(1999) 08 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE Company Limited APPELLANT

Vs

SHEO DATTA SHARMA RESPONDENT

Date of Decision : 26-08-1999

Acts Referred:

Citation : 1999 3 CPJ 507 : 2000 1 CLT 363 : 2000 1 CPR 395

Hon'ble Judges : A.N.Chaturvedi , V.N.Misra J.

Final Decision : Order modified. Appeal dismissed

Judgement

1. THE present appeal has been filed against the order dated 30.6.1997, passed by the District Forum, Begusarai in Complaint Case No. 124/96 directing the opposite parties to pay Rs. 1,51,000/- with interest at the rate of 18% from the day of theft alongwith a sum of Rs. 10,000/- as compensation and Rs. 2,000/- as litigation cost.

2. THE brief facts of the case are that the complainant had purchased seven numbers of cows at Buxar on 19.3.1996 for a sum of Rs. 1,51,000/-. He got these cows insured for one year with Oriental Insurance Company on 12.5.1996 for a sum of Rs. 1,51,000/-for which he paid the Insurance Premium of Rs. 9,514/-. Insurance Policy No. 3/No-019528 was issued by opposite party No. 3 covering all risks, which according to the complainant meant that it was a comprehensive policy covering all sorts of risks. All the seven cows of the complainant were stolen on 17.5.1996. F.I.R. was lodged by the complainant with Pandark Police which was registered as Case No. 41 of 1996. The complainant informed the opposite party on 18.5.1996 through registered post with A /D vide registration receipt No. 3464 informing them that all the insured cattle had been stolen on 17.5.1996. A registered letter with A/D had also been sent to them on 12.7.1996 vide registration receipt No. 3859 dated 12.7.1996. Opposite party No. 3 thereupon wrote to the complainant vide his letter dated 15.7.1996 saying that according to column 6 of the policy, no claim can be made under the policy for theft of the cattle and Insurance Company refused to make any payment of the claim. The complainant in reply sent his reply dated

30.7.1996 that Clause- 6 of the policy is not applicable in his case as according to his policy all risks had been covered and therefore his claim may not be rejected. The complainant again requested opposite party No. 3 vide his letter dated 13.9.1996 to refer the matter to an Arbitrator for adjudication vide Clause-11 of the policy, but they were not stirred even to send a reply to him. The complainant claims to have spent Rs. 10,000/- in correspondence and in meeting officers of the Insurance Company at different places on several occasions. He suffered mental agony because of the loss of the cows and he was not getting any response from any quarter of the Insurance Company.

The complainant then filed a complaint case before the District Forum, Begusarai with the prayer that the opposite party may be directed to pay a sum of Rs. 1,81,000/- for insurance claim, compensation, expenses incurred by him including litigation cost. The complainant filed affidavit in support of his contention in the complaint case.

3. THE opposite party, on being noticed, filed show-cause denying that they had issued a comprehensive policy covering all risks. THEy contended that all risks written in hand only meant that all risks arising out of various types, of diseases and accidents mentioned in the insurance policy. THE risk on account of theft is not covered under this policy. THEy further contended that they have clearly stated in the insurance policy that there will be no claim if no tag is produced. No tag has been produced by the complainant in this case. THE complainant has not been able to make out any case against the opposite parties. THE complaint case may, therefore, be dismissed. THE opposite parties have also filed affidavit in support of their show- cause. The District Forum after hearing both the parties passed the impugned order directing the opposite parties to pay a sum of Rs. 1,51,000/- as insurance claim with interest at the rate of 18% per annum from the date of theft of the cows till actual payment, Rs, 10,000/- as compensation and Rs. 2,000/- as litigation cost.

4. BEING aggrieved by the above order the opposite parties have filed the present appeal reiterating that unless tag is produced before the Insurance Company no insurance claim can at all be entertained, according to the condition of the insurance policy. The case of the complainant is that his cows were stolen. Risk against theft is not covered under the policy. The order of the District Forum is illegal and under such circumstances the District Forum has also erred in allowing both interest and compensation in the complaint case when National Commission in Laxmi Vikas Bank Ltd. & Ors. v. P.R. Krishnan & Ors., I (1995) CPJ 43 (NC), has held that conference of double benefits by awarding both interest as well as lump-sum compensation is not justified in law. They further referred to the decision of the Hon''ble Supreme Court in United India Insurance Company Ltd. v. MKJ Corporation, reported in III (1996) CPJ 8 (SC)=(1996) 6 SCC 428, that the rate of interest cannot be more than 12%. The respondent-complainant on being noticed filed his rejoinder to the appeal stating that he is a cultivator living in country-side. Before taking the policy he had enquired if theft of cattle is

also covered under the insurance policy or not. He further told the agent that the cases of theft of cattle in village side are frequent. He was clearly told by the agent that his policy would cover all risks. It is for this reason all risks have been mentioned in the policy. The lawyers on behelf of both the parties were finally heard.

