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In the National Consumer Disputes Redressal Commission

Case No : 447 of 2016

M/S. COSMIC TRENDS PVT. LTD. APPELLANT

Vs

ORIENTAL INSURANCE COMPANY LIMITED RESPONDENT

Date of Decision : 19-05-2016

Acts Referred:

Citation : 2016 3 CPR 295

Hon'ble Judges : V.K. Jain, Anup K Thakur

Advocate : Narender Singh Yadav, ?Vijay Kumar Sharma

Judgement

1. The complainant/petitioner obtained an insurance policy to the extent of 20 Lakhs in respect of the goods kept in godown. The theft/burglary allegedly took place in the godown of the complainant at 379/2, Alipur Garhi, Alipur, Delhi in the night intervening 03/04.12.2011. The Police Control Room was informed of the theft on the same day but the FIR with the concerned Police Station was lodged only on 18.12.2011 i.e. two weeks after the said theft/burglary was detected by the deliveryman of the complainant. The intimation to the insurer was given on 09.12.2011. Mr. Surender Kumar Singla was appointed as the surveyor to assess the loss of the petitioner/complainant. The claim however was repudiated vide letter dated 23.11.2012, which, to the extent it is relevant reads as under:- "The insurance company has perused your claim file and documents available on the claim file along with surveyor report and founds that you have given delay intimation to insurance company (the alleged theft occurred on 04/12/2011 and intimation given to insurer on 09/12/2011 after delay of 5 days. Moreover, you have also given intimation before the police station Alipur regarding your theft after delay of 18 days (FIR has been registered by the police of P.S. Alipur, Delhi on 18/12/2011), As per you statement submitted before the police as well as our surveyor there was no sign of forcible entry found on the shutter and/or any other part of the godown. You have purchased the Burglary Policy from the insurance company. The definition of Burglary Policy is as under:

"BURGLARY AND/OR HOUSEBREAKING SHALL MEANS THAT INVOLVING ENTRY

TO OR EXIST FROM THE PREMISES STATED THEREIN BY FORCIBLE AND VIOLENT MEANS OR FOLLOWING ASSAULT OF VIOLENCE OR THREAT THEREOF TO THE INSURED OR TO HIS EMPLOYEE OR THE MEMBERS OF HIS FAMILY/"

In view of above facts and circumstances your claim does not fall under the preview of the above said definition of the Burglary Policy, which was taken by you, hence your claim has been repudiated on the above said grounds and your claim is not tenable and file is closed as ''NO CLAIM''.

Being aggrieved from the repudiation of the claim, the petitioner/complainant approached the concerned District Forum by way of a complaint.

2. The opposite party/respondent resisted the claim on several grounds including that there was an inordinate delay in lodging the FIR and even intimation to the insurer was given 5 days after the incident. It was also alleged that there was no sign of forcible entry in the godown of the complainant and the case was not covered under the burglary clause of the insurance policy. Reliance was placed on the judgment of the Hon''ble Supreme Court in United India Insurance Co. Ltd. vs. Harchand Rai Chandan Lal, (2004) 8 SCC 644.

4. The District Forum vide its order dated 04.07.2014 allowed the complaint.

5. Being aggrieved from the order passed by the District Forum, the insurer approached the concerned State Commission by way of an appeal. Vide impugned order dated 05.10.2015, the

State Commission dismissed the appeal filed by the insurer and consequently, dismissed the complaint. Being aggrieved, the complainant company is before this Commission by way of this revision petition.

6. As per the terms and conditions of the insurance policy, the petitioner/ complainant was required to give immediate intimation of the loss to the insurer. That admittedly was not done since the alleged loss was detected in the morning of 04 December 2011, whereas intimation to th the insurer was given on 09.12.2011. The intimation given after a gap of 5 days cannot be said to be immediate and therefore such delayed intimation particularly when no satisfactory explanation for the said delay is given, constitutes breach of one of the conditions on which the policy was issued. The petitioner/complainant did not even give any explanation for the said delay in intimating the loss to the insurer. Since the loss had already been detected in the morning of 04.12.2011, the delay of 5 days in intimating the insurer seems to be unjustified and in any case remains unexplained. The requirement of immediate intimation of the loss to the insurer is not a mere formality, the purpose of the intimation being to enable the insurer to verify the alleged loss at a time when the evidence is still available at the place of the occurrence. If there is delay of 5 days in intimating the insurer, it is quite possible that crucial evidence made in the meanwhile be lost or may disappear from the spot. Such delay may also give an opportunity to an unscrupulous insured to fudge his record and lodge a higher claim. It is to avoid

such possibility that the insurer insists on immediate intimation of the loss to it.

