
(2013) 05 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

Shri Jagdish Parshad

APPELLANT

Vs

Icici Lombard General Insurance Co. Ltd

RESPONDENT

Date of Decision : 14-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 350 : 2013 2 CPJ 578

Hon'ble Judges : V.B.GUPTA , Rekha Gupta J.

Advocate : RAJESH MAHNA , AMIT TYAGI

Judgement

1. REVISION petition no. 1996 of 2012 has been filed under section 21 (b) Consumer Protection Act, 1986 against the order dated 13.03.2012 of the Haryana State Consumer Disputes Redressal Commission, Panchkula ("the State Commission ") in appeal no. 285 of 2012. The brief facts of the case as per the petitioner/complainant are that the petitioner is the absolute registered owner of vehicle bearing registration no. HR 39 L - 9211, Engine no. 697TC 56JUZ129779 and chassis no. 373145JUZ131288, Model 2005. The above said vehicle was got insured with the respondent nos.1 and 2 vide cover note bearing no. GD 3351281 for a sum of Rs.8,00,000/- for the period from 04.10.2006 till 03.10.2007. The vehicle in question was also got insured earlier with the respondents no. 1 and 2 from October 2005 to October 2006. The complainant had got the above said vehicle financed with respondent no. 3 for an amount of Rs.6,64,000/- which was payable in equal instalments by the complainant to the respondent no. 3.

2. THAT on 14.04.2007 when the said vehicle reached village Gohapur, it was parked on the side to meet the call of nature. Meanwhile all of a sudden a Marshal Jeep came from Utawar side in which about 8-10 persons were sitting, out of them 4-5 persons came down from the said jeep and opened the window of the truck and took away the said truck forcibly. The driver as well as the cleaner of the truck made noise on seeing this and tried to take possession of the said truck, but all in vain because they were 8-10 numbers and there was apprehension of being done to death by the culprits. After the above said

incident, the driver of the truck informed about the above said fact to the complainant/owner of the truck and later on, the police of PS Hathin was informed about the same by the driver of the said truck. On the basis of said complaint, the police of PS Hathin, registered FIR bearing no. 79 dated 16.04.2007 under section 379 IPC. The complainant as well as driver and cleaner of the truck tried to search for the truck in question and later it was revealed that the culprits unloaded the stones lying in the truck at Jayanti Mour, near Curaksar Road, and ran away along with the empty truck. Thereafter, the complainant intimated to the insurance agent namely Ashok Kumar on 15.04.2007 about the fact of snatching of the truck in question by the culprits and intimation in this regard was also sent to the bank authorities, i.e., respondent no. 6. On the basis of intimation, the respondent no. 1 and 2 registered the claim bearing no. 339569 dated 15.04.2007, being the insurer of the truck. The claim was not passed by the respondent no. 1 and 2 due to non-deposit of UNTRACED report with them. Thereafter the complainant obtained UNTRACED report issued by the concerned court, i.e., from the court of Shri Harish Gupta, JMIC, Nuh dated 07.11.2007 and submitted the same with the respondent no. 1 and 2 through its agent/ surveyor, namely H D Pandey, since the said agent/ surveyor was deputed for the said purpose by respondent no. 1 and 2. Later on the said surveyor contacted the petitioner and obtained some signatures of the petitioner on some blank documents/papers and assured the petitioner that the claim amount shall be passed shortly. The petitioner after that visited the office of respondent no. 1 and 2 to get released the insured amount of the vehicle in question, but the respondents no. 1 and 2 intentionally and deliberately, knowingly have been delaying the matter and putting off the complainant on one pretext or the other.

3. DUE to non-availability of the above said vehicle the petitioner has been suffering from business loss to the tune of Rs.2,000/- per day with effect from 15.04.2007 till its realisation plus further loss towards the interest accruing on the finance amount raised by the respondent no. 3 and further the respondents no. 1 and 2 has withheld the insured amount to the tune of Rs.8,00,000/- due to wrongful act and conduct by the respondents no. 1 and 2. The respondents/OPs 1 and 2 in their reply have taken preliminary objections that the petitioner used the Dumper Bearing no. HR 39 L 9211 (hereinafter referred to "as said vehicle ") for commercial purposes through others. Therefore, petitioner is not a consumer qua the answering opposite parties under the provisions of Consumer Protection Act, 1986. Hence, instant complaint is liable to be dismissed. As per the admissions of complainant the said vehicle was used by his family friend Mr Satya Narayan Kasana with effect from the date of its purchase. As per further admissions of petitioner during the night of 14-15th April 2007, said vehicle was being driven by Driver (Hanif) and Cleaner/Conductor (Rafiq) was also with him. They were coming from Uttawar (Hathin) with stones loaded. At about 1.00 A M driver and cleaner left the said vehicle unattended on road with keys within said vehicle for urination. In the meantime some unknown persons came from behind and took away the said vehicle. Even in the FIR lodged with respect to theft of

