
(2016) 10 NCDRC CK 0061

In the National Consumer Disputes Redressal Commission

Case No : 77 of 2016

SONELL CLOCKS AND GIFTS LTD.

APPELLANT

Vs

THE NEW INDIA ASSURANCE CO. LTD.

RESPONDENT

Date of Decision : 25-10-2016

Acts Referred:

Citation : 2016 4 CPR 457

Hon'ble Judges : V.K. Jain

Advocate : Jitendra Mohan Sharma, Joseph Fernandes, Shweta Jain, Joy Basu, J.P.N. Shahi, Rajat Khattri

Final Decision : Petition Dismissed

Judgement

1. The complaint was dismissed by this Commission vide its order dated 10.12.2015. Being aggrieved from the dismissal of the complaint, the review petitioner / complainant preferred an appeal before the Hon'ble Supreme Court. The said appeal came to be disposed of vide order dated 26.02.2016, which to the extent it is relevant for this review petition, reads as under:

"Heard Mr. Jitendra Mohan Sharma, learned senior counsel for the appellant. It is submitted by the learned counsel that the insurer has waived the condition relating to delay in intimation by appointing a surveyor.

On a perusal of the order passed by the National Consumer Disputes Redressal Commission (N.C.D.R.C.), New Delhi, we do not find that the said issue was raised before the NCDRC.

In view of the aforesaid, we permit the appellant to file an application for review and put forth the issue of waiver before the NCDRC within a period of four weeks hence. The NCDRC will entertain the application for review singularly on this score".

2. In terms of the liberty granted by the Hon'ble Supreme Court, this review petition has been filed by the complainant. In view of the specific direction of the

Hon"ble Supreme Court, the scope of the review petition is restricted to the issue as to whether the respondent insurer had waived the condition related to delay in intimation, by appointing a surveyor.

3. As noted by this Commission in its order dated 10.12.2015, the alleged loss to the complainant had happened on 04.8.2004 whereas the intimation of the loss was reported to the insurer on 30.11.2004, meaning thereby that there was delay of about three months and 25 days in reporting the loss to the insurer.

4. Clause-6 of the Insurance Policy, to the extent it is relevant required the insured to forthwith give notice to the insurer on the happening of any loss or damage. It is an admitted position that instead of rejecting the claim out rightly on account of the delay in intimating the loss to it, the insurer appointed a surveyor to visit the premises of the complainant / review petitioner and assess the loss sustained by it. It is also not in dispute that the surveyor so appointed by the insurer submitted his report dated 29.12.2004, assessing the loss suffered by the complainant but also pointed out the delay in intimating the loss to the insurer, despite repeated reminder, resulting in breach of the condition No.6 of the insurance policy. He therefore, recommended that the loss was not payable as per para-6 of the policy conditions. It is contended by the learned senior counsel for the review petitioner that if the insurer was to reject the claim, solely on the ground of delay in intimating the loss, it ought to have out-rightly rejected the claim instead of appointing a surveyor to assess the loss. In his contention, by appointing the surveyor, the insurer waived its right to reject the claim on the ground of breach of condition No.6 of the insurance policy. In support of his contention he relied upon *New India Assurance Company Limited Vs. Trilochan Jane*, First Appeal No.321 of 2005 dated 09.12.2009, *Oriental Insurance Co. Ltd. Vs. Parvesh Chander Chadha*, Civil Appeal No. 6739 of 2010 dated 17.8.2010, *United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal*, (2004) 8 SCC 644, *Export Credit Guarantee Corporation of India Ltd. Vs. Garg Sons International* (2014) 1 SCC 686 and *M/s. Industrial Promotion & Investment Corporation of Orissa Ltd.*, Civil Appeal No. 1130 of 2007 dated 22.8.2016.

5. Per contra, the learned counsel for the insurer contended that waiver postulates a positive act giving up a right vested in a person and needs to be accompanied by the other party altering its position based upon such a positive act. He also contended that the term of the policy requiring immediate intimation of the loss to the insurer being mandatory, an implied waiver of such a condition, cannot be inferred. In support of his contention he heavily relied upon the decision of the Hon"ble Supreme Court in *Parvesh Chander Chadha* (supra).