7. The petitioner/complainant committed breach of yet another condition of the policy by not lodging the FIR of the alleged theft/burglary immediately after it was detected. Though intimation to the Police Control Room was given and recorded vide DD, what is material is that the complainant/petitioner did not disclose the extent of his alleged loss even to the police as many as 14 days from the date on which the said loss was detected. It was stated in the FIR lodged with the police that the owner of the godown was verifying the stock kept in the godown and that was the reason, the FIR could not be lodged earlier. In our opinion, the complainant could not have required as many as 14 days only to check the stock of PVC/Adhesive sheet in his godown, particularly when the said stock was not in huge quantity as is evident from the extent of the insurance taken by him and also considering the fact that the stock was in the form of rolls of PVC Sheet and Adhesive Sheet, which would not require even one day to count. Therefore, from whatever angle we may look at it, we find that there has been an abnormal and inordinate delay in reporting the loss to the police by way of an FIR and the said delay remains wholly unexplained.

8. The following view taken by this Commission in R.P. No.2479 of 2015, Reliance General Insurance Co. Ltd. vs. Jai Prakash and R.P. No.1068 of 2015, Shri Gurnam Singh Vs. The New India Assurance Co. Ltd., decided on 11.01.2016 , is relevant in this regard: " One of the conditions, subject to which the insurance policy was issued to the complainants, reads as under: "Notice shall be given in writing to the Company immediately upon the occurrence of any accidental loss or damage and in the event of any claim and thereafter the insured shall give all such information and assistance as the Company shall require. Every letter claim writ summons and / or process or copy thereof shall be forwarded to the Company immediately on receipt by the insured. Notice shall also be given in writing to the Company immediately the insured shall have knowledge of any impending prosecution Inquest or Fatal Inquiry in respect

of any occurrence which may give rise to a claim under this policy. In case of theft or criminal act which may be the subject of a claim under this policy the insured shall give immediate notice to the police and co-operate with the Company in securing the conviction of the offender".

In Oriental Insurance Company Limited Vs. Parvesh Chander Chadha, Civil Appeal No.6739 of 2010, decided on 17.08.2010 , the car in question was stolen between 18.01.1995 and 20.01.1995. The FIR was lodged with the police on 20.01.1995 but intimation of the said theft was given to the insurance company only on 22.5.1995. The claim having been repudiated on the ground of the breach of the conditions of the policy, a complaint was filed by the insured before the concerned District Forum, seeking compensation along with interest. The complaint was resisted by the insurance company on the ground that he had violated the conditions of the policy by not intimating the alleged theft for almost five months. The District Forum, State Commission as well as National

Commission, having ruled in favour of the complainant, the matter was agitated by the insurance company before the Hon''ble Supreme Court. Allowing the appeal filed by the insurance company, the Hon''ble Supreme Court inter-alia held as under:

"Admittedly, the respondent had not informed the appellant about the alleged theft of the insured vehicle till he sent letter dated 22.5.1995 to the Branch Manager. In the complaint filed by him, the respondent did not give any explanation for this unusual delay in informing the appellant about the incident which gave rise to cause for claiming compensation. Before the District Forum, the respondent did state that he had given copy of the first information report to Rajender Singh Pawar through whom he had insured the car and untraced report prepared by police on 19.9.1995 was given to the said Shri Rajender Singh Pawar, but his explanation was worthless because in terms of the policy, the respondent was required to inform the appellant about the theft of the insured vehicle. It is difficult, if not impossible, to fathom any reason why the respondent, who is said to have lodged First Information Report on 20.1.1995 about the theft of car did not inform the insurance company about the incident. In terms of the policy issued by the appellant, the respondent was duty bound to inform it about the theft of the vehicle immediately after the incident. On account of delayed intimation, the appellant was deprived of its legitimate right to get an inquiry conducted into the alleged theft of vehicle and make an endeavour to recover the same. Unfortunately, all the consumer foras omitted to consider this grave lapse on the part of the respondent and directed the appellant to settle his claim on non-standard basis. In our view, the appellant cannot be saddled with the liability to pay compensation to the respondent despite the fact that he had not complied with the terms of the policy.

In the result, the appeal is allowed, the impugned order as also those passed by the District Forum and the State Commission are set aside and the complaint filed by the respondent is dismissed".

For the reasons stated hereinabove, we have no hesitation in holding that the insured was under a contractual obligation to intimate the theft of the vehicle to the insurer immediately after the said theft came to his knowledge and mere intimating the police or lodging an FIR does not amount to sufficient compliance with the terms and conditions of the insurance policy. Since admittedly, there was substantial delay in intimating the theft of the vehicle to the insurance company in both these cases, the insurer was entitled to repudiate the claim on account of the aforesaid default on the part of the insured."

9. For the reasons stated hereinabove, we would not like to interfere with the order passed by the State Commission. Since the complainant was bound to be required to give immediate intimation of the loss to the insurer, as well as to the police, the insurer, on account of the said breach, stood relieved of its obligation to reimburse him even it is held that the loss alleged to have been suffered by the complainant constitute the burglary as defined in the insurance policy, the

revision petition is accordingly dismissed with no order as to costs.

