(2017) 03 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

Case No : 157 of 2017

RAKESH S/O. MR.SATBIR SINGH, & ANR. — APPELLANT

Vs

RELIANCE GENERAL INSURANCE COMPANY LIMITED — RESPONDENT

Date of Decision : 24-03-2017

Acts Referred:

Indian Penal Code, 1860, Section 379 - Punishment for theft

Consumer Protection Act, 1986, Section 12, Section 21(b) - Manner in which complaint shal

Citation : (2017) 03 NCDRC CK 0014

Hon'ble Judges : Rekha Gupta, Prem Narain

Advocate : ANKIT SWARUP

Judgement

1. The present revision petition no. 157 of 2017 has been filed against the order dated 17.10.2016 of the Haryana State Consume Disputes Redressal Commission, Panchkula (''the State Commission'') in Appeal no. 219 of 2016.

2. The facts of the case as per the petitioner/ complainant are that the petitioner had filed a complaint under section 12 of the Consumer Protection Act, 1986 with the allegations that he owned a truck bearing registration no. HR 63B 3998. It was insured with the respondent/ opposite party/ insurance company, vide insurance policy for the period 24.04.2012 to 23.04.2013. The insured declared value (IDV) of the truck was Rs.16,60,000/-. The petitioner had employed Ashok Kumar - complainant as the driver. On the intervening night of 17/18.05.2012, the said truck was parked near the house of the petitioner no.1 when it was stolen. Ashok Kumar not finding the truck informed the policy control room on telephone no.100. The driver also informed the insurance company. It was submitted that since the driver was illiterate, he after consulting some members of the locality got First Information Report (FIR) registered showing himself to be the owner. The claim being repudiated, the petitioner filed the instant complaint.

3. It is, therefore, prayed that the respondent may kindly be directed to pay the

insurance amount of Rs.16,60,000/- to the petitioner with interest of 12% per annum and Rs.50,000/- also be awarded to the petitioner for all humiliation and harassment, he suffered from the hands of the respondent.

4. The respondent/ insurance company contested the complaint inter alia stating that there was unexplained delay of seven days in lodging the FIR. The truck was stolen on the intervening night of 17/18/05/2012 and the FIR was lodged on 26.05.2012 and the insurance company was informed on 29.05.2012. Another plea that raised was that the complainant had no insurable interest in the truck as he sold the vehicle to one Ashok before the theft, therefore, he was not entitled to any compensation.

5. The District Consumer Disputes Redressal Form, Jhajjar (''the District Forum'') vide its order dated 12.01.2016 while allowing the complaint observed as under:

"The counsel for the respondent tried to prove the fact by producing some documents that complainant had sold his vehicle to Ashok but we have observed that R C of vehicle still exists in the name of complainant, insurance of vehicle also exists in the name of complainant Ashok Kumar, therefore, by saying from the mouth of respondents that the complainant has no insurable interest in the vehicle is of no use and unjustified. Sufficient documents are on record and it has been observed that the documents go in favour of complainant proving that actually the theft of truck in question which was insured with the respondent took place and immediate action of lodging report with police has been taken in the present case. Under the facts and circumstances of the present case in hand, we have observed that by repudiating the claim of complainant on some technical grounds, the respondent has committed deficiency in service. Therefore, we allow the complaint of the complainant and direct the respondent to make the payment of claim/ insured declared value of Rs.16,60,000/- to the complainant as per policy along with an interest @ 9% per annum from the date of theft, i.e., 18.05.2012 till realisation of final payment to the complainant subject to transfer of RC and subrogation letter in the name of respondent company by the complainant. However, the respondent company shall be at liberty to make the payment of awarded/ ordered amount to the complainant through finance company of vehicle in question after adjustment of loan account, if hypothecated. The complainant is also entitled for a sum of Rs.5,500/- on account of litigation expenses for the present unwanted and unwarranted litigation only due to the deficiency in service on the part of the respondent. The complaint stands disposed of accordingly."

