitioner''s account. Petitioner did not inform opposite party regarding other insurance policy and petitioner also did not disclose regarding other claim filed by Sube Singh pertaining to theft of same vehicle. Thus, petitioner suppressed important facts while obtaining insurance policy and alleged false facts in paragraph 7 of the complaint and learned State Commission has rightly dismissed complaint on all these counts and impugned order does not call for any interference.

6. CONSEQUENT LY , petition filed by the petitioner is dismissed with no order as to costs.

