
(2007) 05 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE CO LTD

APPELLANT

Vs

D P JAIN

RESPONDENT

Date of Decision : 15-05-2007

Acts Referred:

Citation : 2007 3 CPJ 34

Hon'ble Judges : M.B.Shah , P.D.Shenoy J.

Advocate : Atul Nanda , Rajeev Aggarwal

Judgement

1. IN this case the complainant/respondent purchased a Nokia mobile handset for a sum of Rs. 6,100 on 4. 10. 2004 for his daughter which was carrying free insurance cover for one year. The handset was stolen from the bag of complainant's daughter on 21. 10. 2004. In this regard a report was lodged by the complainant with the police on the same day i. e. 21. 10. 2004. Thereafter, the complainant preferred a claim with the Insurance Company, which repudiated the claim on the ground that there was absence of "actual or threatened force" as per clause of the terms and condition mentioned in the policy. Hence, the complainant filed a complaint No. 845/2005 before the District Forum-II, Delhi. The District Forum allowed the complaint by its order dated 20. 7. 2006 and directed the insurance to pay the complainant a sum of Rs. 6,100 i. e. the cost of mobile handset, Rs. 1,000 as compensation and Rs. 1,000 as cost of litigation. Being aggrieved against the order of the District Forum, the Insurance Company filed Appeal No. 813/1006 before the State Commission, Delhi. The State Commission by its order dated 9. 11. 2006 dismissed the appeal. Hence, this revision petition. Revision Petition No. 187/2007 :

2. THE facts of this case are similar to that of revision petition No. 186/2007. The complainant purchased a Nokia mobile handset on 22. 8. 2004 for a sum of Rs. 17,150 which carries a tempting offer that there would be insurance cover free of charge for one year against theft, etc. Theft of the Nokia mobile handset took place on 6. 3. 2005 by breaking open the door of the car. For that an FIR was also lodged. But, when the claim was lodged with the Insurance Company, the

Insurance Company repudiated the claim on the ground that there was absence of "forced and violent entry or exit", as has been incorporated in Exclusion Clause 1b (a) of the insurance cover. Hence, the complainant knocked the doors of the District Consumer Forum by filing Case No. 759 of 2005. That complaint was allowed by the District Forum by order dated 27. 7. 2006 and the Insurance Company was directed to reimburse the complainant a sum of Rs. 17,150, i. e. the price of the Nokia mobile handset with compensation of Rs. 1,000 and Rs. 1,000 as costs of litigation.

Hence, the Insurance Company preferred First Appeal No. 821 of 2006 before the Delhi State Commission. That appeal was dismissed by the State Commission by discussing what is meant by theft, burglary, extortion, robbery and house-breaking. Hence, this Revision Petition. Findings

3. MR. Nanda, learned Counsel appearing for the Insurance Company, vehemently contended that the impugned order passed by the State Commission is unjustified and arbitrary as the State Commission has no jurisdiction or power to ignore the law laid down by the Apex Court in the case of *United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal*, IV (2004) CPJ 15 (SC)=v (2004) SLT 876= (2004) 8 SCC 644. We entirely agree with Mr. Nanda that the State Commission cannot by pass the judgment rendered by the Apex Court.

4. HOWEVER, the State Commission, while disposing of the matter, has drawn the attention to the word "theft" as used and understood in common parlance and held that it would not mean taking away of the property by violent means. If the property is taken away by force, it would not be understood as theft. Further, if the words used in the insurance policy are vague, benefit of those words or phrase is required to be given to the insured. Whatever be the position, in our view, once there is a binding judgment of the Apex Court, the State Commission ought to have followed the same. (a) Effect of Regulation No. 3 of the IRDA Regulations The next important question which requires consideration in these Revision Petitions is to the effect of Regulation 3 of the Insurance Regulatory and Development Authority (Protection of Policy Holders' Interests) Regulations, 2002, framed by Insurance Regulatory and Development Authority (IRDA) in exercise of powers under Section 114 (A) of the Insurance Act, 1938 read with Sections 14 and 26 of the Insurance Regulatory and Development Authority Act, 1999.