6. Aggrieved by the order of the District Forum the respondent/ opposite party/ insurance complaint filed an appeal before the State Commission. The State Commission while allowing the appeal observed as under:

"The insurance policy is in the name of complainant Rakesh son of Shri Satvir as owner of the insured vehicle. Only the policy itself is not sufficient. FIR has been placed on the file which clearly shows that the complainant had sold the truck to

Sonu who further sold it to Ashok Kumar. FIR was lodged by Ashok Kumar submitting himself to be the owner. Intimation to the National Crime Bureau was also given by Ashok Kumar as owner of the vehicle. Even claim with the Insurance Company has also been lodged by Ashok Kumar vide claim form Annexure A 2. All these facts also find support from the affidavit, duly sworn by Ashok Kumar on 14.06.2012 nearly after a month of the theft. Claim form was lodged by Ashok Kumar claiming himself to be the owner. Except that the name of the complainant appears in the insurance policy, the complainant has not been able to prove from any evidence that he continued to be having insurable interest in the vehicle. The insurance company has written letters to the complainant, before repudiation but he did not respond to any of them. All this consistently shows that the complainant ceased to have any insurable interest in the vehicle and it is only for that reason he did not lodge the claim with the insurance company. The fact that claim was lodged by Ashok Kumar with the insurance company also speaks that it is the Ashok Kumar who was the de facto owner of the vehicle. That besides even unexplained delay of seven days in lodging FIR and 11 days delays in giving intimation to the insurance company. Thus, the District Forum has failed to appreciate the above stated facts into consideration and the impugned order cannot sustain.

For the reasons recorded herein above, the appeal is accepted, the impugned order is set aside and the complaint is dismissed".

7. Hence, the present revision petition.

8. We have heard the learned counsel for the petitioner. He contended that the State Commission has erred in holding that Shri Rakesh Kumar was not the owner of the stolen truck and such as he has an insurable interest. He further contended that as the petitioner is not only the holder of insurance policy but also of certificate of registration, national permit, certificate fitness, pollution certificate in his name, hence, he should be considered to be the lawful owner of the truck.

9. The revision petition has been filed by two petitioners, i.e., Rakesh and Ashok Kumar. Ashok Kumar was not a party either before the District Forum or before the State Commission. He was also not a complainant in the original complaint. It appears that Rakesh - petitioner no. 1 has added his name to strengthen his own case.

10. We have carefully gone through the record. It is evident from the FIR filed on 26.05.2016 that Shri Ashok Kumar had lodged the FIR as the owner of the truck which was stolen. The contents of the FIR are reproduced below:

"To in charge, police post Sector 6, Bhadurgarh

Sir,

I Ashok Kumar Son of Sukhbir Singh am resident of Sankhol. I am friendly with Rakesh son of Satbir of village Kasni at present Mundka. Rakesh deals in trucks.