6. In *Parvesh Chander Chadha* (supra), the car in question was stolen between 18.01.1995 and 20.01.1995. The FIR was lodged with the police on 20.01.1995 but intimation of the said theft was given to the insurance company only on 22.5.1995. The claim having been repudiated on the ground of the breach of the conditions of the policy, a complaint was filed by the insured before the concerned District Forum, seeking compensation along with interest. The

complaint was resisted by the insurance company on the ground that he had violated the conditions of the policy by not intimating the alleged theft for almost five months. The District Forum, State Commission as well as National Commission, having ruled in favour of the complainant, the matter was agitated by the insurance company before the Hon"ble Supreme Court. Allowing the appeal filed by the insurance company, the Hon"ble Supreme Court inter-alia held as under:

"Admittedly, the respondent had not informed the appellant about the alleged theft of the insured vehicle till he sent letter dated 22.5.1995 to the Branch Manager. In the complaint filed by him, the respondent did not give any explanation for this unusual delay in informing the appellant about the incident which gave rise to cause for claiming compensation. Before the District Forum, the respondent did state that he had given copy of the first information report to Rajender Singh Pawar through whom he had insured the car and untraced report prepared by police on 19.9.1995 was given to the said Shri Rajender Singh Pawar, but his explanation was worthless because in terms of the policy, the respondent was required to inform the appellant about the theft of the insured vehicle. It is difficult, if not impossible, to fathom any reason why the respondent, who is said to have lodged First Information Report on 20.1.1995 about the theft of car did not inform the insurance company about the incident. In terms of the policy issued by the appellant, the respondent was duty bound to inform it about the theft of the vehicle immediately after the incident. On account of delayed intimation, the appellant was deprived of its legitimate right to get an inquiry conducted into the alleged theft of vehicle and make an endeavour to recover the same. Unfortunately, all the consumer foras omitted to consider this grave lapse on the part of the respondent and directed the appellant to settle his claim on non-standard basis. In our view, the appellant cannot be saddled with the liability to pay compensation to the respondent despite the fact that he had not complied with the terms of the policy.

In the result, the appeal is allowed, the impugned order as also those passed by the District Forum and the State Commission are set aside and the complaint filed by the respondent is dismissed".

7. In *Trilochan Jane (supra)*, the policy condition required the insured to give notice to the insurer immediately upon the occurrence of any accident or loss or damage. Interpreting the word "immediately", this Commission inter-alia observed as under:

"As per Oxford Advanced Learner's Dictionary, the word "immediately" means "at once".

As per Stroud's Dictionary, Fifth Edition, word "immediately" is defined as under:

1. "The word "immediately", although in strictness it excludes all mean times, yet to make good the deeds and intents of parties it shall be construed such convenient time as is reasonable requisite for doing the thing".

As per Black's Law Dictionary, Sixth Edition, word "immediately" means:-

" Immediately. Without interval of time without delay, straightway, or without any delay or lapse of time. When used in contract is usually construed to mean "within a reasonable time having due regard to the nature of the circumstances of the case", although strictly, it means, "not deferred by any period of time. The words "immediately" and "forthwith" have generally the same meaning. They are stronger than the expression "within a reasonable time" and imply prompt, vigorous action without any delay".

According to Mitra's Legal and Commercial Dictionary, Fifth Edition, word "immediately" is defined as under:

"Immediately. "Immediately" is to be construed as meaning with all reasonable speed, considering the circumstances of the case. Halsbury's Laws of England, 4 th Ed. Vol.23, para 1618, p. 1178.

The word "immediately" is stronger than the expression "within a reasonable time", and imply prompt, vigorous action, without any delay. It means all convenient speed. The word "immediately" should not be construed so as to require doing something which is impossible".

As per Oxford Advanced Learner's Dictionary, the word "immediately" means "at once" whereas Stroud's Judicial Dictionary, Fifth Edition, word "immediately" in the context of contract has to be taken as reasonable requisite time for doing the thing. As per Black's Law Dictionary, Sixth Edition, word "immediately" means doing of a thing straightway or forthwith but when used in the context of contract, it is usually construed to mean "within a reasonable time having due regard to the nature of circumstances of the case". More or less to the effect, is the same meaning assigned in Mitra's Legal and Commercial Dictionary, Fifth Edition. Since, in the present case, there was a contract between the insured and the insurer and, the word "immediately", under the circumstances, has to be construed within a reasonable time having due regard to the nature of circumstances of the case".

