(2008) 07 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

National Insurance Co. Ltd. APPELLANT

Vs

GOBIND CHANDRA NAYAK RESPONDENT

Date of Decision : 24-07-2008

Acts Referred:

Citation : 2008 4 CPJ 67

Hon'ble Judges : R.C.Jain , P.D.Shenoy J.

Final Decision : Appeal dismissed

Judgement

1. -AGGRIEVED and dissatisfied by the order dated 14.7.2004 of the State Consumer Disputes Redressal Commission Orissa, Cuttack (the State Commission) in C.D. Case No. 42 of 1999 directing the Insurance Company to pay the amount of Rs. 2,00,000 to the complainant along with interest @ 9% p.a. from the date of the report submitted by the surveyor i.e. 15.1.1999 till payment along with the cost of Rs. 2,000, National Insurance Company has filed this appeal before us.

2. THE case in brief is that the complainant was the owner of the bus which was comprehensively insured by the petitioner for a period from 1.9.1998 to 31.8.1999 for Rs. 3,30,000. THE vehicle met with an accident on 21.10.1998, which resulted in total loss according to the complainant. THE damaged vehicle was also examined by the Motor Vehicle Inspector who had indicated the extent of the damage. The Insurance Company on receipt of intimation of the accident had deputed a spot surveyor and subsequently a final surveyor who estimated the damage to the vehicle at Rs. 3,00,000 (net). Surveyor had deducted Rs. 1,00,000 towards the salvage which was disputed by the complainant according to whom the salvage could not have been more than Rs. 40,000. Despite this the Insurance Company has sent a letter to the complainant on 9.6.1999 stating that the Company had estimated the loss at Rs. 1,06,250 towards full and final settlement of the claim treating the same as non-standard claim. Though the complainant signed the pre-receipt discharge voucher dated 9.6.1999, he sent a protest letter dated 10.6.1999 itself stating that the loss estimated by the

surveyor at Rs. 2,00,000 and he is entitled for the balance amount. After considering the records of the case and hearing the parties and State Commission passed the order as narrated above.

Learned Counsel for the appellant quoted a clause of the insurance clause relating to limitation to use, which reads as follows: "Use for carrying passengers in the vehicles except employees (other than the driver not exceeding six in number coming under the purview of the Workmen''s Compensation Act, 1923)."

3. DESPITE that eight persons were found to be travelling in the vehicle and had sustained injuries. Learned Counsel for the appellant quoted judgment of the Hon''ble Supreme Court, United India Insurance v. Ajmer Singh Cotton & General Mills & Ors., II (1999) CPJ 10 (SC)=VI (1999) SLT 590, and he submitted that this case is clearly covered by the judgment and hence no additional amount is required to be paid. As against this learned Counsel for the respondent submitted that almost simultaneously along with the signing of the discharge voucher, the complainant has sent a letter by registered post on 10.6.1999 to concerned Branch Manager. He also made a plea in his petition before the State Commission as follows: "That the complainant was compelled to sign the discharge voucher which was however made with protest as would be clearly evident from the complainant''s registered letter dated 10.6.1999, a copy of which has been annexed herewith."

Findings:

4. WE have perused the insurance policy. It is to be noted that the policy document was printed in very small letters which requires a magnifying glass to read the same. WE do not appreciate such a practice. However, the learned Counsel for the petitioner has been kind enough to reproduce the same in user friendly typed version, which enabled us to read the clause clearly and this has been quoted above. The limitation to use clearly permits six persons to be carried in the truck. It is stated that the truck was carrying cement bags and loading and unloading cement bags requires skilled labourers who generally travel in the truck. Just because two more persons were there that does not mean that there was violation of condition of the policy necessitating settlement of the claim on non-standard basis. In this connection, it is useful to quote the celebrated judgment of the Hon''ble Apex Court in B.V. Nagaraju v. M/s. Oriental Insurance Co. Ltd. Divisional Office, Hassan, II (1996) CPJ 18 (SC)=I (1997) ACC 123 (SC)=(1996) 4 SCC 647, wherein it is held that: "It is plain from the terms of the Insurance Policy that the insured vehicle was entitled to carry 6 workmen, excluding the driver. If those 6 workmen when travelling in the vehicle, are assumed not to have increased any risk from the point of view of the Insurance Company on occurring on an accident, how could those added persons be said to have contributed to the causing of it is the poser, keeping apart the load it was carrying. In the present case the driver of the vehicle was not responsible for the accident. Merely by lifting a person or two, or even three, by the driver or the cleaner of the vehicle, without the knowledge of the owner,

