

(2011) 05 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE COMPANY LTD

APPELLANT

Vs

ROHTAS SINGH

RESPONDENT

Date of Decision : 09-05-2011

Acts Referred:

Citation : 2011 3 CPJ 407

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Revision Petition allowed.

Judgement

1. ORIENTAL Insurance Company Ltd. which was the Opposite Party before the District Forum, has filed this Revision Petition against the Order dated 21.12.2006 passed by the Chhattisgarh State Consumer Disputes Redressal Commission (for short the State Commission) in Appeal No. 413/2006 whereby the State Commission has dismissed the appeal filed by the Petitioner against the order of the District Forum. District Forum has awarded a sum of Rs. 1,60,000 towards permanent disability and Rs. 20,000 towards expenses incurred on treatment along with interest @ 6% per annum from the date of the complaint i.e. 21.2.2006 till realization to Respondent-Complainant. Rs. 10,000 was also awarded for mental agony and Rs. 500 as costs.

2. RESPONDENT had taken from the Petitioner an "Individual Nagrik Suraksha Policy" providing personal accident cover to the extent of Rs. 1,60,000 and medical expenses to the extent of Rs. 40,000. The policy was effective from 2.12.2003 to 1.12.2004. It is alleged in the complaint that on 27.1.2004 while Respondent was changing punctured tyre to the truck, the jack slipped and the truck fell on him resulting in fractures on his leg. The Petitioner was informed for the first time on 25.6.2005 about the accident and the disability. Police report was lodged on 22.3.2005. Petitioner repudiated the claim inter alia on the ground of inordinate delay in informing Petitioner about the incident. Another ground taken was that Respondent did not produce any documentary evidence about the injury and disability suffered by him.

3. RESPONDENT being aggrieved filed the complaint before District Forum. In

response to the allegation made in the complaint, Petitioner reiterated the ground for rejection of the claim.

4. DISTRICT Forum allowed the complaint and directed Petitioner to pay Rs. 1,60,000 i.e. the sum assured and Rs. 20,000 towards medical expenses along with interest @ 6% from the date of filing the complaint i.e. 21.2.2006 till realization, to the Complainant. In addition, a compensation of Rs. 10,000 towards mental agony and costs of Rs. 500 was also awarded to the Complainant.

5. PETITIONER, being aggrieved, filed appeal before the State Commission which has been dismissed by the impugned Order.

6. RESPONDENT was ordered to be served through publication in newspaper, namely "Dainik Bhaskar" Hindi edition and "Hindustan Times" Bhopal edition. In spite of due publication of notice in the newspapers, Respondent is not present. Proceeded ex parte.

7. COUNSEL for the Petitioner contends that as per terms of the policy, Respondent was required to lodge an FIR as well as inform the Petitioner immediately about the incident so as to provide an opportunity to it to investigate about the incident as also to know the nature of injury suffered by the Respondent. That Respondent was guilty of violation of the terms of the policy. Petitioner has been deprived of its right to investigate about the incident as well as the extent of injury suffered by Respondent. Relevant clause of the policy requiring insured to inform Petitioner about the incident reads as under: "Upon happening of any event which may give rise to a claim under this policy, written notice with full particulars must be given to the Company's policy issuing office immediately. However, reasonable cause to be furnished in the event of the insured person or his representative for not notifying the accident immediately. This clarification for delay in notification shall in any case be submitted within 7 days from the date of accidental injury."

8. IN the present case, Respondent lodged Police Report on 22.3.2005 after 14 months of the incident and informed Petitioner about the incident on 25th June, 2005 after 17 months of occurrence of the incident. As per terms of the policy, Respondent was required to inform the Petitioner about the incident immediately so as to give an opportunity to Petitioner to investigate about the incident. Because of the delay in lodging the claim, Petitioner was deprived of an opportunity to investigate the incident and the nature of injuries suffered by Respondent. Respondent was guilty of violation of the terms of the policy.

9. POINT in issue is squarely concluded in favour of the Petitioner and against the Respondent by a judgment of the Supreme Court in Oriental Insurance Co. Ltd. v. Parvesh Chander Chadha, Civil Appeal No. 6739 of 2010 decided on 17th August, 2010 wherein the Supreme Court has held that the delay in lodging the claim was fatal and the Insurance Company could not be saddled with the liability to pay compensation to the insured as the insured had not complied with the terms of the policy. Relevant portion of the order of the Supreme Court reads as

under: "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 Fora 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."

10. RESPECTFULLY following the view taken by the Supreme Court in the aforesaid case, we accept this Revision Petition, set aside the order of the Fora below and dismiss the complaint leaving the parties to bear their own costs. Revision Petition allowed.