(2015) 03 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE CO. LTD. — APPELLANT

Vs

Ganga Ram Chaturbhuj (Huf) — RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Citation : 2015 2 CPJ 541

Hon'ble Judges : SURESH CHANDRA J.

Final Decision : Petition Allowed

Judgement

1. THIS revision petition challenges the order dated 30.1.2008 passed by the Rajasthan State Consumer Disputes Redressal Commission, Jaipur in Appeal No. 465 of 2007 by which the State Commission dismissed the appeal of the petitioner filed against the order dated 3.1.2007 passed by the learned District Forum, Ajmer in Case No. 162 of 2006.

2. THE District Forum by its order had allowed the complaint filed by the respondent/complainant under Section 12 of the Consumer Protection Act, 1986 in terms of the following directions: "Resultantly complaint of the complainant is admitted and OP/Insurance Company is directed to pay 75% of claim amount of Rs. 4,67,609 as assessed by Shri K.L. Gunjal with interest @ 9% after period of two months from the date of institution of claim along with Rs. 1000 towards cost of litigation after period of two months from the date of order or to pay amount in the Forum."

Brief facts of this case which are relevant for its disposal are that the respondent/complainant insured his "Tata Truck Trailor" with the petitioner Insurance Company vide insurance policy for the period from 20.1.2005 to 19.1.2006 for a sum of Rs. 14,06,000. The said vehicle met with an accident on 21.2.2005 during which it was damaged. A report about the accident was lodged with the local police station vide FIR No. 27/05 and information about the accident was also given to the Petitioner/Opposite Party Insurance Company. Spot survey was done and the vehicle in question was got repaired by the complainant/respondent from the authorized dealer of Tata Company. Thereafter, on

27.3.2005, a claim was preferred by the complainant before the Insurance Company and even though the surveyor had assessed the loss to the tune of Rs. 4,67,609, the Insurance Company vide its letter dated 27.12.2005 repudiated the claim on the following grounds:

"(i) During Police investigation it has come on record that you had sold the vehicle on 23.1.2005 i.e. prior to even registration and was thus having no insurable interest in the insured vehicle, has not sustained any loss. The claim is not found payable.

(ii) The vehicle was overloaded at the time of accident by 21 m. ton as it was loaded with 55 m.ton against carrying capacity of 34 m.ton."

In view of the repudiation of its claim, the complainant knocked the door of the Consumer Fora by filing a consumer complaint before the District Forum which allowed the same vide its order dated 3.1.2007 reproduced above. Aggrieved of this order of the District Forum, the petitioner Insurance Company challenged the same before the State Commission by filing its appeal No. 465 of 2007 which came to be dismissed by the State Commission on merits but partly allowed in respect of the date of awarding of interest in that the State Commission directed that the complainant/respondent would be entitled to get interest at the decretal amount from the date of filing of the complaint i.e. 1.6.2006 instead of date of presentation of claim and to that extent, the order of the District Forum was modified. Not satisfied with the partial relief granted by the State Commission, the petitioner Insurance Co. has now filed the present revision petition.

3. WE have heard learned Mr. Pradeep Gaur, Advocate for the petitioner and Mr. S.P. Gandhi, Advocate for the respondent. Learned Counsel for the petitioner has contended that the impugned order passed by the State Commission is perverse and based on a wrong appreciation of facts and case law applicable to the present case. He submitted that the State Commission failed to consider the fact that the vehicle was actually in the possession of one Mohd. Hussain Qureshi and the name of the complainant/respondent was only in the Registration Certificate. He submitted that the State Commission ought to have considered that the complaint of the respondent was liable to be rejected by it because the complainant did not approach the Consumer Fora with clean hands and it suppressed material fact that he had already sold the vehicle to the said Mohd. Hussain Quershi prior to the date of accident and yet did not make any mention of this fact in his complaint. In these circumstances, the complainant/respondent had no insurable interest in the vehicle and as such his claim in respect of vehicle which he had sold was bound to be rejected. Besides this, learned Counsel submitted that the District Forum has applied the principle of acceptance of the claim at the rate of 75% on non -standard basis wrongly to the present case because in the present case, the vehicle itself had been sold and as such the petitioner did not have any insurable interest. He has drawn our attention to the statement given by Shri Rajender Kumar Goel who is the Karta of the complainant/respondent firm, namely, M/s. Gangaram Chaturbhuj (HUF) of which