5. THE Regulations came into effect from the year 2002. Therefore, the policies which are issued after 2002 are being covered by the said Regulations and are required to be followed by the Insurance Company.

6. IT is to be stated that the aforesaid Regulations are framed by the IRDA to "protect the interests of the policy holders". Firstly, Regulation 3 requires to be followed by the insurance companies so that the terms of the insurance policy do not operate harshly against the insured and in favour of the insurer. Regulation 3 thereof reads as under : "3. Point of sale.- [1] Notwith-standing anything

mentioned in regulation 2 (e) above, a prospectus of any insurance product shall clearly state the scope of benefits, the extent of insurance cover and in an explicit manner explain the warranties, exceptions and conditions of the insurance cover and, in case of life insurance, whether the product is participating (with profits) or non-participating (without profits). The allowable rider or riders on the product shall be clearly spelt out with regard to their scope of benefits, and, in no case, the premium relatable to health related or critical illness riders in the case of term or group products shall exceed 100% of premium under the basic product. All other riders put together shall be subject to a ceiling of 30 per cent of the premium of the basic product. Any benefit arising under each of the rider shall not exceed the sum assured under the basic product : provided that the benefit amount under riders shall be subject to Section 2 (11) of the Insurance Act, 1938. Explanation.-The rider or riders attached to a life policy shall bear the nature and character of the main policy, viz. , participating or non-participating and accordingly the life insurer shall make provisions, etc. , in its books.] (2) An insurer or its agent or other intermediary shall provide all material information in respect of a proposed cover to the prospect to enable the prospect to decide on the best cover that would be in his or her interest. (3) Where the prospect depends upon the advice of the insurer or his agent or an insurance intermediary, such a person must advise the prospect dispassionately. (4) Where, for any reason, the proposal and other connected papers are not filled by the prospect, a certificate may be incorporated at the end of proposal form from the prospect that the contents of the form and documents have been fully explained to him and that he has fully understood the significance of the proposed contract. (5) In the process of sale, the insurer or its agent or any intermediary shall act according to the code of conduct prescribed by- (i) the Authority; (ii) The Councils that have been established under Section 64c of the Act; and (iii) The recognised professional body or association of which the agent or intermediary or insurance intermediary is a member.

The aforesaid Regulation makes it clear that - (i) the prospectus of insurance product are required to clearly state the scope of benefits, the extent of insurance cover and in explicit manner explain the warranties, exceptions and conditions of the insurance cover. The phraseology used is "mandatory" by providing that it shall be stated clearly. (ii) Sub-Regulation (2) provides that an insurer or its agent or other intermediary shall provide all material information in respect of the proposed cover to the insured. (iii) Sub-Regulation 4 also provides that if the proposal and other connected papers are not filled by the prospect, a certificate is required to be incorporated at the end of the Proposal Form from the prospect that the contents of the form and documents have been fully explained to him.

7. FROM the above it is amply clear that the rule making Authority has taken much care to protect the interest of the consumer. At this stage, whether the Insurance Company can contend that even though it has not followed the binding Regulations, the said Regulations/the Exclusion Clauses are yet binding to the

complainant? In our view, the unexplained or unnoticed exclusion clauses would not be binding to the insured. The reason being, the Regulations are of mandatory in nature so as to protect the consumers' interests. (b) Position before the coming into force of IRDA Regulations :

8. SECONDLY, even before the Regulations came into force, the Apex Court in *Modern Insulators Ltd. v. Oriental Insurance Co. Ltd.*, I (2000) CPJ 1 (SC)=ii (2000) SLT 323= (2000) 2 SCC 734, has specifically held that Exclusion Clauses, which are not explained to the insured, are not binding to the insured and are required to be ignored. The Court in para 9 held thus : "9. In view of the above settled position of law we are of the opinion that the view expressed by the National Commission is not correct. As the above terms and conditions of the standard policy wherein the exclusion clause was included, were neither a part of the contract of insurance nor disclosed to the appellant, the respondent cannot claim the benefit of the said exclusion clause. Therefore, the finding of the National Commission is untenable in law. "

