(2016) 10 NCDRC CK 0017

In the National Consumer Disputes Redressal Commission

Case No : 2661 of 2016

RAMESH KAUSHIK S/O. SH. TEK RAM — APPELLANT

Vs

UNITED INDIA INSURANCE COMPANY LTD. & ORS. — RESPONDENT

Date of Decision : 06-10-2016

Acts Referred:

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

Citation : 2016 4 CPR 104

Hon'ble Judges : Ajit Bharihoke, S.M. Kantikar

Advocate : Savita Devi

Final Decision : Petition Dismissed

Judgement

1. This revision is directed against the order of the Haryana State Consumer Disputes Redressal Commission, Panchkula (in short, "the State Commission) dated 16.11.2015 in first appeal No.690/2015 whereby the State Commission dismissed the appeal preferred by the petitioner/complainant against the order of the District Forum, Jind.

2. The facts relevant for the disposal of the revision petition are that the petitioner Ramesh Kaushik filed a consumer complaint in the District Forum, Jind alleging that he is partner of M/s Parakh Cassette Industries. Said firm purchased Tata Indigo CS Diesel (LX) car with temporary registration No.HR-99-HB (TP) 5070 from opposite party No.2. The vehicle was insured in the name of the firm with opposite party No.1 insurance company. It is the case of the complainant that due to some technical reason the finance company was not inclined to sanction loan for purchase of said vehicle in the name of the firm, therefore, the complainant applied for loan in his own name. Thereafter, the complainant applied for change of ownership in the record of the opposite party No.2 dealer. The complainant also requested the agent of the opposite party No.1 for transferring the insurance cover from the name of the firm in his name and paid for the requisite transfer changes to the agent. The subject vehicle was stolen in

the intervening night of 21/22.7.2011 from in front of the house of the complainant in Ajmer Basti, Bhiwani Road, Jind. The matter was reported to the police vide FIR 479 dated 22.7.2011 under Section 379 IPC, police station Jind. The complainant lodged the insurance claim but the claim was repudiated on the ground that the insurance was not in his name. Being aggrieved of the repudiation of the claim, the petitioner filed the consumer complaint.

3. Consumer complaint was resisted by the opposite party No.1. In the written statement the insurance company justified the repudiation on two grounds i.e. intimation of theft was given after a gap of 12 days which amounts to violation of the terms and conditions of the insurance contract. It was also pleaded that on the date of theft the petitioner was not having any insurable interest in the subject vehicle.

4. The District Forum on consideration of pleadings and the evidence did not find merit in the complaint. The complaint was accordingly dismissed mainly on the ground that on the date of theft petitioner/complainant was not the owner of the vehicle and also that the petitioner had violated the terms and conditions of the insurance contract by failing to give immediate information of theft in writing to the insurance company.

5. Being aggrieved of the order of the District Forum the complainant preferred an appeal. The State Commission, Haryana did not find merit in the appeal and confirmed the order of the District Forum.

6. Learned counsel for the complainant has contended that the orders of the Fora below are not sustainable because they have failed to appreciate that because of some technical error regarding grant of loan, the complainant had requested opposite party No.2 dealer to make necessary correction in the relevant documents of sale of vehicle by changing the name of the owner from firm to his personal name and that a request for transfer of insurance in his name was made to the agent of the insurance company who was paid the transfer charges in cash. It is further argued that opposite party insurance company has rejected the insurance claim on technical ground against the circular of IRDA which requires that the insurer should treat the claims on merit and good spirit and refrain from rejecting the claims on technical grounds in mechanical fashion as such a practice would erode the confidence of the policy holders in the insurance industry.

7. On careful consideration of record we do not find merit in the contention of the petitioner. Undisputedly the subject vehicle was purchased in the name of the partnership firm and the insurance cover was also taken in the name of the firm. The petitioner has relied upon the copy of the insurance policy Ext. C-8. On perusal of this document, we find that the insurance cover was issued in the name of the complainant w.e.f. 1.8.2011. Admittedly, the theft of the vehicle took place on the night of 21/22.7.2011. On the said date the complainant was not the insured therefore he had no insurable interest in the subject vehicle. So

far as the plea of the complainant to the effect that he had paid the transfer charges for change of name of insurer by cheque of Rs.55/- is concerned, the subject cheque is dated 1.8.2011, which makes it clear that till 1.8.2011 there was no valid request for transfer of insurance of the subject vehicle from the name of the partnership firm in the name of the complainant. There is no cogent evidence on record to show that before the theft partnership firm sold the vehicle to the petitioner. Thus, it is clear that request for transfer of ownership was made after the theft had taken place. Therefore, we do not find any fault with the concurrent finding of the Fora below dismissing the complaint. Otherwise also it is evident from the record that the intimation of theft was given after a delay of 12 days which amounts to violation of the terms of the contract. On this count also the respondent was justified in repudiating the claim in view of the judgment of Hon?ble Supreme Court in the matter of " Oriental Insurance Co. Ltd. Vs. Parvesh Chander Chadha - Civil Appeal No.6739/2010 decided on 17.8.2010. In view of the discussion above, we do not find merit in the revision petition. Revision petition is accordingly dismissed.

