
(2015) 01 NCDRC CK 0056

In the National Consumer Disputes Redressal Commission

Sarfajudeen S/O Yasin Khan

APPELLANT

Vs

Branch Manager, New India Assurance Co Ltd

RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:

Citation : 2015 1 CPJ 748

Hon'ble Judges : V.B.GUPTA , SURESH CHANDRA J.

Final Decision : Petition dismissed

Judgement

1. THE petitioner/complainant, registered owner of truck number HR -38 J 4186 got his truck insured with respondent no. 1 for the period from 21.07.2005 to 20.07.2006 for a sum of ? 5,00,100/- . The truck of the complainant was stolen on 21.09.2005 from the possession of one Ashok Kumar who is respondent no. 2 herein. The said Ashok Kumar lodged a report of theft with the Police bearing FIR No. 329 dated 25.09.2005 at the local police station. The petitioner/complainant intimated respondent No. 1 on 21.10.2005 regarding the theft of the truck and also submitted a copy of the FIR, registration certificate and insurance cover note. It is averred that the petitioner/complainant had executed an agreement for the sale of truck in favour of respondent no. 2 for which, he had received some amount by way of advance but since the total consideration had not been paid the ownership of the truck was never transferred in favour of respondent no. 2. The claim of the petitioner was, however, repudiated by the respondent Insurance Company and hence a complaint was filed by him before the District Forum. On notice, the respondent insurance company filed its reply in which it was pleaded that since the truck in question came in possession of respondent no. 2 on 25.08.2004 as per the sale agreement and it was stolen from the possession of respondent no. 2, the petitioner/complainant had no right in the truck so as to claim compensation in respect of the loss thereof. It was also pleaded by the Insurance Company that initially respondent No. 2 had submitted the claim in respect of loss of the truck but he had no insurable interest in the truck on the date of theft because the registration had not been transferred in his name and as such his claim also had been repudiated.

2. AFTER hearing the parties and taking into consideration the evidence before it, the District Forum allowed the complaint by directing the respondent insurance company to pay the insured amount ₹5,00,100/- to the petitioner with interest @9% p.a. from the date of complaint till the date of payment and also ₹2,200/- towards litigation expenses. It was clarified by the District Forum that respondent no. 2 has no claim against respondent no. 1 Insurance Company. Aggrieved of the order of the District Forum, the respondent Insurance Company challenged the same before the State Commission of Haryana by filing First Appeal No. 1500/2011. The State Commission vide its impugned order dated 18.09.2012 allowed the appeal, set aside the order of the District Forum and dismissed the complaint. It is against this impugned order of the State Commission that the present revision petition has been filed by the petitioner under section 21(b) of the Consumer Protection Act, 1986.

3. WE have heard learned Shri Dev Dutt, Advocate for the petitioner and perused the record. It is not in dispute that the vehicle in question had been sold under an agreement dated 25.08.2004 to respondent no. 2, Ashok Kumar. It is also not in dispute that the vehicle was stolen on 21.09.2005 for which the FIR was lodged by respondent no. 2 on 25.09.2005 and the intimation about the incident of theft was sent to the Insurance Company by the petitioner on 21.10.2005. Although, respondent No. 2 is said to have applied to the RTO for transfer but on the date of theft, the registration of the vehicle was in the name of the petitioner. Specific dates of application for transfer in the name of respondent no. 2 as also the receipt of the request for transfer by the RTO have not been provided by the petitioner and as such it is not possible to say as to whether the respondent no. 2 had complied with the requirement of law in regard to the transfer of the vehicle in his name within the period allowed. Taking into consideration the provisions of GR -17 of Motor Tariff Rules of Tariff Advisory Committee referred to by it and also the contents of section 157 of the Motor Vehicles Act, 1988, the State Commission set aside the order of the District Forum and allowed the appeal of the respondent Insurance Company. The State Commission while reversing the order of the District Forum has discussed the legal position in the light of undisputed facts and has recorded the following reasons in favour of the impugned order which can be reproduced thus: - "On behalf of the appellant - opposite party it is contended by learned counsel that on the date of alleged accident i.e. on 21.09.2005, the vehicle in question was registered in the name of complainant, whereas the vehicle was transferred in the name of Ashok Kumar vide an agreement dated 28.08.2004. Learned counsel further contended that as per provisions of GR -17 of Motor Tariff Rules of Tariff Advisory Committee, the complainant as well as respondent no. 2 Ashok Kumar were required to apply to the insurance company to get the insurance policy transferred in his name, within 14 days when the vehicle was transferred in his name but he did not apply and as such the complainant is not entitled to any insurable benefits. In support of his argument, learned counsel for the appellant -opposite party referred to GR -17 of Motor Tariff Rules of Tariff Advisory Committee, Annexure A/8, which is