said vehicle similar version of incident has been mentioned.

4. THEY further stated that "the petitioner and his representatives (i.e., driver and cleaner) left the said vehicle unattended with the keys. Had petitioner and his representatives properly locked the said vehicle, theft of said vehicle could have been avoided. Petitioner and his representatives have acted negligently and have failed to take proper care and caution for the protection/ safety of said vehicle. Sole reason for theft of said vehicle is negligence of petitioner and his representatives. Therefore, petitioner is not entitled to any claim. The petitioner has violated the terms and conditions of insurance policy, therefore, the petitioner is not entitled to any claim. Thereafter, they denied that the said vehicle was taken away by the culprits forcibly. Even as per admissions of petitioner, his friend and driver, no amount of force was used by culprits/ thieves. As the said vehicle was left unattended on road in night with keys in, thieves got the chance and they simply took (stole) it away. It is denied that driver and/ or cleaner made any effort to take the said vehicle back from culprits/ thieves. Driver and/or cleaner never encountered the culprits/ thieves. It is denied that there was any apprehension of death or even of any injury to driver or cleaner. It is denied that driver and/ or cleaner made any noise in order to protect the said vehicle. It is submitted that the said FIR was lodged on 16.04.2008 at 04.55 PM i.e., after more than 40 hours after the alleged theft of said vehicle. It is denied that either the petitioner or the driver or cleaner made any effort to search the said vehicle. It is submitted that the petitioner intimated the claim of answering opposite parties only 23.04.2007. It is denied that said vehicle was snatched from petitioner or from driver/cleaner. Upon being intimated about the claim, answering opposite parties processed the same but found that complainant is not entitled to the claim, therefore answering opposite parties vide their letter dated 13.02.2008 repudiated complainant 's claim. It is denied that the surveyor obtained signatures of complainants on any blank paper. It is denied that surveyor assured the petitioner that his claim will be passed ".

The District Consumer Disputes Redressal Forum, Faridabad ("the District Forum ") vide their order dated 06.02.2012 in consumer complaint no. 302, have cited the judgment dated 15th August 2011 in "RP no. 682 of 2011 - Mr Keshav Natu Mhatre vs The Manager, New India Assurance Co. Ltd., where the National Commission dismissed the revision petition as there were concurrent findings of fact of two Fora below that the petitioner had left the vehicle unattended on the road for five and half hours which was a breach of important terms and conditions of the insurance company. In the said case, the keys of the vehicle had been taken away by the driver whereas in the case in hand the driver even left the keys inside the truck while going for urination. In "Delhi Dhulia Road Carrier vs United India Insurance Company Ltd., III (2011) CPJ 36 the claim lodged by the owner for loss of his vehicle by way of theft was repudiated by the insurance company and that repudiation was upheld by the State Commission of New Delhi on the ground that the complainant ad not taken any care of the vehicle as he left it unattended and unlocked. A similar view was taken by the

State Commission of Uttar Pradesh in the case of "United India Insurance Company Limited vs Shivali Cement Pvt. Ltd., 111 (1999) CPJ 264. No law to the contrary was cited by the counsel for the complainant. Since the driver of the complainant went for urination after leaving the truck unattended and with keys inside, his act amounts to negligence in not safeguarding the truck/vehicle and as such the insurance company was justified in repudiating the claim of the complainant for the loss of his vehicle. Resultantly, the complainant is dismissed as being without any merit ".

