

(2016) 09 NCDRC CK 0148

In the National Consumer Disputes Redressal Commission

Case No : 1104 of 2016

ORIENTAL INSURANCE COMPANY LIMITED

APPELLANT

Vs

JAINA CONSTRUCTION COMPANY & ANR.

RESPONDENT

Date of Decision : 09-09-2016

Acts Referred:

Citation : 2016 4 CPR 291

Hon'ble Judges : Ajit Bharihoke, ?S.M.Kantikar

Advocate : KISHORE RAWAT, ?Avinash Kr. Lakhanpal, Amitabh Singh

Final Decision : Petition Dismissed

Judgement

1. By this order, we propose to dispose of the above noted revision petitions arising out of the order of the State Commission Haryana dated 16.12.2015 in First Appeals No. 537 & 617 of 2015 filed by complainant and opposite party no.1 insurance company.

2. Briefly stated, the facts relevant for the disposal of the revision petitions are that complainant got his truck bearing temporary registration no. RJ-02-09-8177 insured with the opposite party no.1 insurance company. IDV of the truck was Rs.17,05,865/-. The insurance was valid w.e.f. 30.10.2008. It is alleged that on the night intervening 4 th & 5 th November, 2007, the

said truck was snatched by some miscreants from the driver of the truck in the area of village Nagina, District Mewat. FIR regarding snatching of truck was lodged at PS Nagina on 05.11.2007. It is claimed that insurance company was informed and claim was filed. The insurance company, however, failed to settle the claim within a reasonable time. Claiming non settlement of insurance claim to be deficient in service, consumer complaint was filed by the complainant M/s Jaina Construction Company against opposite party no.1 insurance company as also opposite party no.2 who allegedly financed the truck.

3. OP No.1 in its written statement took the plea that the District Forum Gurgaon has no territorial jurisdiction to entertain the complaint. Pleas on merit were also

denied. Subsequent to the filing of the written statement, a repudiation letter was issued on 19.10.2010 informing the complainant that his claim has been repudiated on the ground of violation of terms and conditions of the insurance policy inasmuch as information regarding the theft was given with a delay of five months from the date of alleged theft.

4. The District Forum on consideration of the pleadings and evidence took the view that it has territorial jurisdiction to entertain the complaint. On merits, the District Forum allowed the complaint on non standard basis and directed the opposite party no.1 as under: "Keeping in view the facts and circumstances discussed above the complainant is directed to insure amount on non-standard basis as held by the Hon"ble Apex Court in case National Insurance Company Limited Vs. Nitin Khandelwal 2008 ACJ 2035. Thus, complainant is entitled to Rs.12,79,399/- as 75% of the IDV i.e. Rs.17,05,865/- with interest @ 6% p.a. from the date of filing of the complaint till realization from Insurance Company OP-1. The complainant, however, has been harassed by OP 1 unnecessarily since long and have caused mental agony due to heavy loss by way of robbery of his vehicle and Finance Company has already issued NOC in favour of the complainant regarding clearance of the loan against the complainant. Consequently he being proprietor of the complainant firm is entitled to compensation of Rs.10,000/- from OP 1 insurance company. The complainant is also entitled to litigation expenses of Rs.5000/- Compliance be made within 30 days."

5. Being aggrieved of the order of the District Forum, opposite party insurance company preferred an appeal being Appeal No.612 of 2015. Complainant also filed an appeal seeking enhancement of compensation being appeal No. 537 of 2015. The State Commission vide impugned order dated 16.12.2015 dismissed the appeal preferred by the opposite party insurance company. The appeal of the complainant was partly allowed by increasing the interest payable from 6% to 9% p.a.

6. Feeling aggrieved of the order of the State Commission, both the complainant as well as opposite party insurance company preferred the above noted revision petitions.

7. Learned Shri Kishore Rawat, Advocate for the opposite party has assailed the impugned order on the ground that it is violative of the judgment of the Supreme Court in Civil Appeal No. 6739 of 2010 arising out of SLP (C) No. 12741 of 2010 titled Oriental Insurance Co. Ltd. Vs. Parvesh Chander Chadha decided on 17.08.2010. It is contended that both the Fora below have failed to appreciate that insurance claim of the complainant was rightly repudiated because of the

failure of the complainant to intimate the theft to insurance company in writing within a reasonable time, which amounts to violation of the terms and conditions of the insurance contract.

8. Learned counsel for the complainant on the contrary has argued in support of

the finding of the For a below holding the opposite party insurance company guilty of deficiency in service. The complainant, however, has submitted that For a below have fallen in error in allowing the claim on non standard basis whereas the claim in toto should have been allowed. In this regard, counsel for the complainant has taken us through the relevant condition no.1 of the insurance contract and submitted that aforesaid condition does not require the giving of immediate notice in writing to the insurance company in the event of theft. It is argued that only requirement of the above condition is that FIR should be lodged immediately. It is further argued that otherwise also, in view of circular of IRDA dated 20.09.2011, the opposite party insurance company was expected to look into the genuineness of the claim instead of repudiating the claim on the ground of delay in intimation of theft.