8. It would thus be seen that the term "immediately" or "forthwith", when used in an insurance policy does not always mean that the insured should report the loss to the insurer the very moment or the very day it happens. The insured is required to intimate the loss or damage to the insurer expeditiously and within a reasonable time. What a reasonable time would be depends upon the facts and circumstances of each case though it can hardly be disputed that the imputation should be given without deliberate loss of time. If an explanation is given by the insured for the delay in reporting the loss to the insurer, such an explanation also needs to be considered firstly by the insurer and if the matter is taken to a Court / Forum by the said Court / Forum. As noted by the Hon'ble Supreme Court in Parvesh Chander Chadha (supra), the respondent / complainant before it had not given any explanation or the unusual delay in informing the incident of theft to the insurer. The aforesaid observation clearly implies that the delay in

reporting the loss to the insurer ought to be unusual and if a satisfactory explanation even for an unusual delay is given that explanation needs to be examined on its merit. Therefore, it would be difficult to say that in every case of delay in reporting the loss, the insurer instead of appointing a surveyor should straightway reject the claim on account of the said delay, and appointment of the surveyor would amount to waiving the right of the insurer to reject the claim on account of breach of the condition requiring immediate/forthwith information of the loss.

9. If the insurer straightway rejects the claim, without appointing a surveyor, solely on the ground of the delay in reporting the loss to it, that may result in a situation where it may not be possible to reasonably assess the loss even in a case where the insured has a reasonable explanation to offer for the delay in reporting the loss to the insurer. For instance, if the claim is rejected solely on the ground of reporting the loss, the decision of the insurer is challenged before a Court, and the Court accepts the explanation furnished by the insured for the delay in reporting the loss to the insurer, it may not be possible to assess the loss at the time when the decision is rendered by the Court, since valuable evidence which is available soon after the incidence of loss is mostly likely to be lost by the time Court decision is rendered. On the other hand, no prejudice at all is caused to the insured by appointment of a surveyor to assess the loss alleged to have been sustained by him since even if the claim is later rejected on account of the delay in reporting the loss to the insurer. In such a case if the Court before which the decision of the insurer is challenged, comes to the conclusion that rejection of the claim solely on the said ground was not justified in the facts and circumstances of the case, it will be in a position to award appropriate compensation based upon the report of the surveyor. In the absence of such a report the Court will be severely handicapped in awarding appropriate compensation to the insured.

10. In *State of Punjab Vs. Davinder Pal Singh Bhullar* (2011) 14 SCC 770, the Hon'ble Supreme Court, inter-alia stated as under:

"41. Waiver is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed. In fact, it is an agreement not to assert a right".

42. This Court in *Municipal Corpn. of Greater Bombay Vs. Dr. Hakimwadi Tenants Assn.* considered the issue of waiver/acquiescence by the non-parties to the proceedings and held: (SCC p. 65, para 14-15)

14. In order to constitute waiver, there must be voluntary and intentional relinquishment of a right. The essence of a waiver is an estoppel and where there is no estoppel, there is no waiver. Estoppel and waiver are questions of conduct and must necessarily be determined on the facts of each case".

The facts and circumstances of the case however, do not indicate an intentional

and conscious relinquishment, by the insurer, of its right to reject the claim on account of the delayed intimation of the loss, by appointing a surveyor to assess the loss claimed by the insured. The said appointment, in my opinion, was as a matter of practice and caution so that an appropriate decision on the claim may be taken by the complainant Authority, in the light of the report of the surveyor and the terms and conditions of the insurance policy.

11. The learned counsel for the review petitioner also relied upon the decision of the Hon'ble Supreme Court in M/s. Galada Power and Telecommunication Ltd. Vs. United India Insurance Co. Ltd. & Anr. Civil Nos. 8884-8900 of 2010 decided on 28 th July, 2016. However, the aforesaid decision, in my opinion, would not apply to this case since the claim in that case was not rejected on account of the delay in intimating the loss to the insurer, which has been held to be a mandatory condition of the insurance policy.

12. It also transpired during the course of hearing that vide its Circular No. IRDA/HLTH/Misc./Cir/216/09/2011 dated 20.9.2011, Insurance Regulatory and Development Authority has advised the insurers not to repudiate the claims on account of the delay in intimating the loss to the insurer, without first ascertaining the reason for the said delay and satisfying themselves that the delayed claim would have been otherwise rejected even if reported in time. The aforesaid circular is binding on the insurers with effect from 20.09.2011 as stated in an affidavit dated 27.7.2016 filed by the IRDA before this Commission in Revision Petition No. 2850 of 2015 Reliance General Insurance Company Ltd. Vs. Harleen Kaur. Since the scope of this review petition is restricted to the question as to whether the insurer had waived the condition related to the delay in intimation, by appointing a surveyor, I cannot while considering this review petition go into the question as to whether the benefit of the aforesaid circular dated 20.9.2011 is available to the complainant / review petitioner or not.

13. For the reasons stated hereinabove, I find no merit in the review petition and the same is accordingly dismissed, with no order as to costs.