(2010) 09 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

State Bank of India APPELLANT

Vs

Kashmir Singh S/o Sri Singhara Singh RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Citation : 2010 0 NCDRC 172 : 2011 1 CPJ 144

Hon'ble Judges : R.C.Jain , Suresh Chandra J.

Final Decision : Revision petition is dismissed

Judgement

1. STATE Bank of India, Nazibabad Branch, Nazibabad, District Bijnor, who was the opposite party No. 1 in the complaint filed by the complainant-Kashmir Singh, has filed this revision petition under Section 21(b) of the Consumer Protection Act, 1986 (for short, the Act) against the order dated 15.09.2008 passed by the Uttar Pradesh STATE Consumer Disputes Redressal Commission, Lucknow (for short, the STATE Commission). By the impugned order dated 15.09.2008, the STATE Commission has dismissed the appeal filed by the petitioner-Bank against the order dated 6.6.2003 of the District Consumer Forum, Bijnor. By the aforesaid order, the District Consumer Forum allowed the complaint filed by Kashmir Singh and directed the petitioner-bank to pay a compensation of Rs. 53,020/- with interest @12% from 17.12.1997 till the date of payment besides cost of Rs.3,000/-.

2. THE facts and circumstances, which led to the filing of the complaint and then the appeal before the State Commission have been amply noted by the State Commission in detail in the impugned order and need no repetition at our end. Consumer dispute raised before the District Consumer Forum was in regard to the non-settlement of a claim of Rs.53,020/-, which the complainant, Kashmir Singh had incurred in repair of his Mahindra Tractor bearing registration No. UAK 7738, which met with an accident at an unmanned railway crossing on 28.2.1996. THE complainant had obtained loan of Rs.1,06,000/-, therefore, the tractor in question was hypothecated with the State Bank of India. According to the complainant, the bank had been taking insurance for the said tractor from

opposite party No. 2, Oriental Insurance Company Limited but the insurance company had repudiated the claim on the ground that there was no insurance coverage for the tractor as on the date of accident i.e. 28.2.1996, opposite party No. 1-bank having not remitted the requisite premium to the insurance company for the relevant period. THE bank though admitted that a sum of Rs.1022/- was debited towards premium from the loan account of the complainant on 14.12.2005 and the said amount alongwith insurance premiums in respect of other borrowers was also remitted to the insurance company through its agent but the insurance company delayed the issuance of policy/renewal of policy uptil April, 1996 and therefore, the deficiency in service if any committed is on the part of the insurance company rather than the bank. THE parties led evidence, the complainant having filed his own affidavit and the bank having filed the affidavit of Mr. Balbir Singh, Manager (Personnel), State Bank of India, Bijnor in support of their plea about the handing over the cheque No. 348292 in the sum of Rs. 4937/- including the premium of Rs.1022/- debited from the account of the complainant to the Development Officer of the insurance Company in December, 1995 itself while the insurance company filed affidavit of Shri Mohd. Afaq Ahmad, Development Officer, Oriental Insurance Company Ltd., Nazibabad Branch denying that any such cheque was given to him on 14.12.1995 and rather confirmed that a cheque was given to him only on 12.4.1995 and on the same date, he (deponent) issued cover note No. 21685 for covering the tractor of the complainant for the period from 12.4.1996 to 11.4.1997. The State Commission going by the evidence and material brought on record, found no deficiency on the part of the insurance company and held that it was due to the negligence/deficiency in service on the part of the petitioner-bank that the insurance in respect of the tractor in question could not be renewed in time by the bank before it expired and accordingly made the order against it. It would appear that in appeal before the State Commission, there was no appearance on behalf of the appellant-bank at the time of hearing of the appeal but the State Commission going by the entirety of the facts and circumstances of the case, evidence and the material obtaining on record, considered the grounds set up in the memorandum of appeal and has dismissed the appeal affirming the order of the District Forum.

We have heard Mr. A. K. Tiwari, learned counsel for the petitioner and Mr. J. P. Sharma, learned counsel for opposite party No. 1 and Ms. Manjusha Wadhwa, learned counsel for opposite party No. 2 and have given our thoughtful consideration to their respective submissions. Mr. A. K. Tiwari, learned counsel for the petitioner has assailed the impugned order primarily on the ground that the fora below have erred in holding the bank guilty of deficiency in service for not renewing the insurance policy for the tractor of the complainant and holding them liable to pay the loss suffered by the complainant. In this connection, his submission is that the fora below have erred in placing reliance on the testimony of Shri Mod. Afaq Ahmad, Development Officer of the insurance company in preference to the sworn testimony of Shri Balbir Singh, Manager of the petitioner-

Bank. In any case, his submission is that it was the sole obligation of the complainant to obtain the insurance for the hypothecated tractor rather than of the Bank and therefore, even if it is assumed that the bank did not seek renewal of the insurance policy, still no liability can be fastened on the bank on that score. As against this, the submission of the learned counsel for the respondent No. 1 is that it was the obligation of the petitioner to obtain the insurance coverage for the hypothecated tractor in order to safeguard their own interest and in fact they had taken the policy and of claim to have got it renewed by debiting the amount of premium amounting to Rs.1022/- in the account of the complainant. Learned counsel for the respondent No. 2 has further supported the order passed by the fora below and submitted that due to the fault or delay on the part of the bank, the insurance policy could not be renewed before April, 1996 and for which they should suffer.

3. HAVING given our thoughtful consideration to their respective submissions put forth on behalf of the parties, we are of the view that so far as the claim of the complainant for reimbursement of the amount of loss he suffered due to the damage to his tractor on 28.2.1996 is concerned, he needs to be compensated either by the petitioner-bank or the insurance company. It is not in dispute that the bank had debited the amount of premium in the loan account of the complainant as early as in December, 1995 and, therefore, the only question is as to when this amount was actually remitted to the insurance company. If we believe the version of the insurance company, Development Officer of the insurance company has clearly stated that the Pay Order in respect of amount of premium towards the premium of insurance was received by him only on 12.4.1996 and no time earlier while according to the bank, the Pay Order was handed over to him on 14.12.1995. We are unable to believe the version of the bank because if they had actually handed over the Pay Order of the said amount to the Development Officer on 14.12.1995, they could have established the same by means of some cogent evidence. In any case, there is nothing on record to show that the bank had sent any reminder to the insurance company asking for the cover note or policy document for about four months when the policy was renewed in April, 1996. If the bank had actually remitted the amount of premium, they would not have been sitting pretty idle and waiting indefinitely for the receipt of the insurance policy. Both the fora below have given concurrent finding that there was negligence/default on the part of the petitioner-bank as the insurance policy in question was not found got renewed promptly and for which the bank is liable and should suffer. We find no fault in the said concurrent finding recorded by the fora below. In the result, the revision petition is dismissed being devoid of any merit. The petitioner shall pay cost of Rs.10,000/- in these proceedings to be shared by two respondents.