A few days ago I had talked to Rakesh about purchasing an old vehicle and then Rakesh told me that he owns a 10 wheeler truck of Registration no. HR 63 B 3998 which he had sold to Sonu son of Surinder of village Marakpur, Delhi. But Sonu is not making timely payment of instalments to the financier. Sonu is unable to ply this truck. The truck being in my name, the loan stands in my name. It is my liability I shall get this truck delivered to you from Sonu. Sonu had paid me Rs.5 lakh. You pay these Rs.5 lakh to Sonu. So having agreed to this, Rakesh got this truck delivered to me from Sonu on 09.03.2012. I had paid Rs.3,50,000/- to Sonu and amount of Rs.1,50,000/- was yet to be paid. Further, instalments were to be paid by me and I paid two instalments of Rs.41,300/- each also. But Rakesh or Sonu had not given me any sale letter regarding purchasing of truck and third instalment due for payment on 19.05.2012. Sonu several times came to getting the balance amount of Rs.1,50,000/- but I could not manage the amount. Sonu and Rakesh had been telling me that in case I failed to pay the balance amount of Rs.1,50,000/- then they will take back my truck. Sonu resident of Marakpur had come to me in Sankhol on 16.05.2012 also and was enquiring about this truck. But at the time the truck had gone elsewhere. On 17.05.2012 I had parked my truck no. HR 63 B 3998 in the evening in front of my house across main Rohtak road in front of Gole Market Panchayat shops. I did not find this truck there on the morning of 18.05.2012 and so I suspected if Sonu and Rakesh might have taken back their truck. So first of all I contacted Sonu but Sonu denied having taken it away. I contacted Rakesh but during this period he had gone out of station somewhere to Shimla and therefore, could not be contacted. Till now I had been satisfying myself about the truck from Sonu and Rakesh and now I have contacted Rakesh also and he has also satisfied me about his not having taken away truck. Now I have satisfied myself that my above truck has been stolen by some unknown person on the night of 17/18.05.2012. I have been searching for my truck at my own level till now but could not find it. Please register FIR of the theft of my, this truck and my truck be searched. My, this truck is TATA 2518 TC make which has white front and the body colour is red and its Engine no. is 11C63113942. Its Chasis no. is MAT44805OBOD06994. Sd/- Ashok Kumar son of Sukhbir Singh caste Sankhol 9728394040 Dt 25.05.2012. Action taken by police - Today I, ASI along with C Rambir 1112, during patrolling and crime investigation, was present at bridge no. 2 Sector 5, when the above complaint Ashok Kumar met me ASI and submitted the application with above contents. From the contents of the above application offence under section 379 IPC appears to have been committed. Therefore, the written report is sent to the police station through C Rambir 1112 for registration of case. After registration of case the FIR number may be intimated. I, ASI am proceeding to the place of occurrence along with complainant, at bridge no. 2, Sector 5, B Garh, SD JORA SINHG ASI PP SECTOR 6 B GARH DT 26.04.12 AT 05.05 PM. In the police station; After the receipt of report through C Rambir 1112 and finding the offence under section 379 IPC having been committed, the above case is registered and the report is being sent through EHC Satnarayan 289 to R/SP, R/DSP/ R/SDJM of the police station. The copy of the police file along with original written report is being sent through C to the ASI on the spot".

11. We have also gone through the claim form submitted to the insurance company. This claim has been filed by Shri Ashok Kumar as the owner of the vehicle. Counsel for the petitioner no. 1, Rakesh has confirmed that no FIR or claim form had been filed by Rakesh either with the police or to the insurance company. In the investigation report the written statement is as under:

"It is learnt that Mr Ashok Kumar driven the stolen vehicle last purchased it from the insured Mr Rakesh. Mr Ashok Kumar confirmed the same in an affidavit of Rs.100/- non-judicial stamp paper duly attested by the Oath Commissioner, Bahadurgarh. In the affidavit he narrated that he is residing at Village and Post Sankhaul, Tehsil Bahdurgarh, District Jhajjar, Haryana informed us that he had a NP Permit TATA 2518 truck bearing registration number HR 63 B 3998 but in the name of his friend Mr Rakesh son of Satbir resident of Village Kasani, District Jhajjar, Haryana. He added that Mr Rakesh had sold the vehicle to Mr Sonu son of Mr Surender resident of Markpur, Delhi. Since Mr Sonu was unable to pay the monthly instalments of the vehicle to the financier, Mr Rakesh made Mr Ashok Kumar to purchase the vehicle from Mr Sonu for Rs.5,00,000/- of which Rs.3,50,000/- had been paid to Mr Sonu by Mr Ashok Kumar and balance of Rs.1,50,000/- was yet to be paid. He further added that he had purchased the vehicle from Mr Sonu on 09.03.2012 and was paying the monthly instalments against the vehicle loan to City Corp. Finance India Ltd. He further informed us that on 17.05.2012 at around 04.00 p m he parked the vehicle duly locked near his house but on 18.05.2012 morning he found the vehicle missing from there. He enquired about the vehicle with Mr Rakesh and Mr Sonu but when could not locate the vehicle anywhere he intimated the theft to police control room. Police visited the place and conducted the enquiry FIR against the theft was lodged at Bahadurgarh police station. He further added Mr Rakesh has nothing to do with the stolen vehicle, hence, he will complete all the documentation of the insured vehicle. The affidavit witnessed by Mr Pradeep Kumar is attached herewith. Copy of DL of Mr Prdeep is also attached as his ID proof.

