(1999) 02 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE COMPANY LIMITED — APPELLANT

Vs

KODURU MADHUSUDHAN REDDY — RESPONDENT

Date of Decision : 05-02-1999

Acts Referred:

Citation : 1999 2 CLT 213 : 1999 2 CPJ 408 : 1999 2 CPR 262

Hon'ble Judges : S.Parvatha Rao , T.Ranga Rao , Mamata Lakshmanna J.

Final Decision : Appeal allowed

Judgement

1. COUNSEL for the appellant as well as the COUNSEL for the respondent are not present. We perused the record of the District Forum, Nellore in O.P. No. 351/1996 which is before us.

2. THIS appeal has been preferred by the opposite party in O.P. No. 351 of 1996 questioning the order of the Nellore District Forum dated 25.4.1997 partly allowing that O.P. The complainant in that is the respondent before us. The case of the complainant before the District Forum was that he was the owner of a motor cycle bearing No. AP 26/7500 with Engine No. E30 CJ 045784, Chassis No. C 30 CJ 046404 and that it was insured with the appellant under Policy No. 31611402 26637 for the period commencing from 2.2.1994 to 1.2.1995. According to him he parked that motor cycle at Kasturidevi Nagar near Venkataramana Hotel, Pogathota, Nellore on 3.3.1994 and when he returned around 11.00 a.m. he did not find it there and he could not trace it inspire of search made. According to him he reported the same to the concerned police station on the same day i.e., 3.3.1994 itself and informed the appellant on 4.3.1994. Though the claim was taken on file by the appellant he was not paid the amount of Rs. 20,000/- claimed by him towards the loss suffered by him and finally he received a letter dated 3.5.1996 from the appellant stating that as the case was registered with the police on 19.5.1994 his claim was repudiated. He stated in his complaint that though he gave the complaint to the police on 3.3.1994 itself it was registered by the police as Cr. No. 91 x 200/94 under Section 374 on 19.5.1994 only. He approached the District Forum complaining of

deficiency in service on the part of the appellant claiming Rs. 20,000/- towards the cost of the motor cycle to be paid together with interest at 24% per annum from 3.3.1994 and also Rs. 10,000/- to be paid towards mental agony suffered by him and Rs. 10,000/- towards the expenses incurred by him and Rs. 1,000/- towards costs. The appellant filed its version/counter admitting the policy but denying that it was informed of the theft of the motor cycle by the complainant on 4.3.1994. The appellant also stated that there was nothing to establish that the complainant gave police complaint on 3.3.1994 itself when in fact the crime was registered only on 19.5.1994. The appellant further submitted in its version that the claim form was submitted by the complainant only on 10.10.1994 and only thereafter it could appoint an Investigator to investigate into the claim. Inspection of the FIR in respect of the crime reported by the complainant showed that the complaint was lodged only on 19.5.1994 by the complainant after a lapse of nearly 2 months from the date of the alleged occurrence i.e., 3.3.1994. The final report of the police also showed that they could not trace the vehicle mainly because of the inordinate delay in the complainant reporting the alleged theft to them. It was also contended on behalf of the appellant before the District Forum that as per Condition No. 1 of the policy the complainant was required to give immediate notice to the police and co-operate with the insurer in securing conviction of the offender and violation of this condition would entitle them to repudiate the claim.

The District Forum held in its order dated 25.4,1997 that though the Counsel for the complainant argued that the police failed to register the complaint given by him immediately for the reasons best known to them such contention could not be considered. Despite that, the District Forum was pursuaded to allow the complaint by directing payment of Rs. 20,000/- together with interest at 12% per annum as follows : "However, though there is a condition in the policy Ex. B-4 that the insured should give immediate notice to the police in case of theft and co-operate with the Company in securing the conviction of the offender, there is no clause in the policy that for not giving the report immediately the respondent is absolved of its liability. Thus, in the absence of express condition that the Company is not liable to pay compensation for violation of Condition No. 1 of the policy and thus the respondent is guilty of deficiency in service."

3. THIS is a surprising conclusion because the District Forum observed as regards the notice allegedly given by the complainant to the appellant on 4.3.1994, as follows : "According to the complainant, he wrote to the respondent on 4.3.1994 about the theft of the vehicle as per Ex. A-1. But it was denied by the respondent. But the complainant has not produced proof to show that it was acknowledged by the respondent. As per Ex. A-3, final report of the Sub Inspector of Police, I Town Police Station, Crimes, Nellore, he gave a complaint on 19.5.1994 alleging that the theft occurred on 3.3.1994."