5. IT may be seen on perusal of record that it is admitted that the complainant had got his seven numbers of cow insured by the opposite party. IT is also not disputed that health certificates concerning health of all the seven cows were given to the Insurance Company individually. IT is also not disputed that his cows were stolen on 17.5.1996 for which F.I.R. was lodged in Pandarak Police Station same day at 7.00 p.m. IT is also admitted that "all risks" is written in hand on the body of the Insurance Policy. IT is also not in dispute that no tag no claim is also written thereon. The opposite parties-appellants have taken the plea that the purpose of "all risks" written on the body of the insurance policy was to indicate that death of animal arising out of any disease or accident will be covered. But it does not appear to be necessary to elucidate this point in view of the stipulation already made in the insurance policy. IT is true that it has clearly been laid down in Clause 6 of the policy that cases of theft are not included under the purview of the policy. But at the same time it is also clearly laid down in the beginning of the provisions of the insurance policy that all terms and conditions of the policy will be applicable unless expressly agreed to by the Company in writing. The Insurance Company had undertaken to cover all risks in writing. The exclusion Clause 6 in such circumstances may not be attracted in this case. The insurance policy was duly issued by the opposite party with the special provisions of all risks written in hand. Further the Insurance Company was at liberty to cancel the policy within seven days by giving notice to the insured in case if "all risks" was inadvertantly written on the body of the policy. That was not done according to Section 10 of the condition. The complainant-respondent on affidavit has said that he was clearly told by the agent of the Insurance Company that all risks meant that risk against theft is also covered. The insured being a simple cultivator, relied on the assurance of the agent and got his cows insured. There is no specific denial of this allegation on affidavit by the agent. But at the same time no tag no claim is also mentioned on the body of the provision. This will be relevant in case if death of animal takes place.

6. IN our opinion this provision will be irrelevant in case if theft of animal takes place. The complainant-respondent when not getting any relief from any corner of the INsurance Company had explored before opposite party to refer the case to an Arbitrator under Section-II of the conditions of the policy. The INsurance Company remained un-moved and did not even respond to his request. Even if we accept the contention of the appellants that such provisions do not cover risk against theft, it certainly falls within the purview of unfair trade practice to rope in simple un-sophisticated villagers under their net. This finds support from the relevant provision of the Consumer Protection Act, 1986, which reads as unfair trade practice "means a trade practice which for the purpose of promoting the

