(1993) 07 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

Rash Bihari Singh APPELLANT

Vs

NEW INDIA ASSURANCE CO. RESPONDENT

Date of Decision : 30-07-1993

Acts Referred:

Citation : 1993 3 CPR 677 : 1994 3 CPJ 463

Hon'ble Judges : B.N.Sinha , K.P.Sinha , Kalpana Ashok J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant has filed this case claiming Rs. 1,50,000/- against the which includes his claim under the insurance policy of Rs. 1,10,000/- and compensation of Rs. 40,000/- only.

2. THE case of the complainant may be briefly stated. THE complainant is the owner of Maruti Car No. BEA 7500 which stands registered in the name of his wife Mrs. Manna Rani Singh and he got his car insured for the period 10.12.90 to 9.12.91 under Policy No. 31-01963 (Annexure 3 to the complaint petition). THE car met with a serious accident on 27.11.92 near village Jagatpur, P.S. Rohani, District Varanasi. THE Opposite Party was informed about the accident and subsequently he filed his claim before the Insurance Company on 6.1.92. By letter dated 3.3.92 the Divisional Manager of the Insurance Company-Opposite Party rejected the claim of the complainant. THE complainant alleges that repudiation of his claim by the Opposite Party is illegal and unfounded due to which he has suffered loss and he, therefore, has claimed Rs. 1,50,000.00 from the Opposite Party. The opposite party was noticed and thereafter they appeared and filed the counter version alleging inter alia as follows. The car was insured for the period 10.10.90 to 9.10.91 and the premium for the said period had been collected by the Opposite Party through cheque and cover note dated 10.10.90. After the expiry of the aforesaid Policy on 9.10.91, after a gap of thirty three days, the complainant got his car insured for the period 13.11.91 to 12.11.92 and a cheque of Rs. 3252/- only was given towards the premium. But the said cheque was dishonoured by the bank and therefore his Policy was cancelled and

intimation regarding the same was sent to the insured through the registered letter dated 25th November, 1991. Hence on the alleged date of incident his car was not insured and therefore in respect thereof the complainant is not entitled to get any amount. It has been further averred on behalf of the Opposite Party in his counter version that the complainant has manipulated the date of the Policy and entered 10.12.90 to 9.12.91 in place of 10.10.90 to 9.10.91 in Annexure 3 to the complaint petition. Hence the claim of the complainant was repudiated.

A rejoinder was filed on behalf of the complainant to the written version filed on behalf of the Opposite Party stating that the original policy was lost in the accident and Annexure 3 is photo-stat copy thereof and that the allegation of the O.P. that Annexure 3 of the complaint petition has been manipulated and tampered is wrong rather the O.P. has manipulated Annexure ''A'' and Annexure ''A'' is forged and fabricated document.

3. IT may be mentioned that the complainant in his complaint petition had accepted the issuance of cheque dated 13.11.91 which was dishonoured by the bank but it has been averred that the cheque dated 13.11.91 was issued under the wrong impression that the car was insured upto 12.11.91 as such impression was wrongly given by the agent of O.P. It is apparent from the facts stated above that the foundational facts of the case are in dispute. Both the parties are alleging manipulation and tampering in Insurance Policy against each other in the photo-stat copies of the Insurance Policy produced by the other side in support of their case.

4. THE insurance claim was lodged by the complainant before the Opposite Party on 6.1.92 and it was repudiated by the Opposite Party by letter dated 3.3.92, i.e., within two months of the receipt of the claim. Hence there has been no delay in the disposal of the claim of the complainant by the Opposite Party. Having regard to the facts and circumstances of the case, pleadings of the parties and the nature of controversy we consider that this is a matter that should be adjudicated before a Civil Court where the parties will have ample opportunities to examine witnesses at length and to have handwriting expert''s testimony for which the Consumer Protection Act and the machinery there under can not be effectively utilised. We are supported in our view by the decisions of the National Commission in Junta Machine Tools v. Oriental Insurance Company Limited, I (1991) CPJ 234 (NC) and in Shivaji Rao v. M/s. Daman Motor Company & Others, I (1993) CPJ 88 (NCDRC). Hence the complainant may restort to appropriate remedy in the Civil Court, if so advised and this complaint stands disposed of.

5. THERE is no order as to costs. Complaint dismissed.

