(2012) 01 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO. LTD — APPELLANT

Vs

Prataprao H. Pawar — RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Citation : 2012 0 NCDRC 290 : 2012 1 CPJ 424

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Advocate : JOS CHIRAMEL , PRAVIN SATALE

Judgement

1. THIS revision petition has been filed by New India Assurance Co. Ltd. (hereinafter referred to as the ''Petitioner'') aggrieved against the order of the State Consumer Disputes Redressal Commission, Maharashtra(hereinafter referred to as the ''State Commission'') wherein Prataprao H. Pawar was the Respondent.

2. IN his complaint before the District Forum, Respondent/Complainant had contended that he had purchased a brand new Maruti Wagon -R car in 2000 and had obtained a comprehensive insurance coverage for the same from the Petitioner/INsurance Company from 11.05.2000 to 10.05.2001 for which a cover note was also issued to facilitate registration of the vehicle at the Regional Transport Office, Satna. However, no formal insurance policy document was ever issued to the Respondent. Respondent further contended that some officers of the Petitioner/INsurance Company had taken his signatures on blank papers on the grounds that they were required at the time of registration of the vehicle. However, Respondent apprehends that those signed papers could have been misused. IN May 2001, while, Respondent was driving the vehicle with his family in South INdia, a third party vehicle dashed against the Respondent''s vehicle near Salem because of which the vehicle sustained heavy damages. The third party vehicle was also insured with the Petitioner/INsurance Company. Respondent immediately approached the Salem Branch of the Petitioner/ INsurance Company and informed it of the same. An on the spot survey was conducted by the Surveyor appointed by that Branch Office of the Petitioner/

INsurance Company on 09.05.2001 and advised by the Salem Branch Office of the Petitioner/INsurance Company, the vehicle was brought to M/s Hem Agencies for repairs for which Respondent had to pay towing charges. The vehicle was again inspected by the Satara Branch Office of the Petitioner/INsurance Company and an estimate was prepared by M/s Hem Agencies pertaining to the cost of repairs and these were submitted to the Satara Branch Office of the Petitioner/ INsurance Company. A surveyor was also appointed by the Satara Branch Office of the Petitioner/INsurance Company to survey the vehicle and submit its report. The Petitioner/INsurance Company took into possession the original RC Book and duplicate keys of the vehicle for processing the claim in the Pune Branch. On 03.08.2001, the Pune Branch of the Petitioner/INsurance Company informed the Respondent that since the cover note wrongly mentioned that the insurance was from 11.05.2000 to 10.05.2001 whereas the actual policy period was from 13.04.2000 to 12.04.2001 and the date of the accident did not fall within this policy period the claim could not be honoured and therefore, it was repudiated. Being aggrieved by the above action, Petitioner filed a complaint before the District Forum on grounds of deficiency in service and requested that the Petitioner/INsurance Company be directed to pay the Respondent a total amount of Rs.4,70,000/ - which included Rs.3,80,000/ - for the expenses incurred for repairing the vehicle, Rs.50,000/ - for mental agony and other costs, garage rent and towing charges etc.

3. PETITIONER/Insurance Company while admitting that the Respondent had insured his vehicle at Pune with it, denied that the claim was wrongly repudiated. According to the PETITIONER/ Insurance Company, Respondent had purchased a Maruti Zen Car on 13.04.2000 and had got it insured comprehensively with the PETITIONER/Insurance Company from 13.04.2000 to 12.04.2001 on payment of a premium of Rs.4,660/ - on the basis of a cover note and a formal insurance policy was also issued in respect of this vehicle for the above mentioned period. Later, Respondent purchased a new Maruti Wagon -R Car and requested that a change be made in the existing insurance policy for the new Car. Accordingly, PETITIONER made changes in the endorsement after taking the extra premium since the estimated insured value of the new vehicle was Rs.3,80,000/ - whereas the value of the old Maruti Zen was Rs.1,80,000/ -. It was specifically stated in the said endorsement that it is to be attached to Policy No.31/8110 expiring on 12.04.2001. Unfortunately, there was a clerical error in the cover note issued in respect of this vehicle which indicated the validity of the insurance policy being 11.05.2000 to 10.05.2001 instead of 13.04.2000 to 12.04.2001. However, the Respondent was fully aware that his policy began on 13.04.2000 and was expiring on 12.04.2001 and he had not paid any premium for the period from 13.04.2001 to 08.04.2001. Since the accident occurred after the insurance policy period was over, Respondent is not entitled to take the benefit of a clerical mistake especially since he was aware of the actual period of the insurance policy. Therefore, the decision to repudiate the claim was fully justified and there was no deficiency in service.

