(1999) 10 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE COMPANY LIMITED — APPELLANT

Vs

MAYA GANDHI — RESPONDENT

Date of Decision : 05-10-1999

Acts Referred:

Citation : 2000 1 CLT 608 : 2000 1 CPJ 5 : 2000 1 CPR 208

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the judgment and order dated 16.7.1999 passed by District Consumer Forum, Bareilly in Complaint Case No. 228/1998.

2. THE facts of the case stated in brief are that the complainant filed a complaint claiming a sum of Rs. 4,90,000/- alongwith 18% per annum interest as well as cost and other damages. It is alleged that the complainant took insurance of his vehicle No. URW 929 for a period from 11.3.1993 to 10.3.1994 from National Insurance Company Ltd., opposite party and paid a sum of Rs. 11,053/-. It was against the theft also. The amount of insurance was Rs. 3,50,000/-.

In the night of 3/4th March, 1994 the complainant''s vehicle was stolen for which a First Information Report was lodged with the Baradari Police Station. This fact was informed to the opposite party on 4.3.1994. Thereafter the complainant tendered to the opposite party all the relevant documents and prayed for early disposal of the claim. Inspite of several letters the claim was not considered for a long time and after a long period the claim was rejected on the ground that the vehicle at the time of theft did not have a fitness certificate. It is alleged that at the time of theft the vehicle was in running condition and complainant suffered mental agony etc. and for rejection of the claim the complainant has claimed a sum of Rs. 1,40,000/- on this account alongwith an amount of Rs. 3,50,000/- as sum assured. He has also claimed 18% per annum interest on the above amount.

3. FROM the side of the opposite party it was admitted that the vehicle was insured with the opposite party for theft also. It was financed by the State Bank

of India. After receiving the information of the theft of the vehicle, the matter was given to International Security Detective Services, Lucknow for investigation who reported that the vehicle was not stolen. The police also found that the vehicle was not stolen as a lot of amount was due in the form of tax etc. Therefore the complainant has concocted a false story. Hence a final report was lodged with the police on these lines. This final report was presented before the Court on 2nd March, 1994 which was opposed by the complainant. The Court ordered for another investigation in which it was found that the information of theft was correct but the vehicle was not in a fit stage as a fitness certificate was not obtained since 1990. No tax for this vehicle was paid. The Insurance Company repudiated the claim of the complainant by a letter dated 16.10.1997. There was no deficiency on the part of opposite party in repudiating the claim. It was further alleged that the District Consumer Forum has no jurisdiction to adjudicate the claim as complicated questions of law and facts are involved which cannot be dealt with by the District Forum. It was further alleged that the vehicle of the complainant was of 1986 model. Hence its value had depreciated. Even if the vehicle was stolen, its value on the date of theft was not more than Rs. 2,23,000/-. The complainant cannot get more than this amount. It was further alleged that when the vehicle was insured, it was valued at a higher amount. Hence that much amount canot be given. It has also been alleged that on account of the Central Government instructions, interest at the rate of 11.3% could only be awarded. Also the case should have been filed before the Civil Court. Parties filed evidence and after hearing the learned Counsel for the parties, the complainant filed several papers including fitness certificate dated 6.3.1990. The District Forum on perusal of the entire evidence on record came to the conclusion that the complainant is entitled to a sum of Rs. 3,50,000/- as cost of the vehicle and interest at the rate of 18% per annum from 4.3.1994 till the date of payment.

