(2017) 05 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

Case No : 875 of 2016

ORIENTAL INSURANCE COMPANY LTD. THROUGH SENIOR DIVISIONAL MANAGER — APPELLANT

Vs

SHREE BALAJI STEEL & CEMENT TRADERS THROGH PROPRITOR JAYASHRI SURESH SHARMAMADHAVPURA — RESPONDENT

Date of Decision : 17-05-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 173 - Report of police officer on completion of Investigation
Indian Penal Code, 1860, Section 34, <a href=1767-379>Section 379

Citation : (2017) 05 NCDRC CK 0025

Hon'ble Judges : B.C. Gupta, S.M. Kantikar

Advocate : Mohan Babu Agrawal, Amit S. Savale

Judgement

1. The present first appeal has been filed under Section 19 of the Consumer Protection Act, 1986 against the order dated 22.01.2016 passed in Complaint Case No. CC/14/15 of Maharashtra State Consumer Disputes Redressal Commission, Bench at Aurangabad (hereafter referred as ''the State Commission'') whereby the State Commission allowed the complaint of the complainant and directed the OP/insurance company to pay to the complainant an amount of Rs.19,50,000/- with interest at the rate of 9% per annum, from the date of filing of complaint and also to pay Rs.25,000/- as compensation for mental agony etc.

2. The relevant facts for the disposal of the appeal are that the complainant had purchased a truck for consideration of Rs.16,37,692/- by availing loan from HDFC Bank. For body building of the truck, complainant spent Rs.4,27,250/- and therefore Insured Declared Value (IDV) of the policy was shown as Rs.19,50,000/-. The complainant had obtained the public carriers policy (other than three wheelers package policy) bearing No. 182401/31/2013/3544 for own damage and third party liability by depositing premium. The policy period was

24.08.2012 to 23.08.2013. On 27.02.2013, the truck was engaged for transporting iron bars from Jalna to Dhule. The material was unloaded at Dhule at about 2.00 p.m. On the same night, truck was parked in premises of Hotel "5555", near Mohadi village. The driver asked the cleaner to sleep in the truck and he went to his home for dinner. When the driver returned in the morning at 7.00 a.m. on the next day, he found that the truck and the cleaner were missing. He tried to contact the cleaner on mobile but it was switched off. FIR was registered with Mohadi police station by the driver on 2.4.2013 and the occurrence of theft was also informed to the insurance company. Complainant submitted insurance claim with the insurance company but there was neither any response nor the claim was settled by the OP. Meanwhile, the investigation report under Section 173 of Cr.P.C. was filed before the JPMC, Dhule on 25.12.2013 wherein Sections 379, 406 and 34 of IPC was added to the previous charge under Section 406 I.P.C.

3. Aggrieved by the conduct of OP for not settling of the claim, the complainant filed a complaint before Maharasthra State Consumer Disputes Redressal Commission, Bench at Aurangabad praying therein for the IDV of Rs.19,50,000/-, Rs.30,000/- as a business loss and Rs.7,50,000/- as instalments of loan with 18% interest. The complainant also claimed Rs.30,000/- towards mental agony and Rs.20,000/- as costs.

4. The OP resisted the complaint by filing written version and submitted that it was the case of breach of trust, not the theft. The complainant did not take precautionary measure to safeguard his vehicle. Therefore, the claim of complainant was rightly repudiated. The OP denied about intimation of theft within 48 hours by the complainant. The Police Inspector has no authority to add the charge of theft with original charge of breach of trust. Therefore, the complaint deserves to be dismissed.

5. The State Commission partly allowed the complaint and directed the OP/ insurance company to pay Insured Declared Value of truck i.e. Rs.19,50,000/- with 9% interest from the date of complaint.

6. Being aggrieved by the order of State Commission, the OP/appellant filed this appeal before this Commission.

7. We have heard the learned counsel for the parties. Initially, we have heard the arguments on the point of delay in filing this appeal. There is a delay of 142 days to file this appeal. The reasons for the delay are explained by the appellant in paras 6 to 14, which read thus:

"6. That the order was applied in January itself.

7. That the order was delivered some time in February to the counsel for the insurance co.

8. That on intimation by counsel the officer was deputed to contact the counsel before the State Commission and to collect file etc. in March, 2016.

9. That as the entire record was not available with the file the same could not be sent for opinion in the matter.

10. That the Officer was deputed in April, 2016 by the insurance co. to contact counsel at State Commission and seek papers and documents etc.