4. THE District Forum after hearing both parties and considering the evidence on record allowed the complaint by inter alia observing that the original insurance policy purported to have been for the period of 11.05.2000 to 13.04.2001 was not produced before it despite notice of service upon the Petitioner/Insurance Company and it thus, drew an adverse inference for non -production of the said policy to support the Petitioner''s contention. On the other hand, it was clear from the cover note that the policy period was from 11.05.2000 to 10.05.2001 during which period the accident took place. THErefore, in view of this fact and also because the Surveyor of the Petitioner/Insurance Company had confirmed that there was a total loss to the vehicle amounting to Rs.3 lakhs, Petitioner/ Insurance Company had no justification for repudiating the claim. District Forum, therefore, directed the Petitioner/Insurance Company to pay Rs.3 lakhs on total loss basis to the Respondent along with interest @ 9% per annum from 03.08.2001 till realization, Rs.20,000/ - as compensation and Rs.15,000/ - as litigation and other costs within 30 days from the date of the order.

5. AGGRIEVED by this order, Petitioner/Insurance Company filed an appeal before the State Commission which rejected the same and upheld the order of the District Forum. The relevant part of the order of the State Commission is as follows: "The only contention raised is that the vehicle in question was insured for period from 13/04/2000 to 12/04/2001. It is pertinent to note the fact that no insurance policy was issued to that effect. Only cover note of insurance was issued in favour of complainant. The date of issue of said cover note is 13/04/2000. However, the Forum below noted that the complainant changed the said vehicle and purchased another vehicle of same type i.e. Maruti Wagon R and intimated the insurance company about the said change. Accordingly on verifying the increased price of the vehicle, the opp.party calculated the amount of premium as per price of new vehicle and recovered Rs.4,618/ - extra towards difference in premium from the complainant on 11/05/2000 and issued "Motor Extra Endorsement" in favour of the complainant on the very same day. Accordingly, the complainant has been issued with a cover note dt.11/05/2000 by mentioning period of policy from 11/05/2000 to 10/05/2001. The copy of which was filed on record at Rule No.1 at Exh -3. This was the endorsement made in the cover note. It is clear that the said cover note was issued in respect of insurance policy taken by the complainant for his new vehicle Maruti Wagon R with Engine No.4009043 and Chasis No.108402 and Registration No.MH -11 -H -2833. So, in terms of dates mentioned in the cover note, the Forum below held that on the date of accident, which took place on 08/05/2001 at Banglore Kodai Canal Road, the vehicle was properly insured with the Opp.Party Company. The insurance company took a defence plea that there was a clerical mistake in mentioning the policy period from 11/05/00 to 10/05/01 was brushed aside by the Forum by giving cogent and sound reasons. The Forum below took help of Section 115 of Indian Evidence Act to hold that a principle of promissory estoppel against the insurance company since it had issued cover note for period of 11/05/00 to 10/05/01 and clerical mistake as alleged was not proved by the

insurance company. The Forum below also drew adverse inference under Section 114 (9) of Indian Evidence Act against the insurance company on the ground that though the insurance policy was with the insurance company it did not care to produce it on record, despite notice served upon it for the same. Thus, taking reasonable view of the matter, the Forum below was pleased to direct the insurance company to pay an amount of Rs.3 lakhs on total loss basis with interest @ 9% pa. The said order in our view is just and proper and sustainable in law. We are therefore, not inclined to interfere with the order passed by the Forum below, which is reasoned one and supported by documents on record. We therefore find no substance in the appeal filed by the appellant."

Hence, the present revision petition.

6. COUNSEL for both parties made oral submissions. COUNSEL for Petitioner again reiterated the stand taken before the Fora below that the original insurance policy clearly stated that the insurance cover was from 13.04.2000 to 12.04.2001 and when a new vehicle was purchased by the Respondent, only an endorsement was made against the old policy in respect of the new vehicle and a higher premium charged; there was no change in the duration of the insurance policy. COUNSEL for Petitioner while admitting that an inadvertent error had been made in the cover note by the concerned officer regarding the period for insurance policy also pointed out that the cover note is only a temporary document issued to help the owner of the vehicle to register the same and unlike an insurance policy does not represent a legally valid contract between the parties. COUNSEL for Petitioner further stated that in the insurance policy document which is at Annexure -P7, the validity period of the insurance policy was clearly indicated as being from 13.04.2000 to 12.04.2001 and that Respondent was fully aware of this fact. Respondent, however, took advantage of the inadvertent error made in the cover note by claiming insurance for the accident that occurred after the validity of the insurance period was over.