sale, use or supply of any goods or for the provisions of any services, adopts any unfair method or unfair or deceptive practice including the practice of making any statement whether orally or in writing or by visible representation which falsely represents that the services are of a particular standard, quality or grade. Seen from this point of view the opposite parties are found to be guilty of deficiency in service. We are, therefore, inclined to support the decision of the District Forum in allowing the insurance claim of Rs. 1,51,000/- to the complainant. We also agree with the argument of the opposite parties that the rate of interest in view of the decision of the Apex Court in United INdia INsurance Company Ltd. v. M.K.J. Corporation (supra), cannot be more than 12%. We are also inclined to accept the argument of the learned Counsel on behalf of the opposite parties that double benefits of allowing interest and also compensation cannot be awarded in view of the decision of National Commission in Laxmi Vilas Bank Ltd. & Ors. v. P.R. Krishnan & Ors. (supra). We do not interfere with the award of litigation cost of Rs. 2,000/-. IN the light of the above discussions I allow the INsurance Claim of Rs. 1,51,000/- with interest at the rate of 12% with effect from the date of institution of the complaint case alongwith litigation cost of Rs. 2,000/- as allowed by the District Forum payable by the opposite parties to the complainant within two months from the date of receipt of this order failing which the complainant will realise the same through the process of the Court. The impugned order thus will stand modified to the extent as indicated above and the appeal is dismissed. There is no order as to cost of this appeal. Mr. Justice A.N. Chaturvedi, President- I agree with the findings and decision of Brother Mishra for the reasons as mentioned and discussed below : 2. It is not disputed that the complainant (respondent in this appeal) had got his cows insured by the appellant Oriental INsurance Company Ltd. on 12.5.1996 for a sum of Rs. 1,51,000/- and the insurance was for the period 12.5.1996 to 11.5.1997. The allegation of the complainant that his cows were stolen in between the night of 16/17.5.1996 has also not been disputed. It is also not disputed that the complainant had submitted claim form claiming the insured amount of Rs. 1,51,000/-. It is also not disputed that the claim preferred by the complainant was repudiated by the INsurance Company on the ground that in view of the proviso-No. 6 to the insurance policy the INsurance Company was not liable to pay anything for the theft of the cows. Moreover these facts are also apparent from the pleadings of the parties and documents filed by them before the District Forum. 3. IN view of the above mentioned undisputed facts the question that arises for consideration is as to whether the insurance policy covered the risk concerning theft of the cows of the complainant or not. For deciding this question perusal of the insurance policy is necessary. A copy of the insurance policy is on the record of the District Forum. The learned Counsel for the appellant invited the attention of the Commission towards the first page (top portion) of the insurance policy and pointed out that the INsurance Company subject to the terms, provisions, conditions contained in the policy or endorsed or otherwise expressed therein, agreed that if any animal described in the Schedule and belonging to the insured died within the geographical area specified in the Schedule from (a) any disease or (b) accident or (c) surgical operations or (d) strike, riot and civil commotion during the period of insurance, the Company would pay to the insured after receipt of proof of death. The loss which the insured-shall suffer by death of such animal not exceeding the sum insured in respect thereof as stated in the Schedule or its market value at the time of loss, whichever is less. The learned Counsel for the appellan further invited the attention of the Commission towards the endorsement "no tag no claim" in the middle of the first page of the insurance policy and contended that the insurance policy was covering the death of animals by whatever reasons and not the loss thereof due to theft. On the other hand the learned Counsel for respondent referred to the second page of the insurance policy which begins with provisos. The provisos read thus-"Provided always that the policy does not cover (unless expressly agreed to by the Company in writing) death directly or indirectly due to or arising out of or resulting from : xxx xxx xxx (6) theft or clandestine sale of the insured animal. xxx xxx xxx 4. The learned Counsel for the respondent further referred to the endorsement "All risk" in the middle of the first page of the insurance policy and contended that by making the said endorsement the INsurance Company agreed to cover the loss by theft also. There appears much substance in the contention of the learned Counsel for the respondent. By making the endorsement "all risk" the INsurance Company expressed its willingness and agreed to cover risk other than death also. Had it not been so, there could have been no necessity of making such endorsement. 5. The learned Counsel for the appellant laid much stress on the endorsement "no tag no claim" and contended that unless the tag of the animal was produced, the insurance claim was not entertainable. IN case of theft of the animal, the tag also goes with the animal and hence it becomes impossible for the policy holder to produce the tag. The production of the tag can be expected only in the case of death of the animal. That being so, it is difficult to accept the above contention of the learned Counsel for the appellants. It is apparent from what has been pointed out above that the policy in question was comprehensive one and covered the loss of animal by theft also. That being so, the complainant was undoubtedly entitled to get Rs. 1,51,000/- from the appellant INsurance Company. IN view of this the direction of the District Forum for payment of Rs. 1,51,000/- to the complainant by the appellant INsurance Company does not call for any interference by this Commission. 6. The District Forum has allowed interest at the rate of 18% per annum over the said amount of Rs. 1,51,000/- from the date of theft of the cows till the date of actual payment. Allowing of interest at the rate of 18% and that too from the date of theft does not appear to be justified. IN my opinion the end of justice will be met by allowing interest at the rate of 12% per annum from the date of filing of the complaint case before the District Forum till the date of payment and it is held accordingly. So the direction of the District Forum in this regard is modified accordingly. 7. The District Forum has directed for payment of Rs. 10,000/- as compensation to the complainant for the inconvenience, harassment and mental agony caused to him. When the District Forum had already allowed interet over the insured amount, there was no justification for awarding Rs. 10,000/- as compensation. So the direction of the District Forum for payment of Rs. 10,000/- as compensation is not sustainable and is accordingly set aside. The District Forum has further directed for payment of Rs. 2,000/- as cost to the complainant. The said amount of Rs. 2,000/-allowed as cost by the District Forum appears to be reasonable and does not call for any interference by this Commission. 8. IN view of the above discussions the complainant is held to be entitled to get the insured amount of Rs. 1,51,000/- with interest at the rate of 12% per annum from the date of filing of the complaint case before the District Forum till the date of payment thereof. Besides this, he is also entitled to get Rs. 2,000/- as cost. The complainant is not entitled to get any amount as compensation. The impugned order of the District Forum is modified accordingly. Appellant INsurance Company to make payment to the complainant accordingly within two months from the date of receipt/ production of the copy of this order failing which the complainant will be entitled to realise the same through the process of the Court. With the above modification in the impugned order this appeal is hereby dismissed. There will be no order as to cost of this appeal. Order modified. Appeal dismissed.