Aggrieved by the order of the District Forum, the petitioner filed appeal no. 285 of 2012 before the State Commission. The State Commission vide their order dated 13.03.2012 has dismissed the appeal in limine by stating that "we have gone through the impugned order and have taken into consideration the facts and circumstances of the case and are of the view that admittedly petitioner was required to take due care of his vehicle as per the terms and conditions of the policy, but the act of the appellant/complainant by leaving his vehicle unattended with the keys amounts to breach of the terms and conditions of the policy. In this regard, we have taken notice of the case titled "Suraj Mal Ram Niwas Oil Mills (P) Ltd., vs United India Insurance Co. Ltd., and another reported in 2011 CTJ 11 (Supreme Court) (CP) wherein it has been held by the Hon "ble Apex Court that "in construing the terms of a contract of insurance, the words used therein must be given paramount importance, and it is not open for the court to add, delete or substitute any words. It is also well settled that since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the policy, its terms have to be strictly construed to determine the extent of liability of the insurer ". In the present case, the negligence on the part of the complainant by leaving his vehicle unattended and unlocked, is sufficient to hold that there is violations of the terms and conditions of the policy and for that reasons, there was no deficiency in service in repudiating the claim of the complainant by the opposite party. Finding strength from the Suraj Mal Ram Niwas Oil Mills case (supra), we do not find any force in this appeal ".

5. THE main grounds for the revision petition are as follows: - the State Commission as well as the District Forum failed to appreciate that there is no question of breach of the terms of policy by insured in the present case. The driver had the truck parked with goods and left the truck for a period indefinitely leaving the keys inside the truck. He had parked the vehicle by the side of the road near a place where the driver could go into bushes for the call the native away from the village. Unless the action of the driver of having left the keys in the dumper truck is intentional and the grounds are not sufficient to repudiate the claim by the insurance company. In Blacks Dictionary malicious act is denied as an intention or wrongful act performed against other without any justification or excuse but where there is a bonafide mistake on the part of such employee who is the lawful custodian of the vehicle as a driver of the petitioner. The State Commission cannot endorse the findings of the District Forum observing by itself

deemed to be a sufficient ground to absolve the insurance company from the liability of payment the claim.

- the State Commission as well as the District Forum have failed to appreciate that the observation in the case of National Insurance vs Nitin Khandelwal 2008, Apex Division, 45 and Amalendu Sahoo vs Oriental Insurance Co. Ltd. 11 (2010) CPJ 9 (SC), wherein it has been held that in case of theft of vehicle breach of condition is not germane - the insurance company is liable to indemnify the owner of the vehicle which the insured has obtained from the insurance company i.e., comprehensive policy for the loss caused to the insured.

- the question as to whether the theft took place of the vehicle or by snatching of the vehicle or otherwise, repudiation of the claim is not justified. The only question to be considered is whether a theft has taken place and loss has been occasioned to the insured. Repudiation of the claim on the ground that in case of burglary or house breaking or snatching of vehicle has taken place at par when the culprit entered the premises in the presence of the open gate in the gate, there can be no justification by repudiation of claim by the insurance company. This was so held in New India Insurance Company vs Sakar Iron Industries, reported as 1996 (2) CPC 188 decided by the National Commission, Delhi. It is clear that simply because there is a mistake on the part of driver in leaving the keys in the truck at that time when he himself was around cannot be a ground to repudiate a claim by the insurance company. There is a settled distinction between a bonafide mistake and a malafide act especially so as to conclude breach of condition of policy by the insured as stated above.

- the State Commission has relied on judgments declaration which have no application to the facts of the case. We have heard the learned counsel for the petitioner as well as the respondent and gone through the records. Learned counsel for the petitioner cited the following judgments: (i) Royal Sundaram Alliance Insurance Co. Ltd., vs Sanju Dongre - II (2012) CPJ 197 (NC). (ii) National Insurance Company Ltd., vs Mayur Raj Singh - IV (2012) CPJ 580 (NC) (iii) IFFCO Tokio General Insurance Co. Ltd., vs Ram Gopal Soni and Ors - III (2012) CPJ 235 (NC) In the case of Royal Sundaram Alliance Insurance Co. Ltd., vs Sanju Dongre one of the reasons for repudiation of the claim was that "the complainant was negligent by leaving the key in the ignition hole of the vehicle, which is a violation of the terms of the policy, though, the fact of the loss of the vehicle due to theft is not disputed. Immediate FIR was filed and the vehicle never recovered either by the policy or by the Insurance Company. So far as the question whether the complainant himself was negligent by leaving the key in the car, no sufficient proof has been adduced by the opposite party - Insurance Company. In our view, therefore, the petitioner - Insurance Company was not justified in repudiating the claim on those grounds. At best it could settle and has been directed to settle the claim on non-standard basis ".

