(2006) 01 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

SUBHASH AGRAWAL APPELLANT

Vs

ORIENTAL INSURANCE COMPANY LIMITED RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

Citation : 2006 2 CPJ 117

Hon'ble Judges : V.K.AGRAWAL , VEENA MISRA , R.S.AWASTHIS J.

Judgement

1. THIS appeal arises out of the order dated 12.7.2005 passed by the District Consumer Disputes Redressal Forum, Raipur (hereinafter referred to as District Forum for short) in Complaint Case No. 15/2005 whereby the complaint dismissed.

2. BRIEF facts necessary for disposal of this appeal are that the Hero Honda Motor Cycle bearing No. M.P. 23 -MD -8983, in the name of the complainant was insured with the opposite party/respondent under Package Policy for Zone B Motor Cycle for the period from 14.10.2003 to 13.10.2004. During the aforesaid period the vehicle was stolen on 1.11.2003 from the place near Dr. Surs Clinic near Mandi Gate where the complainants friend Mahendra had parked it and after duly locking the same had gone to take dinner with his friends. Next morning when the said Mahendra went to take the vehicle the same was found missing. Consequently, Mahendra had lodged FIR with the Pandri Police Station and had also intimated the RTO and the S.P. Office. Claim was filed before the insurer but the same was repudiated on flimsy grounds and such conduct on part of the insurer amounted to deficiency in service, hence the complainant had to file complaint before the District Forum. The opposite party/insurer resisted the complaint and denied the allegations of the complainant. It was averred in the written version that intimation to the insurer was given by Mahendra after 4 days of the alleged theft. It was further averred that it was Mahendra Khurana who had filed claim form on 5.11.2003, though without any documents, this shows that Mahendra was the owner of the vehicle at the time of accident. It was further averred in the written version that it was revealed from the report and

investigation that the complainant had explicitly violated terms of policy and hence, was not entitled to receive the claim, hence his claim was repudiated vide letter dated 12.8.2004. It is also averred in additional pleadings that the vehicle was left unattended by Mahendra Khurana near Dr. Surs clinic at Pandri and the incident had taken place due to his own negligence and all this amounted to violation of terms of the policy. It was further alleged in additional pleadings that the vehicle was insured in the name of the complainant and Mahendra was not eligible to file claim before the insurer. On investigation, it was revealed that without giving intimation to the insurer, the complainant had sold the vehicle to Mahendra, though the same was not recorded with the RTO.

3. THE learned District Forum had dismissed the complaint with liberty to the complainant to approach the Civil Court or to avail of such other remedy as may be available. Aggrieved by the aforesaid order the complainant had preferred this appeal.

4. FINAL arguments heard and record perused. Learned Counsel for the appellant submitted that the learned District Forum has erred in not properly appreciating the material on record and thereby coming to the conclusion that the complainant had violated terms and conditions of the policy. He further submitted that the District Forum has ignored the affidavits of Mahendra Khurana and the complainant and has erroneously come to the conclusion that the vehicle was sold to Mahendra Khurana. He further submitted that the insurer had repudiated the claim on the ground that it was not parked at a proper place but the District Forum totally lost sight of the fact. On the aforesaid grounds the learned Counsel for the appellant prayed that the impugned order be set aside and the appeal allowed.

5. ON the other hand, the learned Counsel for the respondent reiterated the stand taken before the District Forum and submitted that there is no need of interference in the order of the District Forum and prayed for dismissal of this appeal.

6. IT appears from the repudiation letter dated 12.8.2004 that claim of the complainant was repudiated on the ground that or have left the vehicle unattended and did not take any precaution to safeguard the vehicle resulting into theft of the vehicle. It is nowhere stated in the repudiation letter that the claim was repudiated because it cannot be entertained, as some person other than the owner had filed the claim. It is noticed that the letter of repudiation is addressed to the complainant. Hence, the plea of the insurer cannot be accepted that the claim was not maintainable because it was not filed by the complainant/ owner. We are of the opinion that in case it is necessary that the claim is to be filed by the owner, the Insurance Company appears to have considered the claim filed by someone else and hence waived the requirement of filing of claim by the claimant/owner himself. Had it not done so neither the insurer would not have considered the claim or would have repudiated the same on this count only. From document NA/6 i.e., memo sent by the insurer to the Superintendent of Police,

Raipur, also it is mentioned in most clear and unambiguous terms the insured has lodged the claim with us. Hence, there remains no doubt that the insurer considered the claim to have been filed by the insured and had impliedly waived the condition, if any, that the claim should be filed by the insured himself. So far as the opposite partys plea that the complainant had sold the vehicle to Mahendra Khurana is concerned we do not find sufficient material to conclude that the vehicle was so sold. Simply, on the basis of Surveyors report it cannot be concluded that the vehicle was so sold especially when the alleged purchaser has sworn an affidavit denying such sale and affidavit of the Surveyor has not been filed. It is common for neighbours and friends to use each others vehicle whenever required or when the other is out of station, of course with permission of the owner and this is what appears to have been done in the present case.

7. NOW we have to consider the question as to whether the complainant has violated of the terms of the policy? If so, the effect thereof.

8. THE learned Counsel for the complainant/appellant submitted during course of arguments that the terms and conditions of policy were not supplied to the complainant. On perusal of complaint also it is noticed that it is stated in very clear and unambiguous terms that the insurer had issued single page policy in favour of the complainant. The insurer has not specifically rebutted this averment. Hence, it cannot be concluded that the policy was issued subjected to the terms and conditions that the insurer has filed in the complaint case. We are of the opinion that a person is not bound by the terms and conditions that were not known to him. Otherwise also there is no dispute that Mahendra had duly locked the motorcycle so whether it was parked near Dr. Surs clinic or elsewhere hardly matters. A person cannot always be expected to leave the vehicle in secure premises. At times vehicle is to be left unlocked, the person in whose custody the vehicle is, would be termed to have been negligent because a reasonable and prudent man does not leave the vehicle unlocked. In view of the above discussion, we are of the opinion that the complainant had not violated any terms and conditions. Hence, the order of the District Forum cannot be sustained, it is set aside. We are of opinion that the opposite party insurer has unjustifiably repudiated the claim and is thus guilty of deficiency in service. This appeal is allowed and since the vehicle was stolen, it is a case of total loss. It is directed that the insurer shall pay to the complainant/appellant a sum of Rs. 30,000 (Rupees thirty thousand) being the insured sum and shall pay interest @ 9% per annum from the date of complaint till final realization. Besides bearing its own costs of proceedings the insurer shall also pay that of the complainant/ appellant and the same is quantified at Rs. 2,500 (Rupees two thousand five hundred) only. Appeal allowed.