(2008) 07 NCDRC CK 0059

In the National Consumer Disputes Redressal Commission

PARVATI DEVI APPELLANT

Vs

SUNDERLAL JAIN CHARITABLE HOSPITAL RESPONDENT

Date of Decision : 01-07-2008

Acts Referred:

Citation : 2008 3 CPJ 287

Hon'ble Judges : Sunil Kumar Garg , T.P.Gupta , Vimla Sethias J.

Advocate : Jagdish Narayan Sharma , Raj Sharma

Judgement

1. THIS appeal under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act of 1986") has been filed by the appellant-Insurance Company against the order dated 8. 8. 2007 passed by the learned District Forum, Jaipur-I, Jaipur in case No. 235/2005 by which the complaint filed by the complainant-respondent under Section 12 of the Act of 1986 was allowed partly in the manner that the appellant-Insurance Company was directed to pay to the complainant-respondent a sum of Rs. 2,64,000 as insured amount "along with" interest @ 7% p. a. from 29. 1. 2005 till payment was made and Rs. 2,000 as cost of litigation within one month failing which the complainant-respondent would be entitled to get interest on the above amount @ 12% p. a. from the date of order till payment was made.

2. THE necessary facts giving rise to this appeal are as follows: the complainant-respondent had filed a complaint under Section 12 of the Act of 1986 before the District Forum, Jaipur-I, Jaipur on 21. 3. 2005 stating inter alia that he has got his vehicle "tata Sumo" bearing No. RJ 14-5-C 7637 insured with the appellant-Insurance Company through policy No. 370203/31/03/6109638 for the period from 11. 3. 2004 to 10. 3. 2005 and the sum insured was to the tune of Rs. 2,64,000. It was further stated in the complaint that the vehicle in question was being used by Shri Mukesh Bihari Ginani with the permission of the complainant-respondent. It was further stated in the complaint that on 8. 8. 2004, when the vehicle in question was in possession of Shri Mukesh Bihari Ginani, it was stolen away by some one and on 9. 8. 2004 in the morning, a report of that incident of

theft was lodged by Mukesh Bihari Ginani in the Police Station Nahar Garh Road, Jaipur where FIR No. 130/2004 was registered and after usual investigation, the police submitted FR No. 38/2004 and the same was accepted by the learned Judicial Magistrate No. 16, Jaipur City, Jaipur. It was further stated in the complaint that information about the incident of theft of vehicle in question was also given by Mukesh Bihari Ginani to the appellant Insurance Company. Thereafter, for the theft of vehicle in question, a claim was preferred by the complainant-respondent before the appellant-Insurance Company, but that claim was repudiated by the appellant-Insurance Company through letter dated 29. 1. 2005 in the following manner: "re: Your claim No. 370203/31/04/61/00202 Sr. No. 1 on policy No. 370203/31/03/6109630. Please note that your file stands closed on account of Sr. Nos. 1 and 3 below: (1) In spite of letters/reminders sent to you, you have not complied with the required papers/documents. (2) As you have withdrawn your claim by giving your consent through your letter dated. . . . . we are closing your claim file as No Claim. (3) We are closing your claim file, on account of the following reason-As per Investigation Report Insured Not Have Insurable Interest On Vehicle. We absolve ourselves from any further liabilities, arising out of this claim, which please note. "

Thereafter, the present complaint was filed. A reply was filed by the appellant-Insurance Company before the District Forum on 6. 6. 2005 in which the appellant took the same plea which was taken by it in the repudiation letter dated 29. 1. 2005. It was further submitted that during investigation it was found that the vehicle in question was sold by the complainant-respondent to Mukesh Bihari Ginani for a consideration of Rs. 2,75,000 before the date of theft i. e. 8. 8. 2004 and the said vehicle was also in possession of Mukesh Bihari Ginani at the time of theft and, thus, on the date of theft of the vehicle in question, the complainant-respondent was not having any insurable interest because he had parted with the possession of the vehicle in question after taking consideration. Hence, claim of the complainant-respondent was rightly repudiated by the appellant through letter dated 29. 1. 2005 and the present complaint deserves to be dismissed. After hearing the parties, the learned District Forum, Jaipur-I, Jaipur through order dated 8. 8. 2007 partly allowed the complaint of the complainant-respondent in the manner as indicated above holding inter alia: (i) That since on the date of theft of vehicle in question, its registered owner was complainant-respondent and insurance as well as registration papers of the vehicle in question were in his name, therefore, he had insurable interest and he was entitled to receive insured sum. In coming to the above conclusions, the learned District Forum has placed reliance on the judgments of Hon''ble National Commission in Banowarilal Agrawalla v. National Insurance Company Limited and Another, IV (2005) CPJ 110 (NC)=2006 NCJ 72 (NC) and of this State Commission in Jai Pal Singh and Another v. National Insurance Company Limited and Another, I (2007) CPJ 423.

(ii) That repudiation of claim of the complainant-respondent by the appellant was not justified and it amounted to deficiency in service on the part of the appellant.