4. AGGRIEVED against this order the Insurance Company has come in appeal and has challenged the correctness of the order passed by the learned District Forum. We have heard the learned Counsel for the parties and have perused the evidence on record. The only contention on behalf of the appellant, Insurance Company, is as there was no fitness certificate of the vehicle, therefore, no claim of theft can be put forward and there is no liability on the part of the Insurance Company to pay the amount. If in any event it is found that the liability of the Insurance Company is to pay the claim, then only a sum of Rs, 2,23,000/- can be awarded against opposite party as the price of the vehicle on the date of theft. It may be mentioned that the vehicle was purchased in the year 1986. It must have been purchased for a higher value. The survey report has not been filed in order to find out the value of the vehicle when it was purchased. We are deprived of the findings of the Surveyor and we cannot scrutinise the same in order to see whether the figure of Rs. 2,23,000/- is rightly assessed by the Surveyor or not. This is an admitted fact that on the date of insurance the price of the vehicle was taken at Rs. 3,50,000/-. Learned Counsel for the Insurance

Company has argued that whenever a vehicle is insured at a higher price than the prevailing market price is taken and the insurance is done on that price. This contention of the learned Counsel for the appellant, Insurance Company is devoid of any merit. It cannot be believed that the Insurance Company while insuring a vehicle will mention a higher price than the general price. Generally the prices prevailing on the date of insurance is taken to be the price of the vehicle prevailing on the relevant date. If the price of the vehicle is taken to be on the higher side and the premium is also charged on the higher price by the Insurance Company, then the Insurance Company cannot be allowed to say that the loss is not to be paid on the price which was assured at the time of insurance. The Insurance Company cannot take advantage of its own fault even if it has mentioned a higher price because in that case the premium is also charged on the higher amount. The vehicle shall be deemed to have been insured for the amount for which the premium was charged and in the event of loss that much amount for which the vehicle was insured is to be paid by the Insurance Company. The Insurance Company cannot be allowed to blow hot and cold in the same breath. The next contention of the learned Counsel for the Insurance Company is that the vehicle was not fit to be plied on the road. Hence the theft could not have been committed and as such Insurance Company is not liable to pay any amount. The learned District Forum has also considered this aspect in detail and have come to the conclusion that when the Court had accepted the second investigation report about the theft of the vehicle then this report is to be true. The learned District Forum has clearly held that the first investigation report was not accepted by the Court and second investigation was ordered on the protest petition of the complainant. The learned District Forum was perfectly justified in coming to the conclusion it has reached according to the etablished principles of law. The Insurance Company cannot agitate this point and to say that the First Information Report or the investigation got conducted by the Insurance Company was correct and reliance should be placed on it. This contention of the learned Counsel for the Insurance Company deserves to be rejected. It need not detail us for long as we endorse the finding of the learned District Forum to be correct on this point.

5. THERE is no law which says that if the vehicle is not fit to be road-worthy on the date of theft, then the theft cannot be committed of this vehicle. The learned District Forum has mentioned that the complainant has filed a fitness certificate dated 6.3.1993 which shows in the year the vehicle was stolen, this vehicle was in a fit state, healthy and was in a condition to be road-worthy. If the road tax etc. was not paid then it is not a valid ground for rejection of the complainant''s claim. The Insurance Company is not concerned with the payment of road tax etc. not done by the complainant. The authorities concerned will realise the same as and when they consider it necessary if the same has not been cleared so far.

6. IT has also come to our knowledge through written statement that the vehicle was financed by the State Bank of India. The State Bank of India could realise the amount which is still due to be paid by the complainant and the Insurance

Company has nothing to do with it. The State Bank has not come forward before the District Forum or this Commission to claim the amount. Thus we find that the claim of the complainant was perfectly justified and the District Forum has not committed any mistake in asserting the claim of the complainant for a sum of Rs. 3,50,000/-, the insured value of the vehicle, and interest at the rate of 18% per annum over this amount till the payment of the amount by the Insurance Company to the complainant. The appeal deserves to be dismissed. ORDER

The appeal is dismissed and the judgment and order of the learned District Forum is confirmed. The appellant shall pay a sum of Rs. 1,500/- as cost of this appeal to the complainant. Let the order of the learned District Forum be complied with within a period of two months from the date of this judgment. Let copy of this order be made available as per rules to the parties. Appeal dismissed.