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(2006) 02 NCDRC CK 0089

In the National Consumer Disputes Redressal Commission

NATIONAL GARAGE APPELLANT

Vs

Oriental Insurance Co. Ltd. RESPONDENT

Date of Decision : 08-02-2006

Acts Referred:

Citation : 2006 4 CPJ 396 : 2007 1 CLT 299

Hon'ble Judges : Veena Misra , R.S.Awasthis J.

Final Decision : Appeal partly allowed

Judgement

1. ALL these appeals are directed against the common order dated 2.2.2005 passed by the District Consumer Disputes Redressal Forum, Raipur (hereinafter called the ''District Forum'' for short) whereby the Complaint Nos. 142/04, 213/2004 and 214/2004 were dismissed. The complainant has filed the aforesaid appeals. Since common questions are involved, these appeals are disposed of by this common order.

2. IN all these matters, the complainant had obtained Motor Trade Comprehensive INsurance Policy from opposite party insurer regarding the vehicle purchased from Tata Motors and on accident being taking place the complaints were filed, as the claim of the complainant was repudiated by the insurer. IN all the three complaints the insurer had averred in the written version that the driver did not have effective valid licence on the date of accident. The complaint was filed on false premises, no report was lodged with the police, belated intimation was given to the insurer and no spot survey could be conducted. Hence, there was no deficiency in service on the part of the INsurance Company. It was further averred that the complaint was filed through Power of Attorney holder, hence the complaint was not maintainable and the O.P. had prayed for dismissal of the complaint. Learned District Forum accepted the version of the opposite party and held that the Power of Attorney holder was not competent to file the complaint before the District Forum in view of the provisions contained in Section 2(b) of the Consumer Protection Act which defined the complainant. Learned District Forum held that the complainant is a

registered partnership firm and the complaint was to be filed by any of the partners of the firm. But as the complaint was filed by the Manager who was a Power of Attorney holder, the complaint was not maintainable because under the Consumer Protection Act only the person who is the consumer is competent to file the complaint. It was further held by the learned District Forum that as no FIR was lodged and belated intimation was given to the insurer, it raises suspicion because the accident allegedly took place in Raipur and the office of the opposite parties is also situtated at Raipur and there is nothing to suggest why the complainant did not approach the opposite parties for conducting spot survey. All these facts raise suspicion. The question regarding allegation of opposite parties that the driver did not have valid driving licence on the relevant date was decided by the learned District Forum in favour of the complainant and it was held that the driver had valid driving licence. Learned District Forum further held that in view of the report of the investigator and tariff regulation the insurer has not committed any deficiency in service by repudiating the claim of the complainant.

Heard both the learned Counsel and perused the record.

3. LEARNED Counsel for appellant submitted that the order has been passed without properly appreciating the material on record, hence the same is liable to be set aside. It was submitted by the learned Counsel for appellant that Power of Attorney holder was duly authorized to file the complaint. The attorney had not filed the complaint on his behalf but on behalf of the complainant firm and for that act as well as for verification of the complaint he was fully authorized by means of Power of Attorney. LEARNED Counsel further submitted that the Power of Attorney holder is also the manager of the firm and is fully aware of the facts of the case. Hence, he is fully competent to verify the contents of the complaint as well as to file affidavit. It was further submitted by the learned Counsel for appellant that Divisional Manager of the Insurance Company is also a Power of Attorney holder who represents the Insurance Company and learned District Forum has failed to appreciate this fact. He further submitted that intimation regarding repudiation was also addressed to the Manager of the complainant firm and this goes to show that the Manager was competent to do all necessary acts on behalf of the complainant firm and learned District Forum has lost sight to this fact also. It was further submitted by the learned Counsel for appellant that the opposite party/respondent has not filed any such terms and conditions whereby it can be proved that the road risk policy requires spot survey to be conducted. It has also failed to file any such terms and conditions wherein it is mentioned as to within how many days the intimation is to be given to the Insurance Company. It was submitted in the circumstances of the case the claim of the complainant ought to have been decided on the basis of Motor Claim Manual, but the Insurance Company failed to do so and the District Forum also failed to appreciate this fact. It was further submitted that the claim was repudiated on the ground that the driver did not have valid driving licence which ought not to have been done in the circumstances of the case. He further submitted that the