Aggrieved from the said order dated 8. 8. 2007 passed by the learned District Forum, Jaipur-I, Jaipur, the appellant Insurance Company has preferred this appeal.

In this appeal, the main contention of the learned Counsel for the appellant-Insurance Company is that since prior to alleged incident of theft on 8. 8. 2004, the complainant-respondent had already sold the vehicle in question to Mukesh Bihari Ginani in the month of March-April, 2004 for a consideration of Rs. 2,75,000 and also transferred its ownership in favour of Mukesh Bihari Ginani, therefore, he had not sustained any loss and, thus, the complainant respondent was not having any insurable interest in the vehicle in question. Hence, claim of complainant-respondent was rightly repudiated by the appellant and the learned District Forum has committed serious error and illegality in decreeing the claim holding that the complainant-respondent was having insurable interest in the vehicle in question.

On the other hand, the learned Counsel appearing for the complainant-respondent has supported the impugned order of the learned District Forum.

3. WE have heard the learned Counsel appearing for the appellant-Insurance Company and the learned Counsel appearing for the respondent-complainant and gone through the entire materials available on record. There is no dispute on the point that the vehicle in question bearing No. RJ 14-5-C 7637 was got insured by the complainant-respondent with the appellant-Insurance Company through policy No. 370203/31/03/6109638 for the period from 11. 3. 2004 to 10. 3. 2005 and the sum insured was to the tune of Rs. 2,64,000 IDV.

4. BEFORE proceeding further, it may be stated here that at the time when the vehicles were being insured, the appellant-Insurance Company used to make the insurance of following two types: (i) IDV Insured Declared Value. (ii) IEV Insured Estimated Value. In case of Insured Estimated Value (IEV), the market value of the vehicle in question at the time of accident or theft has to be taken into consideration, while in case of Insured Declared Value (IDV), if vehicle is lost or damaged completely, the insured is entitled to the full insurance amount as shown IDV. In the present case, as already stated above, the vehicle in question was insured for Rs. 2,64,000 IDV. There is also no dispute on the point that the vehicle in question was being used by Shri Mukesh Bihari Ginani and there is also no dispute on the point that on 8. 8. 2004, it was stolen away by some one else and at the time of theft of the vehicle in question on 8. 8. 2004, it was in the possession of Mukesh Bihari Ginani. There is also no dispute on the point that a report about the theft of vehicle in question was lodged by Mukesh Bihari Ginani on 9. 8. 2004 in the Police Station Nahar Garh, Jaipur where FIR No. 130/2004 was registered.

5. THERE is also no dispute on the point that in the aforesaid FIR, the police had submitted FIR No. 38/04 and the same was accepted by the learned Judicial Magistrate, First Class No. 16, Jaipur City, Jaipur on 12. 10. 2004.

6. THERE is also no dispute on the point that in respect of claim of the complainant respondent, investigation was also got conducted by the appellant-Insurance Company through Mahendra Pal Singh, Investigator, who had come to the conclusion that the vehicle in question was sold by the complainant respondent in the month of March-April, 2004 to Mukesh Bihari Ginani for a consideration of Rs. 2,75,000, but the registration has not been transferred in the name of Mukesh Bihari Ginani. There is also no dispute on the point that during investigation in the aforesaid FIR, it was found that prior to theft, Mukesh Bihari Ginani had purchased the vehicle in question from the complainant-respondent, though it was not transferred and registered in his name in RTO papers and, therefore, he has lodged the report.

There is also no dispute on the point that though the vehicle in question was sold by the complainant-respondent to Mukesh Bihari Ginani before the incident of its theft, but on the date of theft of vehicle in question i. e. on 8. 8. 2004, the registration certificate and insurance papers of the vehicle in question were in the name of complainant-respondent.

7. THERE is also no dispute on the point that on the date of theft, the vehicle in question was insured with the appellant-Insurance Company and it was insured in the name of the complainant-respondent. There is also no dispute on the point that the claim of the complainant-respondent was repudiated by the appellant-Insurance Company on the ground that since prior to incident of theft, the complainant-respondent had already sold the vehicle in question to Mukesh Bihari Ginani in March-April, 2004 after taking a sum of Rs. 2,75,000, therefore, he was not having any insurable interest in the vehicle in question.

8. THUS, the question for consideration is whether in the facts and circumstances just narrated above, repudiation of claim of complainant-respondent by appellant was justified or not or whether the findings of the learned District Forum that complainant-respondent was having insurable interest in the vehicle in question could be sustained or not. In the case of Banowarilal Agrawalla v. National Insurance Company Limited and Another, IV (2005) CPJ 110 (NC)=2006 NCJ 72 (NC), where the complainant-petitioner of that case had purchased a second hand vehicle from one EC Bose and Company, which was insured with the National Insurance Company and the same was damaged extensively by fire on 10. 9. 2005 and the claim preferred by the purchaser/complainant-petitioner of that case was repudiated on the ground that since the policy had not been transferred in the name of purchaser/complainant-petitioner, the claim cannot be settled in his favour, the Hon''ble National Commission has held that purchaser/ complainant-petitioner has got no locus to file the complaint as he was not the insured and claim should have been filed by the original policy holder and not by the complainant-petitioner/purchaser. It was further held that the transferee in absence of insurance cover in his name cannot claim compensation from the Insurance Company, but as the cover was in the name of original owner, the original owner could claim the damages from the Insurance Company. The

