
(2017) 05 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

Case No : 1278 of 2017

NATIONAL INSURANCE COMPANY LIMITED

APPELLANT

Vs

GOVIND S/O. YOGIRAJ RATHOD

RESPONDENT

Date of Decision : 30-05-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 161, Section 162 - Examination of witnesses by police - Statements to police not to be signed-use of statements in evidence
Consum

Citation : 2017 4 CPR 244

Hon'ble Judges : Ajit Bharihoke, Anup K Thakur

Advocate : K. K. Bhat

Judgement

1. This revision petition is directed against the order of the State Commission Maharashtra dated 24.01.2017 in F.A. No.915 of 2016 arising out of complaint case No.58 of 2016.

2. Briefly stated undisputed facts giving rise to this revision petition are that the respondent/complainant insured his vehicle no.MH-21V-0115 with the petitioner insurance company for the period from 27.11.2014 to 26.11.2015. The insurance cover was to the tune of Rs.1,60,000/-. On 29.04.2015, the aforesaid vehicle met with an accident resulting in damage. The accident was reported to the police as well as insurance company. The respondent/complainant preferred insurance claim to the tune of Rs.4,63,645/- as repair cost. The insurance company however repudiated the claim on the ground that at the time of accident the vehicle was used for hire and reward purpose against the terms and conditions of the insurance policy. It may be noted that a surveyor was also appointed by the insurance company and as per the survey report the estimate of damage was to the tune of Rs.97,885/-. Being aggrieved of the repudiation of the insurance claim, the respondent/complainant raised a consumer dispute by approaching the District Forum, Jalna under Section 12 of the Consumer Protection Act, 1986.

3. The District Forum on consideration of the pleadings and evidence did not find merit in the complaint. Accordingly, the complaint was dismissed.

4. The complainant being aggrieved of the dismissal of the complaint approached the State Commission Maharashtra in appeal. The State Commission on re-appreciation of the evidence allowed the appeal and directed the petitioner company to pay the sum of Rs.97,885.09 with interest @ 9% from the date of repudiation of the claim till realization of the amount. This has led to filing of this revision petition.

5. Learned counsel for the petitioner has contended that the impugned order of the State Commission is not sustainable because the State Commission has ignored that at the time of accident the subject vehicle, which was insured as a private vehicle, was being used for hire and reward purpose against the terms and conditions of the insurance policy. In support of his contention, learned counsel for the petitioner has drawn our attention to the copies of the statement of the passengers of the car namely Shri Ganesh Raosaheb Jadhav and Shri Lahu Sanataram Garkhade recorded by the police under Section 161 Cr.P.C. immediately after the accident.

6. We have considered the submissions made by the learned counsel for the petitioner. We do not find merit in the submissions of the learned counsel for the petitioner for the reason that as per the provision of the Sections 161 and 162 Cr.P.C. the statements of witnesses recorded by the police during investigation of the case are not admissible in the case. Otherwise also during the course of arguments, learned counsel for the petitioner has contended that the aforesaid two witnesses did not support the version of the prosecution to the effect that they hired the vehicle from the insured. As the above two witnesses had retracted, their statements recorded under Section 161 Cr.P.C., which otherwise inadmissible, are of no avail to the insurance company. Learned counsel for the petitioner has failed to show any other evidence which may lead us to the conclusion that at the time of accident the subject vehicle was being used for hire and reward purpose against the terms and conditions of the insurance policy. Therefore, we do not find any fault with the impugned order which may call for interference in exercise of revisional jurisdiction. The revision petition is accordingly dismissed with no order as to cost. The petitioner is directed to comply with the impugned order within four weeks failing which the respondent shall be at liberty to execute the impugned order.