(1999) 05 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

Sachin Balachandra Shah APPELLANT

Vs

ORIENTAL INSURANCE COMPANY LIMITED RESPONDENT

Date of Decision : 06-05-1999

Acts Referred:

Citation : 1999 2 CLT 438 : 1999 2 CPC 116 : 1999 2 CPJ 10 : 1999 2 CPR 11

Hon'ble Judges : C.L.CHAUDHRY , R.THAMARAJAKSHI , S.P.BAGLA , J.K.MEHRA J.

Judgement

1. THIS revision petition is filed by the complainant against the order of the Maharashtra State Consumer Disputes Redressal Commission dated 11.1.1996, dismissing his complaint. The facts given rise to this revision petition may be summarised as under :

2. THE petitioner got his Maruti Car insured with the opposite party for the period 15th April, 1991 to 15th April, 1992. It was a comprehensive policy. On 19th June, 1991, the complainant along with his family was proceeding from Jalna to Nashik. On Jalna -Aurangabad road, the car met with an accident. At that time, Dilip Sharma who was employed by the complainant as a driver, was driving the vehicle. The car was heavily damaged in the accident. On 20th June, 1991, the complainant contacted the Insurance Company and requested them to make survey of the damaged vehicle. The Insurance Company deputed its Surveyor for assessing the loss. Initially the damage was assessed at Rs. 54,945/ -, On reassessment, it was increased to Rs. 85,000/ -. The case of the complainant was that after the accident, the driver, Dilip Sharma, started exploiting the complainant. He started demanding some amount. But, the complainant did not yield to the unlawful demand of Dilip Sharma. Due to that, Dilip Sharma made a false representation to the Insurance Company that he was not actually driving the vehicle at the time of accident. The complainant complied with all the formalities as required by the opposite parties but the loss was not compensated. Instead, the Insurance Company decided to investigate the matter and appointed U.B. Desai as an Investigator. On 6.10.1992 the Insurance Company repudiated the claim for the reasons stated in the letter. The complainant approached the

District Forum, Nashik for award of compensation. The case set up by the complainant before the District Forum was that the opposite party had no right to repudiate the claim unilaterally. The reasons assigned by the opposite party for repudiating the liability were not correct, legal and proper. It was false to say that the driving licence of Dilip Sharma had been misused. The Investigator had no authority to decide that the medical certificate produced by the complainant was false.

3. THE claim was contested on behalf of the Insurance Company. In the written version, it was denied that at the time of the accident Dilip Sharma was driving the vehicle or that initially it assessed the damage at Rs. 54,145/ - and later on increased to Rs. 85,000/ -. The complainant had misused the licence of Dilip Sharma. As per the terms and conditions of the contract, a person who drives the vehicle must have a valid driving licence.

4. AFTER considering the relevant contentions of the parties, the District Forum allowed the complaint and directed the Insurance Company to pay Rs. 1,10,674.85 Ps. by way of compensation. It was observed by the District Forum that when Dilip Sharma realised that the claim made by the complainant was dependent on his licence and the fact that he was driving the vehicle at the material time, he started exploiting the complainant. But, the respondent refused to yield to the unlawful demands of Dilip Sharma. He sent an application to the opponent contending that he was not driving the vehicle at the time of accident. The complainant had informed the opponent in writing that Dilip Sharma was driving the vehicle at that time. The complainant had produced the licence of Dilip Sharma, which proved that Dilip Sharma was driving the vehicle at the time of the accident. In that event the opponent had wrongly repudiated the claim of the complainant. Being aggrieved by the order passed by the District Forum, the Insurance Company approached the State Commission, Maharashtra, by way of an appeal. By the order dated 11th January, 1996 the State Commission allowed the appeal of the Insurance Company and dismissed the complaint. The State Commission recorded the finding that all the facts were disputed by the parties and directed the parties to approach appropriate Forum for redressal of their grievances.

5. THE complainant has approached this Commission by filing the revision petition.

6. WE have heard the learned Counsel for the parties. It was contended on behalf of the petitioner that the State Commission committed jurisdictional error in refusing to exercise the jurisdiction vested in the State Commission. The District Forum had considered and appreciated the evidence relating to the admitted and the disputed facts and recorded finding thereof. There was no justifiable reason to relegate the parties to appropriate Forum, i.e. Civil Court. The District Forum has recorded the finding that the driver tried to exploit the situation by demanding amount which was refused by the petitioner. It was urged on behalf of the respondent that the order passed by the State

Commission was justifiable in the facts and circumstances of the case. The repudiation of the claim was bona fide and the State Commission had rightly dismissed the complaint. We have given our careful consideration to the respective contentions of the parties. From the record we find that the Insurance Company repudiated the claim by letter dated 6th October, 1992 for the following reasons : "(1) The driving licence of Mr. Dilip Surendra Sharma has been misused by you as stated by Mr. Sharma vide his letter dated 16.5.1992. (2) Our Investigator Mr. U.B. Desai has opined that the Medical Certificate submitted by you is a false one."

The relevant portion of the Report of U.B. Desai, Investigator, is reproduced below : "Reported driver at : Mr. Dilip Sharma the time of accident Reported injuries : RH leg fracture and admitted to Shah Accidental Hospital, Nasik. Period of treatment/ hospitalization is 21.6.1991 to 28.6.1991 In our investigation, observed that Mr. Dilip Sharma was not driving insured vehicle at the time of accident and he was not admitted to Shah Accidental Hospital for the above period.

Mr. Dilip Sharma has given written statement that he was not driving the above vehicle at the time of accident and he was attending marriage of his sister at Delhi between 21.6.1991 to 28.6.1991. (Wedding Card attached) also promised to show video recording of marriage where he was personally present.

As per his knowledge brother of insured Mr. Nilay Sachin B. Shah was driving the vehicle at the time of accident and he (insured) is not having driving licence."

7. ON 16th April, 1992 Dilip Sharma had written a letter to the Insurance Company wherein it was stated that the vehicle met with an accident on 19th June, 1991 and at the time of the accident he was not present. He was in Delhi. But, he came to know that his licence was being produced to your office for claim. He was not driving the vehicle, the owner himself was driving the vehicle and at that time he was not having the licence.

8. WE have carefully considered the material placed on record. In our opinion, the Insurance Company had made investigation thoroughly and rejected the claim of the complainant. It is clear from the reports submitted on behalf of the Insurance Company that it had reasonable doubt to the genuineness of the claim and therefore, non -settling of the claim under the policy could not be due to deficiency in service or negligence. There was a communication by the Insurance Company that gave detailed reasons in support of the decision taken by the insurer to repudiate the claim and it cannot be said that the said decision was taken arbitrarily and without due application of mind of the relevant facts and circumstances or otherwise than in good faith. Such being the position, we have no hesitation to hold that there was no deficiency in service on the part of the Insurance Company so as to entitle the complainant to seek remedy under the Consumer Protection Act. The complainant will be at liberty to approach any other appropriate Forum for redressal of his grievances. We find no merit in this

revision petition and it is dismissed, but leave the parties to bear their own costs. Revision Petition dismissed.