7. COUNSEL for Respondent on the other hand denied the above contentions and stated that in fact till date no policy document was issued by the Petitioner/ Insurance Company and the only valid document that he had received from the Petitioner/Insurance Company was the cover note clearly indicating that the period of insurance was from 11.05.2000 to 10.05.2001. COUNSEL for Respondent further pointed out that the District Forum and the State Commission had both concluded that the Petitioner/Insurance Company despite notice had failed to produce the insurance policy document and they had rightly drawn an adverse inference from non -production of this document. COUNSEL for Respondent also stated that the document at Annexure -P7 referred to by the COUNSEL for Petitioner was never produced before the Fora below and this fact is clearly stated in the order of the District Forum which reads as follows: "It has been brought to our notice on behalf of complainant that no original insurance policy has been brought on record on behalf of opposite party though the same is in the custody of opposite party. The opposite party did not produce the same on

record despite of notice served upon for the same. Thus, as per the basic principles of law when a document in the custody of a party to the proceeding and the same is not produced on record, it directly means that the same is against the contentions of the party suppressing the document. Thus, we can draw adverse inference against the opposite company for non -production of the original insurance policy on record per the provision u/s 114(9) of the Indian Evidence Act."

8. THIS fact was also reiterated by the State Commission. Further, the Petitioner/ Insurance Company has also not produced any affidavit or evidence including in their written statement that this document had been produced before the Fora below. From the above, it is clear that no insurance policy document was issued to Respondent and was subsequently prepared to help the Petitioner/Insurance Company and, therefore, no reliance can be placed on this document. Keeping in view these facts, the Respondent had every reason to believe that the dates in the cover note were the actual dates in the insurance policy. Further, as per documents on record including a report of the Surveyor, it has not been disputed that the total loss caused to the vehicle was Rs.3 lakhs and, therefore, the Fora below had rightly awarded this amount to the Respondent. The revision petition in view of the above circumstances has no merit and deserves to be dismissed. We have heard learned Counsel for both parties at length and have carefully gone through the evidence on record.

9. THE facts pertaining to the insurance of the Maruti Zen by the Respondent with the Petitioner/Insurance Company and issue of a fresh cover note following the purchase of a new vehicle by the Respondent for which additional premium was paid by the Respondent to the Petitioner/Insurance Company are not in dispute. It is further not disputed by the Petitioner/Insurance Company that after purchase of a new vehicle by the Respondent, the date of insurance cover was indicated from 11.05.2000 to 10.05.2001 in the fresh cover note. Counsel for Petitioner has stated that this was due to an inadvertent error and has relied on Annexure -P7 which is an insurance policy document to support its contention indicating that the actual period of the insurance policy which is the valid contract between the parties was from 13.04.2000 to 12.04.2001 and that the Respondent was aware of this. THE Respondent has challenged this contention on the grounds that he was never given the insurance policy document and as per the only valid document available with him, the insurance policy cover was from 11.05.2000 to 10.05.2001. We find force in the contention of the Respondent in this respect because it is clear from the orders of the District Forum as well as the State Commission that the insurance policy document at Annexure -P7 was never produced before the Fora below despite specific directions to the Petitioner/Insurance Company to produce the same. Since, the Petitioner failed to produce the insurance policy, an adverse inference was rightly drawn by the Fora below. We also note that the Petitioner/Insurance Company did not produce any evidence or affidavit in respect of the insurance policy document before the Fora below. THErefore, no credence can be placed on the

document at Annexure -P7 which appears to have been subsequently issued to help the Petitioner''s case. In view of these facts, we agree with the findings of the Fora below that in the absence of an insurance policy document, it was reasonable for the Respondent to rely on the dates mentioned in the cover note to file his claim. THE report of the Surveyor that the vehicle was a total loss is not in dispute. However, we note that while awarding an amount of Rs.3 lakhs to the Respondent, the State Commission did not take note of the fact that as per the Surveyor''s report, the net loss was only Rs.1,70,000/ - since Rs.1,30,000/ - was the salvage value of the vehicle and had not been deducted from the total loss assessed. Since the damaged vehicle has not been returned to the Petitioner/ Insurance Company nor was the salvage amount deducted from the amount of Rs.3 lakhs already paid by the insurance company to Respondent as per the orders of the State Commission, we direct the Respondent to return either the damaged vehicle to the Petitioner/Insurance Company or refund the salvage value from the amount already paid, to the Petitioner/Insurance Company within a period of six weeks from the date of receipt of a copy of this order. Ordered accordingly.