(2018) 03 NCDRC CK 0160

In the National Consumer Disputes Redressal Commission

Case No : Revision Petition No. 724 Of 2018

P. Khamar Pasha APPELLANT

Vs

Branch Manager, Oriental Insurance Co. Ltd. RESPONDENT

Date of Decision : 16-03-2018

Acts Referred:

Citation : (2018) 03 NCDRC CK 0160

Hon'ble Judges : Ajit Bharihoke, J

Bench : Single Bench

Advocate : Rakesh Gogia, Paras Pandey

Final Decision : Dismissed

Judgement

1. This revision is directed against the order of the State Commission, Karnataka dated 25.7.2017 whereby the State Commission allowed the appeal preferred by the opposite party/insurance company against the order of the District Forum and dismissed the complaint.

2. Briefly put, facts relevant for the disposal of the revision petition are that that the petitioner filed a consumer complaint in the District Forum alleging that he had insured his lorry registration No.KA-16-A5288 with the opposite party for the sum insured Rs.8 lakhs. Lorry on 1 st March, 2011 was found missing during the subsistence of the insurance policy. The complainant on coming to know about the loss searched for the same in the surrounding areas and when he could not trace the lorry he lodged a complaint with the Kote Police Station, Chitradurga on 8 th March, 2011. Intimation of theft was also given to the insurance company on 8 March, 2011.

The insurance company, however, repudiated the insurance claim on the ground that in contravention of the terms and conditions of the insurance contract the intimation of theft was given with a delay of seven days. Being aggrieved of repudiation the complainant approached the concerned District Forum. The insurance company on receipt of the notice resisted the complaint by filing reply and justified repudiation on the ground of violation of condition which required the complainant to give immediate intimation of theft of vehicle in writing.

3. The District Forum on consideration of pleadings and the evidence allowed the complaint and directed the opposite party to pay to the complainant a sum of Rs.6 lakhs with 6% interest thereon from the date of repudiation i.e. 18 th March, 2011 till the realization of the amount, besides complainant was granted compensation for mental agony to the tune of Rs.3,000/- and Rs.1000/- as litigation cost.

4. The opposite party insurance company not being satisfied with the order of the District Forum approached the State Commission in appeal No.1094/2012. The State Commission on re-appreciation of the evidence came to the conclusion that it was a case of violation of insurance contract i.e. delayed information about the theft to the police station as well as insurance company. The State Commission accordingly upholding the repudiation to be justified, allowed the appeal and dismissed the complaint. Being aggrieved the complainant has approached this Commission in revision petition.

5. Learned counsel for the petitioner has drawn my attention to judgment of Hon’ble Supreme Court in the matter of Om Prakash vs. Reliance General Insurance (2017) 9 SCC 724 and submitted that in the said case also the delay of eight days in filing of FIR/intimation to the insurance company was ignored by the Supreme Court and it was held that in genuine cases on such a technical ground of delay, the insurance claims should not be repudiated.

6. I have considered the submission made by the learned counsel for the petitioner and perused the record. It is not in dispute that the subject lorry was insured with the insurance company and it is alleged to have been stolen on 1.3.2011. Admittedly the FIR pertaining to the theft was lodged on 8 th March, 2011 i.e. seven days after the theft. It is also the case of the petitioner that intimation of theft of the lorry was given to the respondent insurance company on 8 th March, 2011. No doubt the complainant has stated in his affidavit evidence that he came to know about the missing lorry in the morning of 1 st March, 2011 and thereafter he alongwith his friends started searching for the vehicle everywhere and when the vehicle could not be located despite best efforts till 8 th March, 2011, the FIR was lodged in Kote Police Station, Chitradurga and the intimation to the insurance company was given. The question is whether this explanation for delay in reporting the theft to the police as well as insurance company is acceptable?

7. The question which needs determination in this revision petition is whether admitted delay of seven days in reporting theft to the police as well the insurance company is a reasonable ground to repudiate the insurance claim of the petitioner / complainant?

8. Hon’ble Supreme Court in the matter of Om Prakash Vs. Reliance General Insurance and Another (2017) 9 SCC 724 while dealing with the effect of delay in

intimation on the insurance claim has observed as under:

It is common knowledge that a person who lost his vehicle may not straightaway go to the Insurance Company to claim compensation. At first, he will make efforts to trace the vehicle. It is true that the owner has to intimate the insurer immediately after the theft of the vehicle. However, this condition should not bar settlement of genuine claims particularly when the delay in intimation or submission of documents is due to unavoidable circumstances. The decision of the insurer to reject the claim has to be based on valid grounds. Rejection of the claims on purely technical grounds in a mechanical manner will result in loss of confidence of policy-holders in the insurance industry.

If the reason for delay in making a claim is satisfactorily explained, such a claim cannot be rejected on the ground of delay. It is also necessary to state here that it would not be fair and reasonable to reject genuine claims which had already been verified and found to be correct by the Investigator. The condition regarding the delay shall not be a shelter to repudiate the insurance claims which have been otherwise proved to be genuine. It needs no emphasis that the Consumer Protection Act aims at providing better protection of the interest of consumers. It is a beneficial legislation that deserves liberal construction. This laudable object should not be forgotten while considering the claims made under the Act.”

9. On reading of the above, it is clear that insurer is not expected to reject the genuine claim of the insured on purely technical grounds if the delay in intimation is explained giving cogent reasons Now, the question which needs answer is whether or not the seven days delay in intimating the theft of the subject vehicle to the police as well as insurance company is properly explained. In order to find answer to the above question, it is necessary to have the context of the facts of this case in the background.

10. Perusal of insurance policy of the subject vehicle would show that it was valid from 03.03.2010 to mid night of 02.03.2011. Case of the petitioner is that subject vehicle was stolen on 01.03.20111. Thus, it is clear that insurance policy was going to expire on 02.03.2011. Under these circumstances, as a prudent person, the insured was expected to show the urgency because intimation of theft of vehicle after the expiry of insurance policy would naturally have created suspicion in the mind of the insurer about the date of theft is antedating. Thus, claim of the complainant itself is highly suspicious. Be that as it may, the explanation given by the complainant for delay in lodging the FIR and giving intimation to the insurance company is that he alongwith his friends had been searching for the vehicle for a week and when it could not be traced, complainant ultimately reported the matter to the police and informed the insurance company. The complainant has neither given names of his friends who accompanied him for search of the vehicle nor those friends have been produced as witness nor their affidavit have been filed to substantiate the explanation given for the delay. In absence of any cogent evidence to support the explanation in view of the above noted background of the case, I am not inclined

to accept the explanation given by the petitioner for delayed intimation. In my view, the explanation given by the petitioner is a concocted story and, therefore, it cannot be accepted.

11. Hon'ble Supreme Court in the matter of Oriental Insurance Co. Ltd. Vs. Parvesh Chander Chadha in Civil Appeal No. 6739 of 2010 arising out of SLP (C) No. 12741 of 2010, while dealing with the same issue has observed as under:

"Admittedly, the respondent had not informed the appellant about the alleged theft of the insured vehicle till he sent letter dated 22.05.1995 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 not 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 19.09.1995 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 20.01.1995 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 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 reasons stated above and the judgment of the Supreme court in the matter of Parvesh Chander Chadha (supra), repudiation of the insurance claim by the opposite party / respondent cannot be faulted.

13. In view of the above discussion, I do not find any material irregularity or jurisdictional error in the impugned order which may call for interference in exercise of revisional jurisdiction. Revision Petition is, therefore, dismissed.

