(2015) 11 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

Case No : 2474 of 2014

SHARAD CHANDRA JAISWAL — APPELLANT

Vs

BANK MANAGER, UNITED INDIA ASSURANCE — RESPONDENT

Date of Decision : 16-11-2015

Acts Referred:

Motor Vehicles Act, 1939, Section 30 - Change of residence or place of business

Citation : 2016 1 CPJ 387

Hon'ble Judges : J.M. Malik, Dr. S.M. Kantikar

Advocate : Praveen Chaturvedi, Amit Kumar Singh

Judgement

1. The revision petition has been filed with a delay of 38 days. The petitioner has filed an application for condonation of said delay. Para No.3 of the said application, runs as follows :- "..... The delay has occurred due to following reasons ? the certified copy of the impugned order was issued to counsel for the petitioner on 29.01.2014. The advocate sent the same to the petitioner and received by petitioner on 03.02.2014. After receiving the same, the petitioner consulted the matter with family and Advocate Sri Mahesh Pandey and then decided to challenge the same before Hon''ble National Commission. Having regard to the same, the petitioner approached Sri Mahesh Pandey, Advocate at New Delhi for drafting of the same and finding a suitable practicing advocate in Delhi. On 28 April, the documents and case file were handed over to the counsel for the th petitioner for preparation of revision petition. Since there are various documents in Hindi and same require translation in English, the process of translation took some time. Thereafter, the petitioner was asked to execute an affidavit. And soon after the execution of the affidavit by the petitioner, the petition is being filed before this Hon''ble Commission. It is submitted that there is no malafide in preferring the revision with delay".

2. The said delay is hereby condoned, subject to just exceptions.

3. Sh. Sharad Chandra Jaiswal, the complainant, purchased a Brand new

Sonalika D1-35 Tractor from Sitaram Narbada Prasad, authorised Dealer of Sonalika International Tractor Ltd., Bramha Road, Ambikapur, District Sarguja, OP2. The said Tractor was financed by Sarguja Regional Rural Bank, Nagpur Branch, District Koriya, OP3. It was insured with United India Insurance Co. Ltd., OP1. During the subsistence of the insurance policy, unknown thieves stole the said Tractor in the intervening night of 12-13.09.2010. A report with the police was lodged. The claim was submitted before the insurance company, on 28.09.2010, but the insurance company rejected the claim of the complainant on 16.11.2012, on the ground that the said vehicle was not registered with the District Transport Office.

4. A complaint was filed before the District Forum. OP1 contended that insurance was done on engine No. and Chasis No., in absence of Registration No., and as such, the risk of theft of vehicle during the insurance policy cannot be covered. Again, the identification of the vehicle is based on the registration. As per provisions enshrined in the Motor Vehicle Act, registration of any vehicle is necessary. In the insurance policy itself, there is a condition that use of vehicle will be subject to the provisions of Motor Vehicle Act. The District Forum dismissed the complaint against the OPs 2 & 3, but directed the insurance company, OP1 to pay a sum of Rs.3,60,735/-, along with interest @ 9% p.a., to the complainant. It also awarded a sum of Rs.5,000/- towards financial and mental loss and Rs.2,000/- towards costs of the complaint.

5. The insurance company-OP3, preferred an appeal before the State Commission. The State Commission partly allowed the appeal and gave the following directions :- " 11. The complainant has been able to prove his complaint against the opposite party No.1-insurance company. Therefore, it is directed that opposite party No.1-insurance company shall pay 75% amount of Rs.3,60,735/- along with interest @ 9% per annum to the complainant towards the cost of Sonalika DI-35 Tractor bearing Chasis No.05032, Engine NO.3095F-252663143 from the date of claim dismissal, i.e., 16.11.2012, till date of its payment. He shall also pay Rs.5,000/- towards financial and mental loss and Rs.2,000/- towards cost of complaint".

6. Aggrieved by that order, the complainant has filed this revision petition.

7. We have heard the counsel for the parties. Counsel for the petitioner / complainant vehemently argued that the order passed by the District Forum is correct and the same should be restored.

8. The argument urged by the counsel for the petitioner is devoid of merit. The State Commission observed, as under :- " The investigation report dated 16.09.2012 submitted by the insurance company was perused, according to which, "during the course of investigation, it came to know that the said vehicle is on debt with Gramin Bank, Branch Nagpur. Then, I met Branch Manager, Gramin Bank, Nagpur, for investigation. By whom, it was known that the said vehicle was got insured from the Oriental Insurance, Ambikapur, by the Bank,

which was issued after issuing the policy by the United India Insurance Company". It has been written in the head of the conclusion of this report that "this insurance was got done by the Gramin Bank, there is balance amount of the bank on vehicle owner, the vehicle was not insured". It means the tractor model 2005 was under obligation to pay the considerable amount, then the registration of the vehicle could not made in the name of complainant / respondent No.1. The insurance of the vehicle was made on the basis of engine number and chasis number. Therefore, prior to issuing the policy, this fact was within the well knowledge of the insurance company that the tractor is not insured for last five years. In our opinion, on that basis, the dismissal of the claim by the insurance company was not proper that "the vehicle was not insured on its stealing date, i.e., 13.09.2010 at District Transport Office, which is violation of terms

and conditions of Motor Vehicle Act and insurance policy. The claim amount is not payable".

9. It is settled law that as per Section 30 of the Motor Vehicle Act, the registration of the vehicle is mandatory. The State Commission has also referred to the authority reported in Narinder Singh Vs. Kaushalendra Kumar Mishra Vs. Oriental Insurance Co. Ltd., decided on 12.04.2013 . However, the insurance was provided on the basis of engine number and chasis number, therefore, the insurance company is responsible to pay the claim amount. The order passed, qua the complainant/petitioner, cannot be faulted. He has been given maximum benefit. He is entitled to receive the amount, as directed by the State Commission.

10. The revision petition is without merit and, therefore, the same is hereby dismissed.