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insurer failed to file any regulation relating to road risk policy whereunder the claim of the complainant was repudiated, yet the District Forum has relied on the averments of the Insurance Company. It was also submitted by the learned Counsel for appellant that in the circumstances of the case the complainant is entitled to get the amount assesed by the Surveyor and prayed that the appeal be allowed and the order of the District Forum be set aside. He further submitted that appellant be granted relief as prayed in the prayer clause of the complaint. The first grievance of the complainant/appellant was that the learned District Forum has erred in holding that Power of Attorney holder was not competent to file the complaint. The main emphasis of the learned Counsel for respondent/ insurer was that the complaint has been filed through Power of Attorney holder and Power of Attorney holder is not a consumer of opposite party/insurer and such complaint is not maintainable. He drew our attention to Section 2(1)(b) where the word ''complainant'' is defined and Section 2(1)(d) which defines ''consumer'' and submitted that only a consumer is competent to file the complaint. Besides consumer, others as mentioned in Section 2(1)(b) only are competent to file the complaint. He submitted that Power of Attorney holder is not the consumer hence not competent to file the complaint. In this regard he relied on Oberoi Forwarding Agency v. National Insurance Company and Another, I (2000) CPJ 7 (SC)=II (2000) SLT 86=2000 SAR (Civil) 218 (SC) and M/s. Sowrab Offset Printers v. K.S. Gupta, Director, M/s. Roro Frame Furniture & Machinery Pvt. Ltd. & Ors., II (2002) CPJ 441=2001 (3) CPR 13.

4. IN the aforesaid context, we perused the Consumer Protection Act and Rules made thereunder. It is worthwhile to mention here that M.P. Consumer Protection Rules have been adopted by Chhattisgarh State also and hence the same are relevant in the matter. Rule 2(b) of the M.P. Consumer Protection Rules, 1987 defines ''Agent'' as - ''Agent means a person duly authorized by a party to present any complaint or appeal or reply on its behalf before the State Commission or District Forum''. In view of specific provisions for duly authorized person to file complaint, there remains no doubt that Power of Attorney holder is competent to file a complaint. Hence, we are of the considered opinion that in view of most clear and unambiguous provision contained in Rule 2(b) of the aforesaid Rules, the cases relied by the respondent insurer would not be of any help to the insurer. The next grievance of the learned Counsel for appellant was that the appellant''s claim was repudiated on the ground that the driver did not have valid driving licence which ought not to have been done. The learned Counsel for the respondent submitted that since the complainant had obtained Commercial Vehicle Package Policy it was required that the driver should have licence for driving transport vehicles. So far as the driving licence not having the endorsement of driving transport vehicle is concerned, we fully agree with finding given by the District Forum which is based on various decided cases referred in the order. The said finding is further reinforced in view of the decision of the Apex Court in the National Insurance Company v. Swaran Singh and Ors., I (2004) ACC 1 (SC)=I (2004) SLT 345=2004 ACJ 1.

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5. THE appellant further challenged the impugned order on the ground that delayed intimation of accident to the insurer could not be a ground of repudiation. THE learned Counsel for appellant submitted that the opposite party has not filed any such terms and conditions wherein it is mentioned as to within how many days the intimation of accident is to be given to the Insurance Company. On perusal of record it appears that the opposite party/respondent has filed copy of the Certificate Consumer Policy Schedule together with Commercial Vehicle Package Policy and the same contain various terms and conditions also. Condition No. 1 clearly stipulates -"notice shall be given to the company immediately upon the occurrence of any accidental loss or damage". So, it cannot be said that the terms and conditions do not specifically mention time when the intimation of accident is to be given.

6. MOREOVER, it appears from the report of the investigator Mr. Rupesh Javade that the spot of accident was different and possibly the accident had occurred at some other place and not as mentioned in claim form. It is detailed report. The report raises suspicion regarding the date of accident also as no FIR was lodged and also that due to belated intimation, the spot survey could not be conducted. The investigator has also observed that the complainant is the only dealer of Tata Passenger Cars and sends the cars to various sub-dealers in the nearby area of Chhattisgarh region by road and while the cars are so sent, at times accidents take place. However, as the billing is at Raipur, hence the claimant makes a claim stating that the accident has taken place at Raipur. It was observed by the investigator that in none of the cases, FIR has been lodged though some of the vehicles are severely damaged. In view of the report we are of the opinion that the finding of the District Forum that the Insurance Company had not committed any deficiency in service by repudiating the claim is just and proper. Hence, the aforesaid finding in affirmed. This appeal is partly allowed and it is held that the Power of Attorney holder is ''Agent'' as defined under the relevant Rules and is competent to file complaint. However, as there are suspicious circumstances, we confirm the view taken by the District Forum that the insurer has not committed deficiency in service. This appeal is partly allowed. Order of the District Forum is affirmed subject to the modification that Power of Attorney holder is competent to file complaint before the District Forum. Appeal partly allowed.

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