(2012) 08 NCDRC CK 0098

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE COMPANY — APPELLANT

Vs

CHARAN DASS — RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Citation : 2012 0 NCDRC 423 : 2012 4 CPJ 216

Hon'ble Judges : J.M.Malik , Vinay Kumar J.

Advocate : S.L.Gupta , Ram Ashray

Judgement

1. THE factual matrix of this revision petition is this. The complainant/ respondent, Charan Dass owned Bolero LX (LMV) Model 2009 bearing registration No. PB-65-H-8910. The complainant obtained insurance policy in respect of that car for the period from 3.4.2009 to 2.4.2010. The insured declared its value at Rs.5,17,750/-. During the night falling between 4/5-12-2009, the vehicle was stolen from his residence. FIR was lodged with the police on 5.12.2012.

2. THE complainant made a claim before the petitioner-insurance company. However, necessary documents were filed on 3.9.2010. The insurance company repudiated the said claim vide letter dated 24.9.2010 on the ground that there was inordinate delay of about 10 months in giving intimation regarding the theft of vehicle.

3. THE complaint filed by the complainant was accepted by the District Forum and the petitioner-insurance company was directed to pay a sum of Rs.5,17,750/-, being the insured value of the vehicle alongwith interest @18% p.a. from the date of filing the complaint, Rs.50,000/- as compensation towards physical harassment and mental agony and Rs.7,000/- as litigation cost. The State Commission dismissed the appeal.

4. THE main controversy revolves around the question whether the terms and conditions of the policy were received by the complainant. The case of the complainant is that he only received the cover note but did not receive the

insurance policy. He was not aware of its terms and conditions. Learned counsel for the petitioner vehemently argued that the conditions of the policy were supplied to the complainant through courier, which were duly received by the complainant. Again, there was inordinate delay of 10 months in receiving the claim.

5. THESE arguments are not worthy on credence. Clause 1 under the Head Conditions of the insurance is significant. It runs as follows:- "Notice shall be given in writing to the Company immediately upon the occurrence of any accidental loss or damage in the event of any claim and thereafter the insured shall give all such information and assistance as the Company shall require. Every letter claim writ summons and/or process or copy thereof shall be forwarded to the Company immediately on receipt by the insured. Notice shall also be given in writing to the Company immediately the insured shall have knowledge of any impending prosecution inquest or fatal injury in respect of any occurrence which may give rise to a claim under this policy. In case of theft or criminal act which may be the subject of a claim under this Policy the insured shall give immediately notice to the police and co-operate with the Company in securing the conviction of the offender."

6. LEARNED counsel for the petitioner contended that proof of service of policy was not produced before the District Forum but he has filed the record before this Commission. He invited our attention towards a document bearing the signature of Assistant Manager dated 17.10.2011 which runs as follows:- "Deptt.:- Legal CDRF 267 Re:- Postal Recipt for dispatch of Policy No. 231200/31/2010/112 DCDRF Case Titled Charan Dass Vs. OICL. With reference to the above, we are enclosing herewith certified copy of dispatch register and original letter of courier Akash Ganga Couriers Delhi P. Ltd. confirming the delivery of Policy to the Insured for your doing the needful."

7. HE contended that the service of sending the insurance policy stand proved. This argument has no relevance. The evidence of courier should have been filed through an affidavit. Courier does not deliver the letter unless or until the addressee or any person on his behalf signs the same. Such like evidence can be created at any time. There is no clear cut proof of service of policy upon the respondent. There should be signature on the receipt in lieu of delivery of letter to him. The argument urged by learned counsel for the petitioner that those signatures on the courier must have been lost leaves no impact on this Commission. Such like signature in token of receipt of the letter must be preserved.

8. BOTH the foras below have placed reliance on an authority reported in M/s Modern Insulators Ltd. Vs. Oriental Insurance Co. Ltd. Reported as I(2001) CPJ I (SC), which fully applies to this case.

9. THE revision petition being without merit is dismissed.

