(2011) 01 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE CO LTD APPELLANT

Vs

Track Way Securities And Finance Pvt Ltd RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Citation : 2011 2 CPJ 132 : 2011 2 CPR 175

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Revision Petition dismissed.

Judgement

1. PETITIONER, which was the opposite party before the District Forum, has filed the present Revision Petition against the judgment and order dated 23.3.2006 passed by the M.P. State Consumer Disputes Redressal Commission (for short ''the State Commission'') whereby and whereunder the State Commission, reversing the order passed by the District Forum, has allowed the complaint and directed the petitioner to pay Rs. 2,17,850 with interest at the rate of 8% per annum from the date of repudiation i.e. 29.12.2000 till payment.

2. M/s. Trackway Securities and Finance Pvt. Ltd. (Complainant/Respondent No. 1 herein) is the owner of Vehicle No. MP-21/b-3311. Complainant leased out the vehicle to Shrikrishna Chourasiya (Respondent No. 2 herein) vide lease deed dated 8.11.1998 for a particular amount, which was to be repaid in monthly instalments. Complainant got the vehicle insured for the period from 16.11.1998 to 15.11.1998. While Shrikrishna Chourasiya was standing at Mission Chowk, Katni on 28.5.1999 waiting for the passengers for going to either Sihora, Mihar, etc. at about 10.00 a.m., eight passengers including one Sardar approached him to hire the vehicle. The deal was struck @ Rs. 600 per day to go to Lakhnadon-Bhopal Road, where they had disclosed that their truck had turned turtle. At Sihora, they purchased diesel and reached Lakhandon at about 8 p.m. After refreshment, they went to Narsingpur and after reaching Narsingpur they again went to Chindwara. When they reached Harrai at about 12 o''clock, they stayed there for the night. On 29.5.1999, they went to Chindwara and again went to Chote Mahadeo at Junnardeo. After darshan, they consumed liquor and started

their journey for Narsingpur. Throughout, the vehicle was driven by Shrikrishna Chourasiya. When they went to Narsingpur, the driver started feeling tired and they stopped for the night. During the night, the driver slept off and the passengers took away the vehicle and disappeared. Theft of the vehicle was intimated on 30.5.1999 and the claim was lodged on 2.6.1999. Petitioner repudiated the claim filed by the complainant in respect of theft of the vehicle on the ground that the said vehicle was being used for commercial purpose by the complainant.

3. AGGRIEVED by repudiation of the claim, complainant filed the complaint before the District Forum claiming Rs. 3,22,740 with interest at the rate of 12% per annum along with Rs. 50,000 for mental and financial hardship.

4. DISTRICT Forum dismissed the complaint, aggrieved against which, the complainant filed an appeal, which was partly allowed. State Commission came to the conclusion that the vehicle was being plied in violation of the condition of the policy regarding nature of use of the vehicle. But this could not be a ground for repudiation of the claim in toto. That it is well settled that in such a case of violation of the condition of the policy as to the nature of use of the vehicle, the claim ought to be settled on non-standard basis. Accordingly, the State Commission directed the petitioner to pay 75% of the value of the vehicle, i.e., Rs. 2,17,850 with interest at the rate of 8% per annum from the date of repudiation of the claim, i.e., 29.12.2000 till payment.

5. BEING aggrieved, the Insurance Company has filed the present Revision Petition. Respondent has accepted the order and has not filed any appeal.

6. THE point in issue is squarely concluded against the petitioner and in favour of the respondent by a judgment of the Supreme Court in National Insurance Co. Ltd. v. Nitin Khandelwal, IV (2008) CPJ 1 (SC)=(2008) 11 SCC 259, in which it has been held that in case of theft of vehicle, breach of condition is not germane. Relevant observations of the Supreme Court are as under: "13. In the case in hand, the vehicle has been snatched or stolen. In the case of theft of vehicle breach of condition is not germane. The appellant Insurance Company is liable to indemnify the owner of the vehicle when the insurer has obtained comprehensive policy for the loss caused to the insurer. The respondent submitted that even assuming that there was a breach of condition of the insurance policy, the appellant Insurance Company ought to have settled the claim on non-standard basis. The Insurance Company cannot repudiate the claim in toto in case of loss of vehicle due to theft."

7. SINCE the point in issue is concluded against the petitioner by the aforesaid judgment of the Supreme Court, this Revision Petition is dismissed leaving the parties to bear their own subject to payment of Rs. 2,500 as costs. Costs be deposited in the Consumer Legal Aid Account. Revision Petition dismissed.