12. The investigator in his report dated 03.07.2012 has concluded that:

"Conclusion:

After the diligent investigation, environment checks, verification of police records and a close analysis, we give below our opinion:

i.The theft incident recorded in the FIR is true and we found no evidence to suspect any foul play or wrong doings in reporting the theft to police;

ii.Mr Ashok Kumar user of the vehicle confirmed in writing on Rs.100/- non-judicial stamp paper duly attested by Oath Commissioner that he had purchased the insured vehicle on 09.03.2012 from its previous owner Mr Sonu and the purchase was mediated by the insured Mr Rakesh;

iii.Neighbours of Mr Ashok confirmed in writing that they had seen the vehicle with Mr Ashok since two months;

iv.Claim form is signed by Mr Ashok Kumar. Mr Ashok Kumar confirmed in the affidavit that Mr Rakesh has nothing to do with the vehicle;

v.Since Mr Rakesh had sold the vehicle to Mr Sonu who again sold it to Mr Ashok Kumar, the insured Mr Rakesh has no insurable interest on the insured vehicle;

vi.However, the vehicle is still in the name of Mr Rakesh Kumar as per RTA records".

13. We have seen the affidavit of Shri Ashok Kumar on Rs.100/- non-judicial stamp paper duly attested by Oath Commissioner placed on record stating that he had purchased the vehicle on 09.03.2012 from its previous owner Sonu and the purchase was mediated by Mr Rakesh. It reads as under:

"I Ashok Kumar son of Shri Sukbir Singh, resident of village and post office Sankhol, Tehsil Bhadurgarh, District Jhajjar. I had a National permit TATA 2518 Truck number HR 63 B - 3998. This vehicle was in the name of Rakesh son of Shri Satbir resident of village Kasni District Jhajjar who is my friend. Rakesh had sold this vehicle to Sonu son of Surinder resident of Marakpur, Delhi, but Sonu was unable to pay its instalments and therefore Rakesh had this vehicle purchased by me from Sonu son of Surinder for Rs.5,00,000/- and I had paid Rs.3,50,000/- to Sonu and Rs.1,50,000/- were due to be paid. I had purchased this vehicle from Sonu on 09.03.2012. I used to pay the instalment for this in City Corp. Finance India Ltd., I had parked this vehicle on 17.05.2012 at 04.00 PM near my house after locking it, but on 18.05.2012 in the morning I saw that the vehicle was not there. _____ line missing _______. I immediately made call on no. 100. Police came on the spot to take action. And I, in my own name, registered complaint about the theft of the vehicle in police station Shah/ Bhadurgarh. Now Rakesh has no relation whatsoever with this vehicle and all the paper work related to the vehicle shall be done by me."

14. Petitioner no. 1 has not given any evidence to support his averment that Ashok Kumar was the driver and was driving the vehicle. He has only made a bald statement in his letter dated 11.12.2012 to the respondent to this effect. None of the neighbours of Ashok Kumar spoken to by the Investigator had stated that he was merely a driver of the truck and the said vehicle was stolen from Rakesh Kumar''s house. It is also clear from the FIR that the reasons for the delay in lodging the FIR were because Rakesh - petitioner no. 1 had sold the vehicle to Sonu, from whom the said vehicle had been purchased by Ashok Kumar and Rakesh Kumar had threatened to take back the vehicle unless the last instalment of Rs.1,50,000/- was paid. Hence, when he found that the vehicle parked in front of his house was missing he suspected that Sonu and Rakesh might have taken it away. Only after he confirmed that the vehicle was not taken by them an FIR of the theft by an unknown person of the truck was lodged.

15. In view of the above, we find that petitioner no. 1 Rakesh has failed to provide any evidence to support the fact that he was the owner of the truck at the time of the theft having insurable interest and not Ashok Kumar. Thus, no jurisdictional or legal error has been shown to us to call for interference in the exercise of powers under Section 21 (b) of Act. The order of the State Commission does not call for any interference nor does it suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity. Thus, the present revision petition is hereby, dismissed.