From the Regulations as well as the law laid down by the Apex Court, it is clear that if exclusion clauses are not explained, they are not binding on the insured. Those exclusion clauses are required to be ignored while considering the claim of the insured. Disclosure of material information in explicit manner However, Mr. Nanda, the learned Counsel for the Insurance Company, contended that- (a) Even if there is a breach of Regulation 3 or any other Regulation, Regulation 11 (4) specifically empowers the IRDA to initiate action against the insurer or insurance agent or against the intermediary, jointly or severally, under the Insurance Act or under the Insurance Regulatory and Development Authority Act. He, therefore, submitted that once this procedure is prescribed for taking action under the Regulations, exclusion clauses should be read, as they are. He contended that if Statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits doing of the act in any other manner than that which has been prescribed. The principle behind the Rule is that if those were not so, the Statutory Provisions might as well would not have been enacted. This principle has been followed all-throughout.

9. IN support of his contention, Mr. Nanda vehemently submitted that it is a matter of well settled law that when a Statute or Regulation provides for a manner in which a particular thing must be done, then that thing must be done in that manner only. The Rule of law laid down in *Taylor v. Taylor*, (1876) 1 Ch. D 426 has been founded on sound principle and well recognised and followed by Courts in India for several decades. The principle laid down in *Taylor v. Taylor* (supra), is that if a Statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the Rule is that if these were not so, the statutory provision might as well would have not been enacted. The principle has been followed by

Indian Courts in the cases of Nazir Ahmed v. Emperor, AIR 1936 PC 253, State of UP v. Singhara Singh, AIR 1964 SC 358, Ram Chandra Keshav Adke v. Govind, (1975) 1 SCC 559, Deep Chand v. State of Rajasthan, AIR 1961 SC 1527, Dhananjay Reddy v. State of Karnataka, II (2001) SLT 725=ii (2001) CCR 26 (SC)= (2001) 4 SCC 9, M. P. Wakf Board v. Subhan Shah, VIII (2006) SLT 444= (2006) 10 SCC 696, Ram Chandra Murari Lal v. State of Maharashtra, II (2007) SLT 341=i (2007) CLT 251 (SC)= (2007) 2 SCC 58.

10. IN our view, there is no dispute with regard to the aforesaid settled law. In the light of the aforesaid principles as submitted by Mr. Nanda and the provisions of Regulation (3) and others, we have to find out whether the Regulations are being followed by the Insurance Company or not. Because, if the statute has laid down the method in which the Insurance Company has to exercise its right to issue the policy, then that procedure must be followed by the Insurance Company and it necessarily prohibits issuing the policy in any other manner than what has been prescribed. The principle behind the aforesaid Regulations is that if these were not so, there was no necessity of enacting the said Regulations. Hence, applying the said principles to Regulation 3 we have to arrive at the conclusion that the Insurance Companies are bound to follow the procedure prescribed therein before issuing the insurance cover. The Insurance Company is required to state the scope of benefits, the extent of insurance cover and in an explicit manner explain the warranties, exceptions and conditions of the insurance cover. The rider or riders are required to be clearly spelt out. It is mandatory (the phrase used is "shall provide") duty of insurer or its agent or other intermediary to provide all material information in respect of a proposed cover to the insured to enable him to decide the best cover that would be in his or her interest. Therefore, we accept the contention of the learned Counsel for the Insurance Company, Mr. Nanda, that when the Statute provides the manner in which a particular thing must be done, then that thing must be done in that manner only. That means, the Insurance Company is bound to follow the said Regulations.

It is to be stated that Mr. Nanda has contended that if the procedure is not followed it is for the Regulatory Authority to take appropriate action against the Insurance Company or the intermediary or the agent as provided under Regulation 11 (4), but would not nullify the exclusion clauses.

