(2012) 04 NCDRC CK 0053

In the National Consumer Disputes Redressal Commission

Prahlad Sharma APPELLANT

Vs

ICICI Lombard General Insurance Co. And RESPONDENT

Date of Decision : 24-04-2012

Acts Referred:

Citation : 2012 0 NCDRC 125 : 2012 2 CPJ 498 : 2012 2 CPR 293

Hon'ble Judges : R.C.Jain , S.K.Naik J.

Advocate : Nitinjya Chaudhary , Anuj Chauhan

Judgement

1. THIS order will decide the objections of the opposite party/Insurance Company in regard to the maintainability of the complaint in the present form before this Commission. The complaint has been filed against the opposite party No.1/Insurance Company and opposite party No.2/Exclusive Motors Private Limited alleging deficiency in service on their part.

2. IN nut shell the case of the complainant is that after purchase of a car-Lamborghini Gallardo Coupe imported from Italy, the complainant got it insured from the opposite party No.1/INsurance Company on 22.10.2009 on which date the vehicle in question was also registered with the Transport Authority of the Government of NCT of Delhi. On 05.11.2009, the said car met with an accident, while driven by a certain Mr. Divakar Pilania, representative of O.P. No. 2/dealer who had supplied the car to the complainant and the car was damaged requiring extensive repairs cost of which was estimated at Rs. 92,42,025.30P. The complainant lodged the claim with the insurance company for indemnification of the loss but the insurance company repudiated the claim on the grounds that the statements and disclosers made by the complainant in making the claim were not in accordance with the actual circumstances of the accident and it was found that the referred accident had taken place on 22.10.2009 i.e. one day prior to the date of inception of the policy on 23.10.2009 and not on 05.11.2009. Not satisfied with the said repudiation, the complainant filed the complaint seeking the following relief (s) / compensation from the opposite parties: ?It is therefore, respectfully prayed that this Hon?ble Commission may kindly be pleased to grant

the following reliefs to the complainant by way of deficiency of service on the part of the opposite party No.1: a) A sum of Rs. 92,42,025.37P towards repair charges of the car in question, as per the estimate already given to the opposite party no.1; b) A sum of Rs. 5,50,000.00 towards expenses incurred so far for keeping the car in the garage of the opposite party no.2 where it is lying for repairs; c) A sum of Rs. 10,00,000.00 by way of compensation on account of great harassment and mental torture causes to the complainant due to withholding of payment by the opposite party no.1 of the genuine claim of the complainant and repudiating the same illegally; d) Such further amounts as during the pendency of this complaint before this Hon?ble Commission, the complainant might further be burdened on account of escalation in prices of parts required for repair of the car and labour cost and for continuing to keep the car in garage.?

On being noticed on the complaint, the opposite party/insurance company has filed a reply raising preliminary objections about the maintainability of the present complaint against the said opposite party, inter-alia on the grounds that the present complaint has been filed without any cause of action against the answering opposite party and is abuse of process of law; the complaint has been filed with illegal motive and ulterior endeavor to secure illegal pecuniary gains by suppressing the material facts and circumstances. It is further pleaded that the complainant had obtained insurance policy for his Lamborgini Gallardo Coupe, a luxury car that is a private car and the opposite party had issued a Cover Note bearing Number 57919149 and thereafter provided insurance policy number 3001/57919149/00/000 to the complainant along with the terms and conditions governing the contract of insurance which would show that the vehicle in question was insured from 23.10.2009 and was valid upto 22.10.2010. On issue of the policy, cover note was cancelled. It is also stated that the vehicle in question was registered as Government Vehicle without any insurance policy on 22.10.2010. It is denied that the vehicle in question had met with an accident on 05.11.2009 when it was being driven by Mr. Divakar Pilania in Great Noida, Uttar Pradesh and on receipt of the claim it was found that the vehicle in question had met with an accident on 22.10.2009 itself and not on 05.11.2009 as alleged by the complainant. In any case, it is pleaded that the repudiation of claim by the insurance company is justified. Reference is also been made to IMT 13 of Indian Motor Tariff providing for coverage and indemnification when the vehicle is engaged in such activities on payment of additional premium. Liability to pay the compensation much less the compensation as claimed by the complainant is specifically denied.

We have heard Mr. Nitinjya Chaudhry., learned counsel on behalf of the complainant and Mr. Anuj Chauhan, learned counsel on behalf of O.P. No. 1/ Insurance Company and have given our thoughtful consideration to their submissions. Learned counsel appearing for the opposite party contended that the insurance claim lodged by the complainant for indemnification of loss to his vehicle was based on suppression of true facts and is rather based on incorrect /

false representations made in regard to the date and time of the peril and other circumstances relevant to the settlement of claim. It was submitted that the questions involved cannot be decided by a consumer Fora like this Commission in exercise of its summary jurisdiction as voluminous oral and documentary evidence will have to be led and appreciated before the complaint can be answered and which can only be done by a competent Civil Court in a civil suit in exercise of its original jurisdiction.

3. COUNSEL for the complainant has contended otherwise and submitted that no detailed questions of facts are involved, which would require to be established through voluminous oral and documentary evidence. Having considered the submissions of the counsel and the material brought on record in the shape of final report of the surveyor-Ganshyam Nayyar as also the report of investigations submitted by Automotive Service Solutions, where it was found that the car had met with an accident on 22.10.2009 while being used in the shooting of a film by some lady model. In view of the material filed on record, we are of the view that the present case is not as simple as is sought to be presented by the complainant about the insured vehicle having met with an accident on 05.11.2009. Many disputed questions of facts viz. the date on which the vehicle in question was insured, on which date the vehicle was registered with the State Transport Authorities under the Motor Vehicle Act and the date on which the peril / accident took place, besides the question who was driving the vehicle in question and for what purpose and whether the complainant has violated any terms and conditions of the insurance policy disentitling the complainant to indemnification of his claim on that ground are involved in the present case. In our view, the above noted controversy would require voluminous oral and documentary evidence including cross examination of the witnesses and also the determination of inter-se liability of the opposite parties to indemnify the complainant, if at all the complainant succeeds in its claim, which cannot possibly be done before this Commission in exercise of its summary jurisdiction within the timeframe of about three-four months as envisaged by the Consumer Protection Act, 1986. For these reasons, we are of the view that complainant should be relegated to work out his remedy before the competent Civil Court of original jurisdiction.

4. IN the result, we hold that the present complaint is not maintainable before this Commission. The complaint is accordingly dismissed however, with liberty to the complainant to work out his remedy in accordance with law.