11. That the counsel handed over the papers and all the documents in April, 2016.

12. That there after opinion was sought in the matter and file was sent to the counsel for the same. The opinion was received in May, 2016.

13. That after seeking opinion and clearance to file the case the file was sent to the counsel for drafting and filing appeal before the Hon''ble Commission.

14. That as the counsel was out of station due to summer vacation in courts, the file was delivered only at the reopening of court in July, 2016."

From a bare perusal of the application, it is quite surprising to note that the appellant has not mentioned the dates on which the certified copy was applied and received. The application itself is non-speaking one. Nothing is mentioned about how many days'' delay occurred and needs to be condoned. It is fact that the appellant filed the instant appeal after the filing of the execution petition by the complainant before the State Commission. Thus, it appears that the appellant slept over the matter and had a casual approach towards the claim of complainant and the complaint before the State Commission. The application does not show the names of those lawyers, the place of office and the date on which, file was misplaced and when it was found. It is also pertinent to note that the period of limitation was expired way before commencement of court vacations. Therefore, in our view, the appellant has not explained sufficient cause for the delay. Hon''ble Supreme Court and this Commission repeatedly observed and not condoned the delay in several authorities like Anshul Aggarwal v. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC), R.B. Ramlingam v. R.B. Bhavaneshwari, I (2009) CLT 188 (SC)= I (2009) SLT 701=2009 (2) Scale 108; Ram Lal and Others v. Rewa Coalfields Ltd., AIR 1962 Supreme Court 361 and Bikram Dass Vs. Financial Commissioner and others AIR 1977 Supreme Court 1221 and Office of the Chief Post Master General & Ors. Vs. Living Media India Ltd. & Anr. 2012 STPL(Web) 132 (SC). The Apex Court in a recent case i.e. Sanjay Sidgonda Patil vs. Branch Manager, National Insu. Co. Ltd. & Anr., Special Leave to Appeal (Civil) No. 37183 of 2013 decided on 17.12.2013, confirmed the order of the National Commission and refused to condone the delay of 13 days.

8. On the merit, learned counsel for the complainant reiterated the facts mentioned in the complaint. Learned counsel for the complainant vehemently submitted that it was the case of theft and he had complied with the terms and conditions of OP. The complainant submitted entire details and necessary documents for the process of the claim but OP turn deaf ears and repudiated the claim after one year.

9. Learned counsel for OP submitted that the complainant failed to take care of his vehicle. It was the breach of terms and condition of the policy. The incident comes within the purview of criminal breach of trust but the police have registered it as a theft. It is further submitted that the truck was not parked but it was taken away by the employee of the complainant itself. Thus, it was the breach of trust.

10. We have perused the documents on the file. It is clear that the complainant after the incident of theft, submitted all necessary documents to OP, but the OP did not honour the claim for almost about a year. The OP never communicated about the repudiation of claim till the filing of the complaint before the State Commission. It is also to be noted that there is no condition implicit or explicit or implied in the policy conditions dealing specifically with authorized or unauthorized places of parking. The said ground or, in other words, breach of so called condition would not be germane in view of the present case. The alleged unauthorized parking has not become contributory cause for the theft of the truck. There is no proof to show that the owner had any connivance in the matter. As per the charge filed by Investigating Officer, the cleaner has been found and arrested.

11. Learned counsel for the complainant relied upon the authorities reported in National Insurance Co. Ltd. vs. Nitin Khandelwal IV (2008) CPJ 1 (SC) , Shri. Sukhwinder Singh vs. Cholamandalam General Insurance Company , IV (2013) CPJ 218(NC), Venkateswara Borewells vs. The Oriental Insurance Co. Ltd., III (2002) CPJ 308 (NC), Khem Chand Sapra vs. Oriental Insurance Co. Ltd. III (2002) CPJ 126 (NC), United India Insurance Co. Ltd. vs. Ravikant Gopalaka IV (2007) CPJ 32 (NC), and National Insurance Co. Ltd. vs. N. K. Financiers and Anr. II (2014) CPJ 402 (NC).

12. On the basis of foregoing discussion and the available file on record, it is clear that the complainant/appellant had intimated the OP about theft on the day of incident i.e. 28.03.2013 and also informed the nearest police station on the same day. We should take into account that the complainant had paid the premium on the basis of Insured Declared Value (IDV), which was fixed by the OP/insurance company itself. The repudiation made by OP was not justified. Considering the entirety of the facts, we do not find any merit in the instant appeal and also there is huge unexplained delay of 142 days. We dismiss this appeal on the point of limitation as well as on merits. There shall be no order as to costs.