11. IN our view, the aforesaid submission cannot be accepted. It cannot be contended with impunity that even if the Insurance Company has not followed the said Regulations, at the most the Regulatory Authority may take appropriate action, as provided under Sub-regulation (4) of Regulation 11. Taking appropriate action under Sub-regulation (4) of Regulation 11 itself is an additional power vested with the Regulatory Authority. But, not taking of appropriate action would not mean that the Statute can be ignored with impunity by the Insurance Company. If the Regulations are ignored and the procedure prescribed before issuing the policy cover is not followed, then the unexplained exclusion clauses

are required to be ignored. If the procedure prescribed by the Regulations is not followed by the Insurance Company before issuing insurance policy cover and the premium is recovered with pleasure for earning profit, then the Insurance Company must suffer the consequences as it is to be held that exclusion clauses which are not explained, are to be ignored for the purpose of insurance cover. We have to reiterate that this is the view taken by the Apex Court in *Modern Insulators Ltd.* (supra). Secondly, if the contention of the Insurance Company is accepted, the whole purpose of enacting Regulations for "protection of Policy Holders Interest" would be frustrated. The purpose and objective is to protect the policy holders' interest and that is required to be fulfilled by following the mandatory procedure prescribed therein.

12. MR. Nanda, the learned Counsel next contended that in all other cases where violence is used and theft has taken place, the Insurance Company has paid the insured the claimed amount. As against this contention we would state that payment of insured amount in such cases was the bounden obligation under the insurance policy. That would not empower the Insurance Company to contend that even if the Insurance Company or its agent or its intermediary, has not followed the Regulations by not explaining the exclusion clauses to the insured i. e. the purchaser of the Nokia Mobile handset in the present case, the Insurance Company can rely upon the exclusion clause for avoiding its liability by not making payment of the sum insured in case of theft. Mr. Nanda raised another contention that the relationship between the Insurance Company and the HCL, which is the intermediary to whom the policy covers were given, is that of principal to principal and, therefore, HCL would be liable to reimburse the complainants. In our view, this submission is devoid of any substance. The Insurance Company has undertaken to reimburse the complainant in the event of peril. It is to be stated that a copy of the Certificate of Insurance given to the consumer of Nokia GSM Mobile Handset, is produced on record for our perusal. It mentions, "hcl-SAFEGUARD NOKIA GSM MOBILE HANDSET InSURANCE COVER". The certificate is issued by stating that it is signed by the authorised signatory for the National Insurance Co. Ltd. This would mean that the Insurance Company would be straightaway liable.

13. FINALLY, the learned Counsel for the Insurance Company vehemently submitted that the contention with regard to not following Regulation No. 3 was not raised before the District Consumer Disputes Redressal Forum or the State Commission and, therefore, this Commission should not deal with the same.

14. IN our view, the said submission is required to be rejected because : (a) Firstly, we have to state that at the admission stage by order dated 13. 11. 2006 we have directed as under : "heard the learned Counsel for the parties. In our view, prima facie, it is apparent that there is a total violation of Regulation 3 of the Insurance Regulation and Development Authority (Protection of Policy-holders' Interest) Regulations, 2002. However, learned Counsel for the petitioner submits that whether the said Regulation 3 is followed by the insurance

companies or its intermediary, appropriate affidavit would be filed within a period of 4 weeks from today by a responsible officer of the Insurance Company. We hope that correct facts would be stated by the concerned officer without suppressing any material. This observation is made because the responsible officer of the agent of the NOKIA states that there was no question of explaining any terms of the policy to the complainant/purchaser of the NOKIA handset. Learned Counsel, Mr. Amit K. Das, appearing for NOKIA states that the insurance policy is purchased by the HCL and is given to the NOKIA for promoting their sale and the dealer of the NOKIA is handing over this policy to the consumer. Stand over to 31st January, 2007 for further hearing. Meantime, it would be open to the dealer of NOKIA to file the necessary affidavit. Dasti in addition. " none has filed the affidavit stating that procedure prescribed under Regulation No. 3 was followed and exclusion clauses were explained.

