(2015) 05 NCDRC CK 0139

In the National Consumer Disputes Redressal Commission

Case No : 2983 of 2013

ROYAL SUDARAM ALLIANCE INSURANCE CO. APPELLANT

Vs

KANWAL JEET SINGH GIL RESPONDENT

Date of Decision : 26-05-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21, Section 19, Section 15, Section 17 - Jurisdiction of the National Commission - Appeals - Appeal - Jurisdiction

Citation : (2015) 05 NCDRC CK 0139

Hon'ble Judges : V.B. Gupta, Suresh Chandra

Advocate : P.K. Seth, Anuj Bhandari

Judgement

1. Petitioner/Opposite Party being aggrieved by impugned order 06.06.2013 passed by State Consumer Disputes Redressal Commission, Rajasthan, Jaipur (for short, ''State Commission'') has preferred this revision petition.

2. The brief facts of this case are, that Respondent/Complainant filed a Consumer Complaint against petitioner on the allegations that respondent has got insured his Maruti Alto Car with petitioner for the period from 23.04.2009 to 22.04.2010. The aforesaid vehicle was stolen on 04.12.2009 from Krushna Enclave, Tonk Road, Jaipur. The matter was reported to the concerned police station after 5 to 7 days. Respondent submitted his claim with petitioner on 05.01.2010, but it did not settle the same. Thus, the above act of the petitioner amounts to deficiency in service. Hence, a Consumer Complaint was filed before the District Consumer Disputes Redressal Forum-II, Jaipur City, Jaipur (for short, ''District Forum'') seeking directions to the petitioner to pay an amount of Rs.1,23,705/- i.e. value of the vehicle with 18% interest from 09.12.2009. Further, sum of Rs.1,00,000/- towards mental harassment.

3. Petitioner in its written statement has admitted about the insurance of the vehicle in question. However, it is stated that the vehicle was stolen on

04.12.2009 and report thereafter was lodged with the police after 5 days. However, the petitioner company was informed after the period of 38 days. In this way, respondent has violated terms and conditions of the insurance policy. Therefore, the complaint is liable to be dismissed.

4. District Forum vide order dated 18.01.2012, rejected the claim of the respondent.

5. Aggrieved by order of the District Forum, respondent filed an appeal before the State Commission, which set aside the order of the District Forum and allowed the complaint. It ordered, that respondent is entitled to receive from the petitioner an amount of Rs.92,778.75 paise with 9% interest per annum from the date of filing of the complaint. In addition, respondent was awarded Rs.25,000/- for mental agony and cost of proceedings.

6. Hence, the present revision.

7. We have heard learned counsel for both parties and perused the record.

8. It is submitted by learned counsel for petitioner, that respondent failed to intimate the petitioner company immediately, after theft of the vehicle. Therefore, delay in intimation of the claim deprived the petitioner valuable right to investigate. As such, there is violation of the mandatory condition of the insurance policy.

9. In his support, learned counsel for petitioner has relied upon following judgments; (i) New India Assurance Co. Ltd. vs. Ram Avatar, I (2014) CPJ 29 (NC) and

(ii) Praveen Dalal Vs. Oriental Insurance Co. & Ors., I (2014) CPJ 546 (NC) and

10. On the other hand, learned counsel for respondent has submitted, that there was delay of 38 days in intimating the petitioner company, but it will not prove fatal to the case of the respondent.

11. In his support, learned counsel for respondent has relied upon following judgments; (i) National Insurance Co. Ltd. vs. Nitin Khandelwal, IV (2008) CPJ 1 (SC),

(ii) Philips Medical, Systems (Cleveland) Inc. vs. Indian MRI Diagnostic & Research Ltd. & Anr., IV (2008) CPJ 4 (SC) and

(iii) Amalendu Sahoo vs. Oriental Insurance Co., II (2010) CPJ 9 (SC).

12. Condition No.1 of the Insurance Policy (Page No.35 of the Paper Book) states; "1. Notice shall be given in writing to the Company immediately upon the occurrence of any accident or loss or damage and in the event of any claim and thereafter the insured shall give all such information and assistance as the Company shall require."

13. It is an admitted fact, that respondent intimated the petitoner regarding theft

of his Maruti Car, after 38 days of the incident. Thus, respondent has violated the mandatory terms and conditions of the insurance policy.

14. In First Appeal No.321 of 2005 titled as "New India Assurance Company Ltd. Versus Trilochan Jane" decided on 9.12.2009, this Commission has held; " Learned counsel for the respondent, relying upon the Judgment of Hon''ble Supreme Court in National Insurance Company Limited Versus Nitin Khandelwal reported in (2008) 11 SC 256 contended that in the case of theft of vehicle, breach of condition is not germane. The said judgment was in a totally different context. In the said case, the plea taken by the Insurance Company was that the vehicle though insured for personal use was being used as a taxi in violation of the terms of the Policy. The plea raised by the Insurance Company was rejected and it was observed that in the case of theft breach of condition is not germane. In the present case, the respondent did not care to inform the Insurance Company about the theft for a period of 9 days, which could be fatal to the investigation. The delay in lodging the FIR after two days on the coming to know of the theft and 9 days to the Insurance Company, can be fatal as, in the meantime, the car could have travelled a long distance or may have been dismantled by that time and sold to kabadi (scrap dealer).

In our view, the State Commission erred in holding that the respondent/ complainant had reported the theft of the vehicle to the appellant-Insurance Company within a reasonable time. We are not going into the other question regarding violation of Condition No.5 of the Insurance Policy as we have non-suited the respondent/ complainant on the first ground ."

15. Similarly, Hon''ble Supreme Court in Civil Appeal No.6739 of 2010 (Oriental Insurance Co. Ltd. Vs. Parvesh Chander Chadha decided on 17.8.2010 , observed; " In terms of the policy issued by the appellant, the respondent was duty bound to inform it about the theft of the vehicle immediately after the incident. On account of delayed intimation, the appellant was deprived of its legitimate right to get an inquiry conducted into the alleged theft of vehicle and make an endeavour to recover the same. Unfortunately, all the consumer fora omitted to consider this grave lapse on the part of the respondent and directed the appellant to settle his claim on non-standard basis ."

16. It is also well settled, that terms of the policy have to be construed as it is and we cannot add or subtract something. Policy contract is between the parties and both parties are bound by terms of contracts. This view was taken by Hon''ble Supreme Court in United India Insurance Company Ltd. V. M/s. Harchand Rai Chandan Lal, IV (2004) CPJ 15 (SC).

17. In the present case also, there has been violation of the mandatory condition of the Insurance Policy. Therefore Judgments (supra) relied by learned counsel for the respondent, are not applicable to the facts of the present case.

18. Thus, we have no hesitation in holding, that State Commission has committed grave irregularity in setting aside the well-reasoned order of the

District Forum. Accordingly, we set aside the impugned order of the State Commission and allow the revision petition. With the result, the consumer complaint filed by the respondent before the District Forum, shall stands dismissed. No order as to costs.

