(2014) 12 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE CO LTD APPELLANT

Vs

Vidya Bai W/O Kishorilal Jaishwal RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Citation : 2015 1 CPJ 384

Hon'ble Judges : K.S.CHAUDHARI J.

Advocate : ABHISHEK KUMAR , Harshvardhan Singh Rathore

Judgement

1. THIS revision petition has been filed by the petitioner against order dated 11 -07 -2013 passed by the learned State Consumer Disputes Redressal Commission, Madhya Pradesh (in short, ''the State Commission'') in Appeal No. 1105/2012 Oriental Insurance Co. Ltd. Vs. Smt. Vidhya Bai, by which while allowing appeal partly, order of the District Forum allowing complaint was upheld but order of payment of compensation and interest was set aside.

2. BRIEF facts of the case are that complainant/respondent got her vehicle Mahindra Bolero insured from opposite party/petitioner for a period of one year from 05 -06 -2006 to 04 -06 -2007. Insured vehicle was stolen on 24 -09 -2006 which was parked in front of complainant''s house. Complainant lodged report with the Police Station but vehicle could not be traced. Information was also given to insurance company. It was further submitted that after 3 -4 days of purchase of vehicle, complainant''s husband was admitted in hospital and she spent time in her husband''s treatment due to which she could not get the vehicle registered. Complainant lodged claim with the opposite party which was repudiated on the ground that vehicle was not registered which amounted to breach of terms and conditions of policy. Alleging deficiency on the part of the opposite party complainant filed complaint before District Forum. Opposite party resisted complaint and submitted that his vehicle was not registered which was clear breach of conditions of the policy as well Motor Vehicle Act provisions and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint and directed opposite party to pay Rs.4,70,250/ -

along with 8% p.a. interest and further pay Rs.5,000/ - for deficiency in service and Rs.1,000/ - as litigation charges. Appeal filed by opposite party was partly allowed and order directing payment of interest and Rs.5,000/ - for deficiency in service was set aside and rest of the order was affirmed, against which this revision petition has been filed along with application for condonation of delay.

3. HEARD learned Counsel for the petitioner finally at admission stage and perused record. Learned counsel for the petitioner submitted that there was delay of 32 days in filing revision petition which occurred due to sanctions from different offices and in procuring documents. As there is delay of only 32 days in filing revision petition which occurred due to sanctions from different offices and in procuring documents, application for condonation of delay is allowed, subject to payment of Rs.5,000/ - as cost to the respondent.

4. LEARNED counsel for the petitioner submitted that as vehicle was not registered on the date of alleged theft, it was clear violation of the terms and conditions of policy as well Motor Vehicle Act and learned District Forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal, hence revision petition be allowed and impugned order be set aside. On the other hand, learned counsel for the respondent submitted that as complainant was busy in treatment of her husband, vehicle could not be got registered and order passed by learned State Commission is in accordance with law, hence revision petition be dismissed.

5. IT is admitted case of the parties that vehicle was purchased by the complainant on 05 -06 -2006 and it was insured by opposite party for a period of one year from 05 -06 -2006 to 04 -06 -2007. As per complainant, vehicle was stolen on 24 -09 -2006 which was parked in front of complainant''s house. It is also admitted fact that on the date of theft vehicle was not registered.

6. LEARNED counsel for the petitioner submitted that under Section 39 of the Motor Vehicle Act, vehicle cannot be driven unless it is registered. It was further submitted that as vehicle was not registered on the day of theft it amounted to violation of the terms and conditions of policy as well Motor Vehicle Act, hence no claim was payable. In support of his contention, he has placed reliance on judgment of this Commission in Revision Petition No. 1834 of 2012 Manager, Bharti AXA General Insurance Co. Ltd. Vs. B.A. Lokesh and Revision Petition No. 4043 of 2008 Kaushalendra Kumar Mishra Vs. Oriental Insurance Co. Ltd., in which it was observed that if vehicle was not registered no claim was payable. On the other hand learned counsel for the respondent placed reliance on judgment of this Commission in Revision Petition No. 52 of 2012 Oriental Insurance Co. Ltd. and Anr. Vs. Pearls Buildwell Infrastructure Ltd. and Ors. and Revision Petition No. 497 of 2012 Oriental Insurance Co. Ltd. Vs. Swami Devi Dayal, in which it was held that insurance company is not entitled to repudiate claim only on the ground that vehicle was not registered.

7. THUS it becomes clear that conflicting views have been expressed by this

Commission in different revision petitions. Learned counsel for the respondent placed reliance on judgment of Hon''ble Apex Court in the case of Amalendu Sahoo Vs. Oriental Insurance Company Ltd., 2010 4 SCC 536, in which it was held that in case of violation of conditions of policy claim should be settled on non -standard basis and 75% of the admissible claim should be paid. On the other hand, learned counsel for the petitioner placed reliance on recent judgment of Hon''ble Apex Court in Civil Appeal No. 8463 of 2014 Narinder Singh Vs. New India Assurance Company Ltd. and Ors., in which after considering Amalendu Sahoo''s case it was held that as vehicle was without any registration on the day of alleged accident and nothing was brought on record to show that before or after expiry of temporary registration owner of the vehicle either applied for permanent registration as contemplated under Section 39 of the Act or made any application for extension of period as temporary registration on the ground of some special reasons it amounted not only to offence punishable under Section 192 of the Motor Vehicles Act but also fundamental breach of terms and conditions of policy and order passed by Fora below dismissing claim was upheld.

8. IN the case in hand complainant had not placed any evidence on record that after getting vehicle insured she ever applied for extension of temporary registration or applied for permanent registration under Section 39 of the Motor Vehicle Act. Merely by mentioning that after purchase of vehicle, complainant''s husband, on account serious illness was admitted in various hospitals and she remained busy to help her husband, it cannot be a sufficient ground for not getting vehicle registered for 110 days and in such circumstances I do not find any deficiency on the part of the petitioner in repudiating claim. Learned District Forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal and revision petition is to be allowed.

9. CONSEQUENT LY , revision petition filed by the petitioner is allowed and order dated 11 -07 -2013 passed by learned State Commission in Appeal No. 1105/2012 Oriental Insurance Co. Ltd. Vs. Smt. Vidhya Bai and order of District Forum dated 15 -01 -2008 passed in Complaint No. 2/2008 Vidhya Bai Vs. Divisional Manager, Oriental Insurance Co. Ltd. is set aside and complaint stands dismissed with no order as to costs.