In the instant case, the question whether the petitioner was himself negligent by

leaving the key in the vehicle would not apply as the petitioner has nowhere denied that keys were left in the dumper.

6. IN fact, in the revision petition, the police station who registered the FIR noted down in the FIR the circumstances that the keys were left inside the vehicle. They have further stated that the theft of the vehicle whether with the keys of the vehicle left in the truck or snatching of keys is at par and was not intentional. In the grounds for revision petition they have also admitted that the driver parked his truck and left the truck for a period indefinitely leaving the keys inside the truck. Hence, the citation would not cover the facts of this case. In National Insurance Company Ltd., vs Mayur Raj Singh - the facts of the case do not apply to the present case. In the third, i.e., IFFCO Tokio General Insurance Co, Ltd., vs Ram Gopal Soni and Ors., the insurance company was not able to produce any evidence in support of its claim that vehicle was being used for hire or reward, in violation of the policy conditions. In the instant case, the petitioner has himself has admitted both in his complaint and in his revision petition that the said vehicle was being used for commercial purpose and was in fact being used by Shri Satya Narayan Kasana for same. Nowhere has it been mentioned that it was used to earn his livelihood. On the other hand, in his complaint, the petitioner has averred that due to non-availability of the above said vehicle, the complainant has been suffering from business loss to the tune of Rs.2,000/- per day with effect from 15.04.2007 and therefore, he is entitled to receive the business loss to the tune of Rs.7,80,000/- with interest. Counsel for the respondent drew our attention to the fact that there are four versions regarding the theft. The first contained in the complaint of the petitioner wherein he has stated that as follows: "when the said vehicle reached ahead village Gohapur, it was got parked on the side to meet the call of nature. Meanwhile, all of a sudden, a Marshal Jeep came from Utawar side in which about 8/10 persons were sitting, out of them 4-5 persons came down from the said jeep and open the widow of the truck and took away the said truck forcibly. The driver as well as the cleaner of the truck made noise on seeing this and tried to take possession of the said truck, but all in vain because they were in 8 to 10 in numbers and there was apprehension of done to death to the driver and cleaner by the culprits ".

7. IN the FIR it was stated as follows: "It was carrying the loaded dumper and my cleaner Rafeeq son of Abdul Raseed resident of Dhing Daka was accompanying. When I went little head of village Gohapur, I parked my dumper by the side of the road and went for getting fresh to answer the call of the nature, in the meantime a white coloured Marshal Jeep came from the Uthawal Village in which eight to ten people were there in the jeep. Out of those people in the marshal four to five people got down and drove the dumper towards Hatheen. We started shouting and ran towards the vehicle ".

8. IN his evidence by way of affidavit Shri Hanif, driver has stated as follows: "On the date of occurrence, i.e., on 14/15.04.2007, at late hours night, when the

deponent along with conductor namely Rafique son of Shri Abdul Rasheed resident of village Dhingraka, Teshil Hathin, District Palwal, were coming back after loading stones in the said vehicle from Uttawar to Pall Zone, Faridabad and stopped the vehicle ahead village Gohapur to meet the call of nature along with conductor in the night hours of 14/15.04.2008. Meanwhile a Marshal Jeep white colour, came from Uttarwar side in which about 8/10 persons were there and out of which 4-5 persons got down from the said Marshal Jeep near the vehicle, i.e., Dumper bearing no. HR 38 L 9211 and took away/ stolen the said dumper along with the loaded material and proceeded towards Hethin side. The deponent along with conductor made a noise loudly but all in vain. The deponent as well as the conductor tried to trace the vehicle/ dumper HR 38 L 9211 and thereafter found that the culprits had taken away the empty dumper and unloaded the material/ stones near Jayanti Mour, near Ghurasar roads ".