reproduced as under: -

"GR.17. Transfers

On transfer of ownership, the Liability Only cover, either under a Liability Only policy or under a Package policy, is deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of transfer.

The transferee shall apply within fourteen days from the date of transfer in writing under recorded delivery to the insurer who has insured the vehicle, with the details of the registration of the vehicle, the date of transfer of the vehicle, the previous owner of the vehicle and the number and date of the insurance policy so that the insurer may make the necessary changes in his record and issue fresh Certificate of insurance "

Learned counsel for the appellant -opposite party further contends that Section 157 of the Motor Vehicles Act, 1988 deals with the transfer of Certificate of Insurance. The provision contained therein directs the purchaser of the vehicle to get the Insurance Certificate transferred in his name by making an application to the Insurance Company. But in the instant case the complainant and respondent no. 2 Ashok Kumar did not comply with the above said provisions of GR -17 of Motor Tariff Rules of Tariff Advisory Committee and Section 157 of the Motor Vehicle Act, 1988 and for that reason, the complainant cannot claim any compensation from the Insurance Company in view of settled law laid down in COMPLETE INSURATIONS (P) LTD. versus NEW INDIA ASSURANCE COMPANY LTD., 1996 1 CPJ 1, wherein the Hon"ble Supreme Court has held that: -

"..In the present case since there was no such agreement and since the insurer had not transferred the policy of insurance in relation thereto to the transferee, the insurer was not liable to make good the damage to the vehicle .."

Further reference is made to case law cited as Dharmendra Nath Thakur versus United India Insurance Co. Ltd., 2010 1 CPC 574 wherein the Hon"ble National Commission has held as under: -

"Consumer Protection Act, 1986 -Section 21(b) -Non transfer of policy - Registration of vehicle was changed in the name of complainant no. 1 but insurance policy remained in the name of previous owner. It is settled law as cited in Complete Insulations case 1996(1) SCC 221 by the Hon"ble Supreme Court that insured will not be entitled to compensation from insurer for damages to the transferred vehicle in the absence of specific contract covering risk for damage to the vehicle - Orders of Fora below dismissing the claim of petitioner warrants no interference -Relief declined."

The facts of the instant case are fully attracted to COMPLETE INSULATIONS (P) LTD."s case and Dharmendra Nath Thakur"s case .

Taking into account the facts and circumstances of the case, we are of the view

that since the complainant has failed to get the insurance policy transferred in his name, therefore, he has no insurable interest and thus, is not entitled for any compensation. The District Forum has failed to appreciate the legal position involved in this case and as such the impugned order passed by the District Forum is not sustainable in the eyes of law.

For the reasons recorded above, this appeal is accepted, impugned order is set aside and the complaint is dismissed."

4. WE do not find any infirmity in the impugned order which would justify our interference with it. The petitioner has not placed any material before us to take a different view. We, therefore, do not find any substance in the revision petition, which is liable for dismissal. While on the subject we would like to mention that in addition to what is observed by the State Commission, we may note that there was delay of four days in lodging the FIR and admittedly, the intimation about the information of theft was sent to the Insurance Company after a month of the theft. The terms of the policy require immediate action in such cases and as per settled law, such delay in the case of theft would result in outright repudiation of the claim because delay in lodging the FIR or intimating the Insurance Company would be disastrous to the interests of the Insurance Company and the same constitutes violation of a fundamental condition of the insurance contract. On this count also we are convinced that the claim of the petitioner was liable for repudiation. In view of above, the revision petition is dismissed but with no order as to costs.