(1993) 10 NCDRC CK 0094

In the National Consumer Disputes Redressal Commission

SAGLI RAM — APPELLANT

Vs

GENERAL MANAGER, UNITED INDIA INSURANCE COMPANY LTD., MADRAS — RESPONDENT

Date of Decision : 06-10-1993

Acts Referred:

Citation : 1994 1 CPJ 444 : 1994 1 CPR 434 : 1995 1 CPC 265

Hon'ble Judges : S.S.Dewan , R.L.Gupta J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant has filed the complaint under Section 17 read with Section 12 of the Consumer Protection Act, 1986 (for short ''the Act'') against the opposite parties on 21.5.1993 before the State Commission.

2. THE issue herein lies in a narrow compass and the relevant facts are not in serious dispute. THE complainant admittedly had insured his Truck bearing Registration No. HIU 2366 with the United India Insurance Company Ltd, Nangal Township (Punjab) under the comprehensive policy for the period commencing from 13.1.1991 and valid upto 12.1.1992. On 20.12.1991 that is to say during the subsistence of the policy, the truck met with an accident and as a result thereof, the same became totally damaged. It transpires that the Insurance Company was informed of the accident by the complainant and the Surveyor appointed by the Insurance Company assessed the loss to the tune of Rs. 94,500/-. THE case of the complainant was that he got his truck repaired and spent about Rs. 2,05,000/- to make it road worthy. THE Insurance Company repudiated his claim on26.6.1992 informing him that his claim stood repudiated as the ill-fated truck was being driven by a person with a forged and fake driving licence and as such he was not liable to be paid any compensation by it. Having failed to receive any relief on making representations, the present complaint was preferred before the Commission, claiming Rs. 2,50,000/- as compensation alongwith interest @ 18% p.a. from the date of accident till payment. On notice being issued, the opposite parties raised a preliminary objection that the

complaint was not maintainable under the Act as the complainant had contravened the terms and conditions of the policy. On merits, the allegations of the complainant were controverted and what was highlighted was the fact that the complainant had already filed a complaint before the District Forum, Una (H.P.) against the same claim and concealed this material fact from the Commission. It was averred that the Insurance Company had repudiated the claim of the complainant as the Licence No.11774/N/86-87, favouring Nathu Ram, who was allegedly driving the truck, was found forged and fake by the Licencing Authority, Agra and hence the complainant was not entitled to any claim from the Insurance Company.

In support of his case, the complainant rested himself content with the documents Annexures C-1 and C-2 annexed to the complaint. The learned Counsel for the complainant had stated before us that these documents may be treated as evidence to be adduced on behalf of the complainant. The Insurance Company put on record, the documents Annexures R-1 to R-6 in support of its case. On the request of the Counsel for the parties, their evidence was closed by the Commission.

3. THE question that arises for determination is as to whether the State Commission constituted under the Act has got the jurisdiction to decide the present complaint. At the very outset, we must necessarily notice the pointed and vehement stand of Mr. S.K. Pabbi, the learned Counsel for the Insurance Company, that the complainant by his suspicious conduct, has rendered himself ineligible for any relief within the consumer jurisdiction. It was his case that there was a deliberate attempt on the part of the complainant to suppress the material fact in the claim filed by him before the Insurance Company and also before this Commission. In particular, it was pointed out that during the investigation, it was found out by the Insurance Company through their investigator that on the fateful day, the ill-fated truck was being driven by one Nathu Ram with a forged and fake driving licence, which fact was further verified by the Licencing Authority, Motor Vehicles Department, Agra (Annex.R-5) and it was reported that no such licence was issued to Nathu Ram by the Licencing Authority. The learned Counsel also referred us to the terms and conditions of the policy wherein it has been mentioned that the insured cannot claim compensation, if the driver of the vehicle is not holding an effective driving licence at the time of the accident.

4. WE are inclined to hold that there is a considerable merit in the aforesaid stance of the learned Counsel for the opposite-parties. The rule of our jurisprudence has long been that those seeking relief in equitable or extra-ordinary jurisdiction (other than ordinary and the formal one at law) must do so with the utmost candour and without any covert or overt suppression of facts or making of any misleading averments. That principle is epitomised in the dictum that the petitioner even on writ side must come into portals of such jurisdictions with clean hands. Though its aspect is patent on principle yet the authority on

the point is not lacking either: In Asiatic Engineering Co. v. Achhru Ram, 1951 All. 746, Chief Justice Malik speaking for the Full Bench has observed as follows:- "A person obtaining an ex-parte order or a rule Nisi by means of a petition for exercise of the extraordinary powers under Art. 226 of the Constitution must come with clean hands, must not suppress any relevant facts from the Court, must refrain from making misleading statements and from giving incorrect information to the Court. Courts, for their own protection should insist that persons invoking these extraordinary powers should not attempt, in any manner, to misuse this valuable right by obtaining ex-parte order by suppression, misrepresentation or mis-statement of facts."

In the light of the above both on principle and precedent, it has necessary to be held that a consumer knocking at the door of the Redressal agencies under the Act for relief in a consumer dispute must do so with clean hands. The complainant had deliberately suppressed the material fact from the Insurance Company and also from this Commission and he has thus disentitled himself to relief in this jurisdiction and he must be relegated to the ordinary remedy at law if so advised. Otherwise also, this complaint is not maintainable, as on identical grounds, his complaint is pending disposal before the District Forum, Una (HP) which is manifest from the notice of the District Forum (Annexure R1). Consequently, the complaint is dismissed on the grounds as stated above. There will be no order as to costs. Complaint dismissed.