We are clearly of the view that the District Forum erred in concluding on the facts of the present case that there was deficiency in service on the part of the appellant. The respondent/ complainant did not place any material before the District Forum to establish that he in fact gave intimation to the appellant on 4.3.1994 itself when the claim itself was made by him only on 10.10.1994 and there was no explanation whatsoever forthcoming for that delay. He did not file any affidavit in support of his complaint. On the finding of the District Forum as regards the notice allegedly given by the complainant both to the appellant as well as to the police, the District Forum ought to have held that there was no deficiency in service on the part of the appellant in repudiating the claim of the complainant. The circumstances establish inordinate delay on the part of the complainant in reporting the occurrence to them. In the FIR of Police Station No. 1 Town (C) of Nellore dated 19.5.1994 (copy marked as Ex. B-1) it was clearly stated that the information was received at the Police Station on 19.5.1994 at 10.66 hours and that it was ''written'' information. Reasons for delay in reporting by the complainant was stated as "for searching his motor cycle in various towns and cities". Ex. B-1 shows that it was signed by the complainant. Ex. B-2 is xerox copy of Motor Claim Form of the complainant. It is dated 10.10.1994 and shows that it was signed by the complainant on the last page. The stamp on the first page shows that it was received by the appellant on 13 10.1994. Ex. A-1 is xerox copy of letter dated 4.3.1994 addressed by the complainant to the appellant stating "the above vehicle was theft on 3.3.1994 at 11 a.m..." It was signed "for K. Madhusudan Reddy". The signature on it is not legible. No acknowledgement is there on it. Ex. A-3 is an attested copy of the Final Report of the Sub-Inspector of Police, No. I Town Police Station Crimes, Nellore. It expressly states that the report of theft was given on 19.5.1994 at 10.00 hours while it was parked in front of Sri Venkata Ramana Hotel. It concludes as follows : "The main lucona in this case is that delaying in report of FIR. Occurrence took place on 3.3.1994 and it was reported on 19.5.1994. Within this span the offenders would have easily shifted it to some distant place and disposed. All sincere efforts to trace out the accused and the stolen motor cycle proved futile. Under the above circumstances, no purpose could be served in still keeping this case under investigation. Hence I have appraised the facts of the case to my superiors and treating the case as "Undetectable''. Therefore I request the Honourable Magistrate to treat the case as "Undetectable'' and issue proceedings accordingly. The served copy of RCS notice on the complainant is on record for favour of perusal."

4. EX. A-6 repudiation letter dated 3.5.1996 of the appellant stated that there was inordinate delay of 2 months 16 days in giving the report to the police, regarding the theft of the motor cycle and that this was in violation of Condition No. 1 of the policy (copy marked as EX. B-4) and that the liability of the appellant was subject to the conditions and terms of the policy and that the claim of the complainant was repudiated "for violation of Condition No. 1 of the motor policy, bearing No. 31 611402 26637." Condition No. 1, inter alia, states as follows : "...In case of theft or other criminal act which may be subject of claim under this policy the insured shall give immediate notice to the police and co-

operate with the Company in securing the conviction of the offender."

The District Forum noted this condition but observed that "there is no clause in the policy that for not giving the report immediately the respondent is absolved of its liability". The District Forum failed to notice Condition No. 8 of the policy which is as follows : "The due observence and fulfilment of the terms, conditions and endorsements of this policy insofar as they relate to anything to be done or complied with by the insured and the truth of the statements and answers in the said proposal shall be conditions precedents to any liability of the Company to make any payment under this policy."

We are of the view that the condition in the policy that the insured should give immediate notice to the police cannot be ignored. The object of that condition is to enable recovery of the goods which form the subject matter of the theft thereby saving the insurer from liability. This is illustrated in R.P.S. Kang v. Branch Manager, New India Assurance Company, Kurukshetra & Ors., II (1998) CPJ 68, decided by the Chandigarh Consumer Disputes Redressal Commission. In that case a new Bajaj Chetak scooter of the complainant was stolen on 23.7.1993 and FIR was lodged on the same day at the concerned police station; subsequently the scooter was recovered in the middle of August, 1993 but in a damaged condition. The Insurance Company was required to pay to the insured only the loss due to the damage caused to the scooter. Thus unless there is substantial compliance of this condition by the insured, the insurer cannot be made liable. In the present case, we need not enquire into the further question as to what would be substantial compliance of that condition, because on the facts found in this case there was gross violation of this condition by not reporting the theft to the police for nearly 2 months - the appellant was also not informed immediately. After careful examination of the material on record we are satisfied that on the facts of the present case there was no deficiency in service, on the part of the appellant in repudiating the claim of the complainant in respect of the theft of his motor cycle.

5. IN the result, we allow the appeal and set aside the order of the Nellore District Forum in O.P. No. 351/1996 dated 25.4.1997. No costs. We find that on 22.8.1997 in FA. IA. No. 985/1997 this Commission granted interim stay subject to the condition of the appellant depositing a sum of Rs. 10,000/- and costs of Rs. 500/- in Nellore District Forum to the credit of O.P. No. 351/1996 and also permitted the respondent/ complainant to withdraw the same without furnishing any security. If any such amount was deposited and withdrawn by the respondent/ complainant, he shall pay back the same within 2 months from today i.e., by 5.4.1999.If the amount continues to be in deposit with the District Forum, it is open to the appellant/opposite party to withdraw the same. Appeal allowed. _______________