In the revision petition, the petitioner has stated that "the vehicle of the petitioner was stolen/ snatched on 14.04.2007 from the road at Sheed village, Gohapur while going from Faridabad to Utawa (description of the place being on the road to Hatheen (Haryana). Where the insured vehicle was parked by his driver. On his way to driver and unload the stones loaded in the dumper. The driver after reaching the place after crossing the village stopped the vehicle to meet the call of the nature went by the side of the road. When the truck was taken away by four strangers. The driver and cleaner both ran behind the vehicle and when they failed to reach and stop the vehicle then reported the matter to police station. That so called theft that took place on was more like snatching ".

9. THE versions differ to the extent while in some it is clearly stated that the truck was taken forcibly, there is no such mention of the same in other versions. The petitioner has not been able to establish that the said vehicle was snatched forcibly. The counsel for the respondent cited two judgments of National Commission: Devinder Kumar vs National Insurance Company Ltd., (RP no. 3840 of 2011 decided on 02.04.2012) wherein it has been recorded as follows: "We have seen the facts of the case, as narrated by the driver of the dumper-truck in the FR of 09.07.2006, in comparison with the facts as detailed by the complainant in his consumer complaint filed before the District Forum on 04.06.2007. The complaint petition is found to contain a significant omission. It does not mention that they key of the vehicle was left inside and that the cabin lock of the vehicle was not working. Both the these pieces of information are contained in the FIR as well as in the written statement of the OP/ National Insurance Company. There is no explanation why the complainant chose to omit these details when they had already figured specifically in the FIR. It is strange that the driver of the dumper truck chose to leave the key in the vehicle, knowing that the lock of the cabin of the vehicle was not functioning. It is equally strange that the driver who claimed to be sleeping practically at no distance from the vehicle had to be told by someone else that the vehicle had been stolen. In our view, the District Forum was wrong in holding that there was no negligence on the part of the driver. For the same reasons, we find ourselves in full

agreement with the view taken by the State Commission. The revision petition has no merit and fails to carry any conviction. The same is therefore, dismissed and the order of the State Consumer Disputes Redressal Commission, Haryana in FA no. 1230 of 2008 confirmed. No order as to costs ".

10. IN the case of RCI India Pvt. Ltd. Vs Parthasarthy (RP no. 443 of 2007 decided on 11.01.2012) reads as follows: "Hon "ble Supreme Court in Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd., MANU/SC/0409/2011: 2011 (3) Scale 654 has observed: "Also it is to be noted that the revisional powers of the National Commission are derived from section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora ".

In the instant case, the petitioner has not raised any legal issues in the revision petition. The said theft was also reported to the police on 16.04.2007 after almost 40 hours. Further, the matter was reported to the respondent only on 23.04.2007. Counsel for the petitioner has cited the decision of this Commission in New India Insurance Company Ltd., vs Trilochan Jane in FA no. 321 of 2005 decided on 09.12.2009. It was argued that the insured had the obligation to inform the Insurance Company immediately about the alleged theft. National Commission held that the word "immediately " has to be construed "within a reasonable time having due regard to the nature and circumstances of the case ". In the case before us the stand of the revision petitioner is different. As seen from the written statement before the District Forum, the stand of the OP/ revision petitioner is that immediately means within 24 to 48 hours. This amounts to modifying the import of the terms "immediately " in the policy. Hence, the plea is rejected. In the instant case, the vehicle was stolen on 14.04.2007 and the insurance company was informed on 23.04.2007. Though the petitioner in his complaint has stated that the insurance agent, namely Mr Ashok Kumar was intimated on 15.04.2007. The petitioner has nowhere mentioned the date when he has informed the respondent. Hence, in this petition no jurisdiction or legal error has shown to call for interference in the exercise of power under section 21 (b) of the Consumer Protection Act, 1986, since, the two Fora below have given cogent reasons in their order which does not call for any interference nor they suffer from any infirmity or revisional exercise of

jurisdiction. It is not that every order passed by Fora below is to be challenged by a litigant even when the same is based on sound reasoning.

11. ACCORDINGLY , the present revision petition is not maintainable being devoid of any merits and is dismissed with cost of Rs.5,000/- (Rupees five thousand only). Petitioner is directed to deposit the cost by way of demand draft in the name of "Consumer Welfare Fund " as per Rule 10 A of Consumer Protection Rules, 1987, within four weeks from today. In case the petitioner fails to deposit the said cost within the prescribed period, then it shall be liable to pay interest @ 9% per annum till realisation.