9. The facts of the case are more or less admitted. It is not in dispute that FIR pertaining to the theft was lodged on the very next day at PS Nagina. It is also not in dispute that intimation of theft was given to the opposite party insurance company after a delay of about five months. Now the question is whether the aforesaid delay in intimation amounts to violation of condition no.1 of the insurance contract and justify the repudiation of the claim by the insurance company

10. In order to find answer to this question, it would be useful to have a careful look on relevant condition no.1 of the insurance contract which reads as under: "1. 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 inquiry in respect of any occurrence which may give rise to a claim under this policy. In case of a major loss, theft or criminal act which may be the subject of a 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."

11. On reading of the above, it is clear that in the event of any accidental loss or damage to the insured vehicle, it was contractual obligation of the insured complainant to immediately inform the opposite party insurance company. Admittedly, the complainant has violated the said condition by delaying the intimation of theft to the insurance company for about five months. Thus, in our considered view, the complainant has violated the above noted stipulation of the insurance contract. Similar issue came up before the Supreme Court in the matter of Oriental Insurance Company Ltd. Vs. Parvesh Chander Chadha (supra) wherein Hon"ble Supreme Court has observed thus: "Admittedly the respondent had not informed the appellant about the alleged theft of the insured vehicle till he sent letter dated 22.5.1995 to the Branch Manager. In the complaint filed by

him, the respondent did not give any explanation for this

unusual delay in informing the appellant about the incident which gave rise to cause for claiming compensation. Before the District Forum, the respondent did state that he had given copy of the first information report to Rajender Singh Pawar through whom he had insured the car and untraced report prepared by police on 19.9.1995 was given to the said Shri Rajender Singh Pawar , but his explanation was worthless because in terms of the policy, the respondent was required to inform the appellant about the theft of the insured vehicle. It is difficult, if not impossible, to fathom any reason why the respondent, who is said to have lodged First Information Report on 20.1.1995 about the theft of car did not inform the insurance company about the incident. In terms of the policy issued by the appellant, the respondent was duty bound to inform it about the theft of the vehicle immediately after the incident. On account of delayed intimation, the appellant was deprived of its legitimate right to get an inquiry conducted into the alleged theft of the vehicle and make an endeavour to recover the same. Unfortunately, all the consumer foras omitted to consider this grave lapse on the part of the respondent and directed the appellant to settle his claim on non-standard basis. In our view, the appellant cannot be saddled with the liability to pay compensation to the respondent despite the fact that he had not complied with the terms of the policy."

12. In view of the aforesaid position in law, the repudiation of insurance claim by the opposite party is justified. Perusal of the order of the State Commission would show that State Commission was impelled to allow the claim on non standard basis in view of para 12 of the judgment of Supreme Court in the matter of National Insurance Company Ltd. Vs. Nitin Khandelwal IV (2008) CPJ 1 (SC) which reads as under: "In the case in hand, the vehicle has been snatched or stolen. In the case of theft of vehicle breach of condition is not germane. The appellant insurance company is liable to indemnify the owner of the vehicle when the insurer has obtained comprehensive policy for the loss caused to the insurer. The respondent submitted that even assuming that there was a breach of condition of the insurance policy, the appellant insurance company ought to have settled the claim on non standard basis. The insurance company cannot repudiate the claim in toto in case of loss of vehicle due to theft."

12. On bare reading of the aforesaid, it is clear that para 12 records the arguments of the complainant of the said case and it is not the finding of the Hon"ble Supreme Court in the matter of Nitin Khandelwal (supra). The ratio of said judgment is in para 13, which reads as under:

"In the instant case, the State Commission allowed the claim only on non-standard basis, which has been upheld by the National Commission. On consideration of the totality of the facts and circumstances in the case, the law seems to be well settled that in case of theft of vehicle, nature of use of the vehicle cannot be looked into and the Insurance Company cannot repudiate the claim on that basis."

13. Counsel for the complainant has contended that irrespective of the judgment of the Supreme Court in the matter of Parvesh Chander Chadha (supra), the repudiation is not justified in view of the circular of IRDA dated 20.09.2011. on perusal of record, we find that claim of the petitioner was repudiated vide letter dated 19.10.2010 prior to the issue of aforesaid circular. Therefore, the repudiation cannot be termed as violative of IRDA circular purportedly issued subsequently in the year 2011

14. In view of the discussion above, particularly, the finding of the Supreme Court in the matter of Pavesh Chander Chadha (supra), we are of the opinion that impugned order of the Fora below is not sustainable. We accordingly allow the revision petition no. 1104 of 2016 filed by opposite party insurance company, set aside the impugned order and dismiss the complaint. As the complaint itself has been dismissed, revision petition filed by the complainant seeking enhancement of compensation is also dismissed. Both the revision petitions are disposed of accordingly.