observations made by the Hon''ble National Commission in para No. 10 of the judgment are quoted here: "10. Be that as it may, it has also been held that since it is the vehicle which is insured and that cover is not disputed, only question involved is who should have preferred the claim? As rightly interpreted above, the petitioner has got no locus to file this complaint as he was not the insured. The only flaw in this case is that the claim should have been filed by the original policy holder and not by the complainant/purchaser of the vehicle. In this slightly technical situation, what could have been done was to have the complaint filed by the insured. Keeping in mind the principle of indemnification of loss by the insurers, in our view, this technicality should not come in the way of the Insurance Company honouring its part of the contract. In the facts and circumstances of the case, we direct that the claim before the respondent-Insurance Company be filed by the insured as per Policy, within a period of 6 weeks of passing of this order upon which the respondent shall consider the case as per law. The time spent before the Consumer Forums in pursuing his remedy by way of filing this complaint, shall have to be condoned, as it appears that it was on account of some wrong advice that this procedure was initiated upon filing a complaint by the insured as per policy, the respondent shall sympathetically consider the claim in view of the report of the surveyor which is on record and settle the claim as per terms of the policy expeditiously. "

In the case of Jai Pal Singh and Another v. National Insurance Company Limited and Another, I (2007) CPJ 423, where the appellant-complainant No. 1 of that case had purchased a motor cycle from one Bhoj Raj, which was insured with National Insurance Company, but the registration certificate and insurance policy were not transferred in the name of the transferee and it was stolen away while the registration certificate and the insurance policy were in the name of original owner of the motor cycle in question, it was held by this State Commission that since registration certificate and insurance policy had not been transferred in the name of transferee, therefore, in absence of insurance cover in his name, he cannot claim compensation from insurer. It was further held that since purchaser of vehicle in question had no privity of contract with the Insurance Company, therefore, he cannot claim any amount from the Insurance Company and claim could be made by the original owner and policy holder. In coming to the above conclusions, this State Commission has placed reliance on the decision of Hon''ble National Commission in the case of Banowarilal Agrawalla (supra).

9. A similar view was taken by this State Commission in National Insurance Company Limited v. Shrawan Bhati, Appeal No. 1223/2007 decided on 1. 11. 2007, where it was held that Insurance Company was under legal obligation to indemnify the loss of vehicle to the complainant-respondent of that case only as it was insured in his name and not to purchaser, who had no privity of contract with the Insurance Company.

10. THUS, in view of the law laid down by the Hon''ble National Commission in the case of Banowarilal Agrawalla (supra) and this State Commission in the cases

of Jai Pal Singh (supra) and Shrawan Bhati (supra), though vehicle in question was sold by the complainant-respondent to Mukesh Bihari Ginani prior to alleged incident of theft, but registration certificate and insurance papers were not transferred and registered in his name and while the registration certificate as well as insurance papers were in the name of the complainant-respondent, the vehicle in question was stolen away, therefore, Mukesh Bihari Ginani, alleged purchaser, in absence of insurance cover/policy in his name, cannot claim compensation from Insurance Company as he had no privity of contract with the Insurance Company and claim could only be made by the complainant-respondent as vehicle in question was insured in his name and he had insurable interest and the learned District Forum has rightly held so. No doubt an agreement was executed between the complainant-respondent and Mukesh Bihari Ginani for sale of vehicle in question, but that agreement would not confer any legal right on Mukesh Bihari Ginani as his name was not entered in the transport papers as well as in the insurance papers and on the date of alleged incident of theft of vehicle in question on 8. 8. 2004, the transport as well as insurance papers were in the name of complainant-respondent. In absence of insurance cover/policy in his name, Mukesh Bihari Ginani, purchaser-transferee cannot claim compensation from appellant Insurance Company and claim could only be made by the complainant respondent as the vehicle in question was insured in his name.

Thus, for the reasons stated above, it is held that the appellant-Insurance Company was not justified in repudiating the claim of the complainant-respondent and it amounted to deficiency in service on the part of the appellant and the learned District Forum has rightly observed so. The appellant-Insurance Company was under legal obligation to indemnify the loss of vehicle to the complainant-respondent only as it was insured in his name and not to Mukesh Bihari Ginani, purchaser, who had no privity of contract with the appellant Insurance Company and, therefore, the learned District Forum was right in decreeing the claim of the complainant-respondent holding that the complainant-respondent was having insurable interest in the vehicle in question. The findings of the learned District Forum in this respect are based on correct appreciation of entire materials and evidence available on record and they do not suffer from any basic infirmity or illegality or perversity. Hence, no interference is called for with the same and this appeal deserves to be dismissed. Accordingly, this appeal filed by the appellant is dismissed. Appeal dismissed.