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In the National Consumer Disputes Redressal Commission

Case No : 2789 of 2016

M/S. RADHEY SHYAM AGRAWAL Vs BHARTI AXA GENERAL INSURANCE COMPANY?LTD.

Date of Decision : 18-04-2017

Acts Referred:

Consumer Protection Act, 1986, Section 21 (b) - Jurisdiction of the National Commission

Citation : 2017 2 CPR 555

Hon'ble Judges : Rekha Gupta, Prem Narain

Advocate : Kanhaiya Andandani

Judgement

1. The present revision petition has been filed against the judgment dated 13.07.2016 of the Chhattisgarh State Consumer Disputes Redressal Commission, Raipur (''the State Commission'') in FA No. 2016/ 194.

2. The brief facts of the case as per the petitioner/ complainant are that the petitioner was the registered owner of vehicle no. CG 13 A 4699. The said vehicle was insured with the respondent/ opposite party for the period 26.12.2009 to 25.12.2010. The petitioner a registered contractor of A 5 Category was undertaking the work of construction in village Guma Akola, Ghat Near Kharun River. On 22.07.2010 due to heavy rainfall, the petitioner''s subordinate employees working under the petitioner were standing near the vehicle. On the morning of 23.07.2010, the petitioner''s subordinate employees saw some unknown person stealing the four tyres, one volt exide battery, jack and wheel spanner. An FIR was filed at police station in Urla which was registered as 149 of 2010. The incident of theft was reported to the insurance company. The insurance company appointed a surveyor. Entire documents was provided to the surveyor and list of material installed in the petitioner''s vehicle which was worth Rs.1,00,000/- was also provided to the respondent. The insurance company did not settle the claim of the petitioner, hence, the present complaint.

3. Respondent/ opposite party - insurance company filed their written statement and contended that the petitioner had filed the report after 12 days and the

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information given to the insurance company was also delayed. Petitioner has failed to file the original documents, i.e., certificate of registration, fitness certificate, load challan and the driving licence. Hence, the respondent prayed that the complaint of the petitioner be rejected.

4. The District Consumer Disputes Redressal Forum, Raipur C G (''the District Forum'') vide its order dated 06.03.2016 has partially accepted the complaint and gave the following order: "Therefore, on the basis of the above considerations, we partially accept the complaint submitted by the complainant and is ordered within a period of one month from the date of the order:-

1. Non applicant shall pay Rs.75,000/- from the complaint date - 15.07.2011 to till payment date with 6% simple annual interest to the complainant;

2. Non applicant shall pay Rs.10,000/- for cause mental harassment to the complainant; and

3. Non applicant shall also pay Rs.2000/- as suit cost and advocate fees to the complainant".

5. Aggrieved by the order of the District Forum, the respondent/ opposite party filed an appeal before the State Commission. The State Commission while allowing the appeal and setting aside the order of the District Forum observed as under: "In this case first information report was registered after 10 days and information was given to the insurance company after about 11 days and no satisfactory explanation was given in this regard and is in violation of the insurance terms and conditions. Given illustration of the mentioned (Supra) complainant taking support of that judicial illustration not benefited to the complaint and not submit any document in respect of loss by complainant and without document only mentioned in the complaint is not sufficient. Though, the complainant violated the condition of Insurance and in this situation complainant not entitled to get any claim amount.

Analysis of the above order of District Forum is not sustainable. Complainant is not entitled to get any compensation on non-standard basis.

Therefore, appeal filed by appellant/ non- applicant accepted and set aside the impugned order of District Forum dated 04.03.2016. Consequently, the complaint to be rejected."

6. Hence, the present revision petition.

7. Learned Counsel for the petitioner was given many opportunities to argue the matter but we found that he was not prepared and unable to do so. Even today he is unable to argue the matter, hence, we have carefully gone through the record by ourselves. The main grounds for the revision petition are that the State Commission''s order is bad in law and it is not based on any survey report and even if there is delay in filing the FIR as also informing the respondent it is not a fundamental breach of law.

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8. Nowhere in the revision petition, has the petitioner disputed the fact that there was a delay of 10 days in lodging the FIR and 11 days in informing the respondent. He has also not given any cogent and believable reasons or explanation for the delay. The State Commission in their long and detailed order have given the following citations to support their decision to allow the appeal and to set aside the order of the District Forum. The citations are: (1) National Insurance Company vs Shravan Singh - I (2016) CPJ 450 (NC); (2) Revision Petition no. 1782 of 2015 - Siddhanth Yadav vs Oriental Insurance Company Limited decided by NCDRC on 30.07.2015; (3) Revision Petitoin no. 3548 - 3549 of 2013 - Ramesh Chandra vs ICICI Lombar General Insurance Company Ltd., and Anr., decided by NCDRC on 13.01.2014; (4) Jaspal Kaur and Anr. Vs New India Assurance Company Ltd. - II (2015) CPJ 727; (5) Shriram General Insurance Co. Ltd. and Anr. Vs Gurshinder Singh and Anr. II (2015) CPJ 750 (NC); (6) Sarfarjudeen vs New India Assurance Co. Ltd., - I (2005) CPJ 748 (NC); and (7) Shriram General Insurance Co. Ltd., vs Mahender Jat - I (2015) CPJ 74 (NC).

9. Admittedly, there was a delay of 10 days in filing the FIR and 11 days in informing the insurance company. The petitioner has given no justification or reasons for the delay.

10. In New India Insurance Company Ltd., vs Trilochan Jane , in FA no. 321 of 2005 decided on 09.12.2009, (IV (2012) CPJ 441 (NC) this has been held that - "in the case of theft when no bodily injury has been caused to the insured, it is incumbent upon the respondent to inform the police about the theft immediately, say within 24 hours, otherwise valuable time would be lost in tracing the vehicle. Similarly, the insurers should also be informed within a day or 2 so that the insurer can verify as to whether any theft had taken place and also to take immediate steps to get the vehicle traced. The insurer can coordinate and cooperate with the police to trace the car. Delay in reporting to the insurer about the theft of the car for 9 days would be a violation of condition of the policy, as it deprivers the insurer offer valuable right to investigate as to the commission of the theft and to trace/ help in tracing the vehicle".

11. In view of the above, we find that no jurisdictional or legal error has been shown to us in the impugned order to call for our interference under Section 21 (b) of Consumer Protection Act, 1986. The order of the State Commission does not call for any interference nor does it suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity. Thus, the present revision petition is hereby, dismissed.

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