cannot be said to be such a fundamental breach that the owner should, in all events, be denied indemnification. The misuse of the vehicle was somewhat irregular though, but not so fundamental in nature so as to put an end to the contract, unless some factors existed which, by themselves, had gone to contribute to the causing of the accident. The exclusion term of the Insurance policy must be read down so as to serve the main purpose of the policy that is to indemnify the damage caused to the vehicle."

5. THE Hon''ble Supreme Court in United India Insurance v. Ajmer Singh Cotton & General Mills & Ors., has held as follows: "Despite execution of the discharge voucher, the consumer may be in a position to satisfy the Tribunal or the Commission under the Act that such discharge voucher or receipt had been obtained from him under the circumstances which can be termed as fraudulent or exercise of undue influence or by misrepresentation or the like. If in a given case the consumer satisfied the authority under the Act that the discharge voucher was obtained by fraud, mis-representation, under influence or the like, coercive bargaining compelled by circumstances, the authority before whom the complaint is made would be justified in granting appropriate relief. However, where such discharge voucher is proved to have been obtained under any of the suspicious circumstances noted hereinabove, the Tribunal or the Commission would be justified in granting the appropriate relief under the circumstances of each case"

(Emphasis added)

6. THE point to be considered is whether the discharge voucher was executed voluntarily or not. This would be evident by reading the protest letter. We reproduce below the following sentences of the protest letter, which was sent almost simultaneously. It was not an after-thought of sending a letter with a gap of a few months or so. This letter is quoted below: "With due respect I beg to state that due to damage of my vehicle No. ORY 4665 which was insured in your company, I had claimed approximately Rs. 4 lakh 23 thousand 4 hundred but after verification and due inquiry by your competent surveyor who was deputed by your R.O. estimated minus salvage Rs. 2 lakh for the damage of the said vehicle and the said due was to be paid by you to me. It is very much surprising to mention here that after lapse of eight months you have sent a pre-receipt voucher to me for an amount of Rs. 1 lakh 6 thousand 2 hundred fifty in lieu of aforesaid claim. Finding no alternative way I am bound to receive the said amount as I have incurred a huge loan. My earlier claim to an extent of approximately Rs. 4 lakh 23 thousand 5 hundred only is outstanding due against you and aforesaid Rs. 1 lakh 6 thousand 2 hundred fifty will be reduced from my earlier claim of approximately Rs. 4 lakh 23 thousand 5 hundred. I have insured my vehicle in your company of Rs. 3 lakh 30 thousand but your Surveyor illegally estimated at Rs. 3 lakh only on total loss basis after near about three months. I hereby inform you that you are liable to pay me Rs. 2,23,750 as per my claim which is legal and valid one. But in an arbitrary manner you have only passed for

payment an amount of Rs. 1,06,250 which is being received by me with protest. Hence, I request you will be please enough to remit back the rest amount Rs. 2,24,750 within a period of fifteen days otherwise I will force to take legal course in the competent Court of law and you will be liable for all expenses, etc. incurred thereon".

(Emphasis added) The complainant had taken a big loan and the interest clock was clicking continuously. Further, even in the complaint itself the complainant has stated that he was compelled to sign the discharge voucher which was however, followed with a protest letter which is clearly evident from the complainant''s letter dated 10.6.1999.

In view of the above analysis, we hold that the discharge voucher was signed under protest and is a direct outcome of coercive bargaining practice adopted by the Insurance Company.

7. ACCORDINGLY, we do not see any merit in this appeal. Therefore, the appeal is dismissed. The Insurance Company has already deposited Rs. 85,000 before this Commission. Registry may transfer this amount to the State Commission, Orissa with a direction to pay this amount to Shri Gobind Chandra Nayak, the complainant in this case. The Insurance Company may pay the balance amount to the complainant, who is a respondent before us within a period of six weeks from today. The Insurance Company shall also pay Rs. 5,000 as costs to the respondent. Appeal dismissed.