(2014) 12 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

Case No : NO 2454 of 2012

NATIONAL INSURANCE CO. LTD. APPELLANT

Vs

RATTAN CHAND & ANR. RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Constitution of India, Article 226 - Power of High Courts to Issue certain writs

Citation : 2015 1 CPJ 586

Hon'ble Judges : Ajit Bharihoke, Suresh Chandra

Advocate : YOGESH PACHAURI , M.R.KHAN

Judgement

1. This revision is directed against the order of the State Commission Himachal Pradesh Shimla dated 04.04.2002 in Appeal No. 4 / 2009, whereby the State Commission reversed the order of the District Forum and directed the respondents as under: "Respondents are directed to hand over the original cover note to the appellant after cancelling the endorsement of ''cancellation''. Also we direct the respondents to pay Rs.5000/- as compensation for harassment and mental agony, as claimed in the complaint and to pay Rs.10,000/- on account of litigation expenses in respect of complaint as also this appeal. Aforesaid amount of money shall be paid to the appellant by the respondents within 30 days from today."

2. Briefly stated facts relevant for the disposal of the revision petition are that respondent Rattan Chand owned a truck No.HP-36-2509. He got the truck insured with the petitioner / company through their agent Harminder Singh (OP No.2) for the period 28.04.2003 to 27.04.2004. According to the complainant, opposite party no.2 received a sum of Rs.7995/- against the insurance premium and instead of giving the original cover note, he gave photocopy of the cover note. Thereafter, the complainant had been constantly requesting the opposite party no.2 for original cover note / insurance policy but the opposite party failed to deliver the same to the complainant. Claiming this to be deficiency in service, the respondent / complainant filed a consumer complaint before the District

Consumer Forum Kangra with the following prayer: "1. Supply the insurance policy and cover note in original in respect of the vehicle Truck No.HP-36-2509 to the complainant. 2. Pay a sum of Rs.5000/- for causing harassment and mental agony to the complainant.

3. Pay a sum of Rs.5000/- for the expenditure incurred on litigation i.e. legal notice, correspondence and lawyer''s fees." 3. Both the opposite parties resisted the complaint by filing separate written statements on similar allegations. It was admitted that opposite party no.2 is the agent of petitioner / insurance company. Case of the opposite parties in the respective written statement is that the complainant approached opposite party no.2 (agent) for insurance of the subject vehicle. Opposite party no.2 in anticipation that premium would be paid, prepared cover note i.e. original cover note with three carbon copies. The complainant, however, did not pay the insurance premium. Therefore, the cover note was cancelled and the cancelled cover note as also the three carbon copies were submitted with the petitioner. Thus, the basic plea of the petitioner company is that as no premium was paid, there is no question of the issue of cover note to the complainant.

4. The District Forum on consideration of the pleadings and the evidence dismissed the complaint holding that the cover note as also its carbon copies were cancelled because the complainant failed to pay the insurance premium.

5. Being aggrieved of the order of the District Forum, the complainant preferred an appeal and the State Commission Himachal Pradesh on consideration of the record and submissions made by the parties allowed the appeal by reversing the order of the District Forum and directed as noted above.

6. Mr. Yogesh Malhotra, Advocate for the petitioner / opposite party has contended that impugned order is based on erroneous appreciation of facts. It is contended that State Commission has failed to appreciate that as per the procedure, opposite party no.2 prepared the cover note in quadruplicate i.e. original and three carbon copies. However, when the complainant failed to pay the insurance premium, opposite party no.2 cancelled the original as well as three carbon copies of the cover note and submitted those with the insurance company. It is argued that onus of proving payment of premium was on the complainant but the complainant has failed to discharge the same. Therefore, the finding of the State Commission is not sustainable.

7. Mr. Himanshu Gupta, Advocate for the respondent / complainant on the contrary has argued in support of the impugned order. He has contended that State Commission has rightly appreciated the evidence and the impugned order cannot be faulted. Expanding on the argument, learned counsel for the complainant has submitted that the explanation of non payment of insurance premium given by the opposite party is obviously false. Had this been the case, there was no occasion for the opposite party no.2 to hand over photocopy of insurance cover which was allegedly cancelled.

8. We have considered the rival contentions. The issue for determination is whether or not the complainant had actually paid the insurance premium in lieu of which he was given photocopy of the insurance cover.?

9. The complainant has not produced the receipt of payment of premium. The case of the complainant is based upon the photocopy of the cover note. On perusal of the photocopy of the cover note filed by the complainant, it transpires that on bottom left side of the cover note, details of premiums are worked out. There is no endorsement on this cover note regarding the payment of insurance premium by the complainant. Case of the opposite party is that the complainant had approached opposite party no.2 for insurance of the subject vehicle and the cover note was prepared in anticipation that the premium would be paid. The complainant, however, did not pay the premium. Consequently, the insurance cover note as also its three carbon copies were cancelled. The petitioner / insurance company has filed all the four cancelled copies of the cover note including the original. This gives credence to the contention of the opposite party that since the premium was not paid, cover note was cancelled.

10. The stand of the complainant on the contrary is that complainant paid the premium and the insurance agent instead of giving him original copy of the cover note gave him photocopy on the promise to deliver the original cover note at a later date. This explanation of the complainant does not appear to be natural for the reason that if he had actually paid the insurance premium, he would not have accepted the copy of the cover note particularly when the cover note was prepared at the spot. It may be noted that complainant in order to prove that he had actually paid the insurance premium, apart from his affidavit filed affidavits of two witnesses, namely, Sanjay Kumar and Joginder Singh as CW-2 & CW-3. Though, those witnesses have vouched for the correctness of the version of the complainant in their affidavits but subsequently in response to the questionnaire submitted by the opposite party in the nature of cross examination, witnesses retracted from their statement and stated that no premium was paid in their presence and they had signed the affidavits at the instance of the complainant without even reading the contents of the same. From this it is obvious that complainant has tried to manipulate the evidence. Thus, we are of the view that version of the complainant is not reliable and he has failed to establish that he paid the insurance premium to the agent of the insurance company. The complainant has not paid the insurance premium. There is no evidence of issue of cover note or insurance policy in his favour. The State Commission, therefore, in our opinion has fallen in error in appreciating the facts.

11. In view of the discussion above, we tend to agree with the finding of fact recorded by the District Forum. Revision petition against the order of the State Commission is allowed, impugned order is set aside and order of the District Forum is restored.