(b) Further, we make it clear that Consumer Fora are not required to follow the adversary system and remand the matter to Trial Court in such cases. If that system is required to be followed, then there is no necessity for separate enactment for rendering inexpensive and speedier justice to the consumers. We reiterate that Consumer Fora are required to follow inquisitorial (to hold inquiry by itself) procedure for finding out the truth for rendering inexpensive or less expensive speedy justice. The consumer would be frustrated if the matter involving small amount is remanded and he is required to approach the District Consumer Forum again and again. That itself would result in injustice to the consumers and hence that lengthy procedure is required to be avoided.

(c) Further, at the time of hearing of the matter the learned Counsel for the dealer has stated that it is not necessary to explain exclusion clauses because only one standard cover is there.

After the arguments were over, learned Counsel Mr. Nanda tendered an affidavit on behalf of the Insurance Company contending that the statement made by the learned Counsel for the Dealer, while addressing the Commission, that the dealers are not obliged to explain to the handset purchaser anything under the Regulation No. 3, was in the context and scope of Regulation 3 (2).

In our view, giving of such gloss to the admission is neither justifiable nor acceptable. In any set of circumstances, as stated above, neither the Insurance Company nor its agent nor the intermediary (HCL) nor the dealer has filed affidavit contending that they have followed the procedure prescribed under Regulation No. 3 and explained the exclusion clauses to the purchasers of Nokia handset. It is to be emphasised that such type of advertisement of giving free insurance cover, gives an added advantage of marketing of Nokia handset and increasing the sale of goods/handsets.

15. AGAIN it is to be stated that the insurance cover is handed over to the consumer by the dealer of Nokia. Therefore, the statement made on behalf of the dealer is of importance and not that of intermediary, or Insurance Company

because insurance cover is not handed over by the intermediary, or Insurance Company or its agent. (d) It is also the duty of the Insurance Company or its agent or its intermediary to abide by the Regulations and whether they have followed that Regulation or not is required to be stated by them. It is the duty of the Insurance Company, prima facie, to prove and establish that the Insurance Company has followed the said Regulation/procedure. It is to be stated that terms which are mentioned at the over leaf of the insurance certificate are in very small print, and require magnifying glass for reading the same. So, we can draw an inference that it is not read by anyone. (e) It is a matter of common knowledge that consumers are attracted to purchase a particular goods or brand of mobile handset depending upon the advertisement as it gives an additional benefit of free insurance cover.

16. NO doubt, we have to state, that wherever the Nokia Company was party to the litigation, the learned Counsel representing the company, without prejudice to the rights of the company, has agreed to pay the amount as ordered by the District Forum. One such case is Revision Petition No. 3110/2006, National Insurance Co. Ltd. v. Gynander Singh, decided on 3. 5. 2007). In that case, this Commission observed as under : we hope that companies in India would try to follow such a gesture towards the consumers and not to raise unnecessary dispute and litigate, so that the consumers are not driven for a small amount to the National Commission or to the Supreme Court. This type of practice is required to be adopted in the interest of consumers all over the country. Unfortunately, we have developed a negative legal practice to such an extent that even established facts are denied in the written version. Unfortunately, such practice is not followed by the Insurance Company after receiving the premium and Insurance Companies are dragging the consumers to unending litigation. In conclusion, we hold that : (i) "exclusion Clauses" are required to be ignored if the Insurance Company or its Agent or Intermediary does not adhere to the mandatory requirement of explaining the "exclusion Clauses" before issuance of insurance cover. (ii) The procedure prescribed under Regulation 3, is required to be followed. In case the said procedure is not followed, apart from aforesaid consequences, the Regulatory Authority can take action under Regulation 11 (4) against the Insurance Company. (iii) The Regulations are based on settled law declared from time-to-time by the Courts [re : Modern Insulators Ltd. v. Oriental Insurance Co. Ltd. (2000) 2 SCC 734]. (iv) Intermediary, the HCL, in the present case, has issued the insurance cover as an agent of the Insurance Company. Therefore, the Insurance Company is bound to reimburse the complainant in case of theft of the mobile handset. Free insurance cover is a method adopted as a part of aggressive marketing.

17. IN the result, the Revision Petitions are dismissed. There shall be no order as to costs. Revision Petitions dismissed.