he is also the Proprietor. The statement was recorded under Section 161 of the Cr.P.C. and a copy thereof is placed at page 88 -89 of the paper -book. He further pointed out that the purchase of the vehicle by Mohd. Hussain Qureshi has also been accepted by him vide statement recorded under Section 161 of Cr.P.C. which is not denied by the complainant. In view of these facts which are supported by documentary evidence, learned Counsel contended that the acceptance of the claim of the respondent on non -standard basis by the for a below cannot be sustained in the eye of law. Both the for a below should have appreciated that it was not a simple case of mere violation as to the use of the vehicle which might have called for settlement of the claim on non -standard basis but a clear case where complainant had already sold the vehicle before the date of accident to a third party and as such the complainant did not have insurable interest in the vehicle. In support of his contention learned Counsel has relied on the order dated 12.7.2011 of this Commission in the case of National Insurance Co. Ltd. v. Shri Rant Gopal Sharma, (Revision Petition No. 1586 of 2007) and the case of Complete Insulations (P) Ltd. v. New India Assurance Co. Ltd., : II (1996) ACC 536 (SC) : I (1996) CPJ 1 (SC) : I (1996) CLT 22 (SC) : (1996) SCC 221. He, therefore, pleaded that the impugned order be set aside and the revision petition allowed.

4. ON the other hand, learned Counsel for the respondent has supported the impugned order and submitted that both the Fora below have returned their concurrent findings in favour of the complainant non -suiting the defence put forth by the petitioner Company and as such there is no scope for interference by this Commission under its limited jurisdiction under Section 21(b) of the Consumer Protection Act under which this revision petition has been filed. He, therefore, submitted that the revision petition be dismissed with cost. In support of his submissions, he has relied on the orders in the cases of Darab Singh & Anr. v. National Insurance Co. Ltd., : II (2013) CPJ 412 (NC) : 2013 (2) CPR 83 (NC)] Banowarilal Agrawalla v. National Insurance Co. Ltd. & Anr., : IV (2005) CPJ 110 (NC), United India Insurance Co. Ltd. & Anr. v. Ravi Gurung,, III (2012) CPJ 222 (NC), and National Insurance Co. Ltd. v. Munni Lal Yadav,, II (2001) CPJ 53 (NC). We have carefully considered the rival contentions and gone through the citations relied on by the respective Counsel. It is not disputed that the vehicle in question had already been sold by the complainant on 23.1.2005 to a third party who was in possession of the vehicle on the date of accident. While Counsel for the respondent now submits that it was only an agreement to sell but not an actual sale, we do not find his contention as acceptable for two reasons. Firstly, there is no pleading to this effect in the complaint filed by the respondent before the District Forum and, secondly, the statements given by the Proprietor of the complainant firm as well as the purchaser of the vehicle, namely, Mohd. Hussain Qureshi, copies of which are placed on record, clearly established that it was an outright sale under which "all the responsibilities of the said vehicle had been transferred to Mohd. Hussain Qureshi and he was looking after the said vehicle". Not only this, it is stated by the complainant in his statement that "all the

original documents are under the custody of Mohd. Hussain Qureshi and photocopies are with me". These statements have not been disputed by the respondent/complainant. In view of this, we do find force in the contention of learned Counsel for the petitioner that the complainant did not approach the Consumer Fora with clean hands inasmuch as it concealed material information from the forum. It is also not under dispute that the said Mohd. Hussain Qureshi did not get the insurance policy transferred in his name within the specified period as required by law. In the circumstances, both the fora below gravely erred in holding that the complainant firm had insurable interest in the insured vehicle. In view of this, no fault could be found with the decision of the petitioner Insurance Company to repudiate the claim of the complainant. So far as the applicability of settlement of claim on non -standard basis is concerned, this question should not have arisen in the present case simply because the violation as to the user of the vehicle was also involved in this case. In this respect also, both the fora below got mislead and wrongly appreciated the facts emanating from the evidence before them. Their perverse findings, therefore, cannot be sustained in the eye of law. Consequently, we accept the revision petition and set aside the impugned order of the State Commission as well as the order dated 3.1.2007 of the District Forum. We may observe that the citations relied on by learned Counsel for the respondent will not be applicable to the facts and circumstances of this case and as such cannot provide any comfort to the respondent/complainant. There shall be no order as to costs.

