
(2010) 10 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

SUBHASH CHAND JAIN

APPELLANT

Vs

UNITED INDIA INSURANCE COMPANY Limited

RESPONDENT

Date of Decision : 13-10-2010

Acts Referred:

Citation : 2010 0 NCDRC 194 : 2010 4 CPJ 291 : 2010 4 CPR 109

Hon'ble Judges : R.C.Jain J.

Final Decision : Appeal is dismissed

Judgement

1. CHALLENGE in this appeal is to the order dated 22.7.2010 passed by Chhattisgarh State Consumer Disputes Redressal Commission, Raipur (in short, the State Commission) in complaint case No. 15 of 2006. By the impugned order, the State Commission has dismissed the complaint filed by the appellant-complainant against M/s United India Insurance Co. Ltd. and M/s Bank of Maharashtra, seeking various amounts of compensation from them alleging deficiency in service on their part in not settling the insurance claim amounting to Rs.14,78,604/- towards indemnification of the loss which the complainant had suffered to his stocks of lubricants etc. at his shop at Navkar Parisar, Pulgaon Naka, Durg due to flood. The claim was repudiated by the insurance company primarily on the ground that the insurance policy under which the claim was lodged, was issued in the name of M/s Bank of Maharashtra A/C Kumat Automobiles having coverage of the risk of oil, grease, lubricants, automobile tools etc. lying at the shop/showroom of the complainant situated at Babji Complex, Maudahapra, Raipur behind Anand Talkies and not the stock lying at Durg where the peril had taken place. The complaint was also resisted on this ground. As against this, the plea of the appellant-complainant was that the complainant had closed his business at Raipur and shifted at the above address at Durg on 12.2.2004 and information to this effect was given to the opposite party No 2 Bank vide letter dated 13.2.2004 and thereafter the insurance company got the premises at Durg inspected and therefore, the stock lying at the shop at Durg was covered under the policy in question. The State Commission going by the respective pleas, evidence and material brought on

record, however, dismissed the complaint holding that none of the opposite parties was guilty of any deficiency in service and consequently, liable to pay any compensation to the complainant much less the compensation claimed by him.

2. WE have heard Mr. R. K. Bhawnani, learned counsel for the appellant-complainant at length and have perused the entire relevant documents brought on record. Mr. Bhawnani, learned counsel for the appellant-complainant would assail the impugned order mainly on the ground that it is not based on correct and proper appreciation of the pleas of the parties, material brought on record. In this connection, he has pointed out that since the goods were hypothecated with opposite party No. 2-M/s Bank of Maharashtra, they were under an obligation to take the insurance policy at the correct address where the stocks of oil and lubricants were lying i.e. Navkar Parisar, Pulgaon Naka, Durg but the bank instead of continuing/renewing the insurance policy which they have taken in respect of previous premises at Raipur despite the shift of the business having been intimated to the insurance company. In our opinion, the contention has no merits because in the impugned order, the State Commission has found that letter dated 13.2.2004 could not be proved. In any case, it has not been proved that the insurance company was notified about the change in the address of the shop of the complainant from Raipur to Durg. The State Commission, going by the decisions of the Supreme Court in the case of Oriental Insurance Co. Ltd. & Anr. vs. P. R. Automobiles & Oils & Anr. I(2010) CPJ 83 (NC), held that the insurance company was not liable to settle the claim lodged by the complainant by observing as under:- 24. From the policy it is clear that there was no contract of insurance between the parties in respect of premises at Pulgaon Naka, Durg at the relevant time and when there was no contract of insurance then the insurance company cannot be blamed of committing any deficiency in service in not paying any compensation or in not settling the claim. In similar circumstances, Honble National Commission in the case of Oriental Insurance Co. Ltd. & Anr. Vs. P. R. Automobiles & Oils & Anr. I (2010) CPJ 83 (NC), has observed that if assuming that the letter dated 30.10.1998 was sent by the complainant and was received by the Insurance Company before the date of peril, it is an admitted position that the Insurance Company had not made any endorsement in the policy document in regard to the change of address before the date of peril. To make such endorsement in respect of new location is entirely in the discretion of the insurer. In the case of S. Rathinavelu vs. The New India Assurance Co. Ltd. & Ors. II (1995) CPJ 135 (NC), Honble National Commission unambiguously held that mere receipt of a request for change in address is not sufficient to make the policy applicable to the changed premises. It is required to be incorporated in the policy by way of a separate endorsement and till then, no risk is assumed in respect of the new location. To make such endorsement in respect of new location is entirely in the discretion of the insurer That decision was made applicable by Honble National Commission in the aforesaid case of P.R. automobile (supra) and it was observed that the insurer was not liable. Honble Supreme Court in the case of Deokar Exports Pvt. Ltd. vs. New India Assurance

Co. Ltd. I (2009) CPJ 6 (SC) in paragraph No. 11 has observed that a policy of insurance is a contract based on an offer (proposal) and an acceptance. The appellant made a proposal. The respondent accepted the proposal with a modification. Therefore, it was a counter-proposal. The appellant had three choices. The first was to refuse to accept the counter proposal, in which event there would have been no contract. The second was to accept either expressly or impliedly, the counter-proposal of the respondent (that is respondents acceptance with modification) which would result in a concluded contract in terms of the counter proposal. The third was to make a counter proposal to the counter proposal of the respondent in which event there would have been no concluded contract unless the respondent agreed to such counter-proposal. But the appellant definitely did not have the fourth choice of propounding a concluded contract with a modification neither proposed nor agreed to by either party. This principle clearly applies in the facts of the present case. In the present case the complainant was propounding to correct the contract of insurance in respect of Raipur premises with modification to make the policy applicable for the Durg premises, though no such proposal was ever sent by anyone nor agreed by the insurance company. Thus, on the basis of aforesaid settled law, we are of the considered view that in the insurance policy filed by OP No. 1, the Durg premises was not covered nor the insurance company was having any liability of indemnifying any loss, particularly when no objection was ever raised either by the complainant or by the Bank, after receiving the policy document and no prayer was made for any change of address. Thus, point for consideration Nos. (iii) & (iv) are decided against the complainant.

So far as the liability of the Bank to compensate the complainant for the alleged deficiency on their part is concerned, the State Commission answered the same also in negative going by the decision of this Commission in the case of Corporation Bank vs. Sandhya Shenoy & Anr. 2009 NCJ 256 (NC), by observing as under:- This clause clearly shows that obtaining insurance policy is the liability of the borrower i.e. the complainant. Renewing such policy is also his liability and if he commits any default then the Bank may obtain such policy or renew the policy, but it is simply lawful for the Bank and not obligatory upon it, as per terms agreed between the parties. Counsel for the complainant submitted that as the Bank was renewing the policy therefore the Bank should be hold liable for not obtaining insurance policy for the premises at Durg. In this regard, reliance has been placed on decision of Honble National Commission in the case of Corporation Bank vs. Sandhya Shenoy & Anr. 2009 NCJ 256 (NC). In that case the Bank obtained policy on oral instructions of the complainant, but in the relevant year it had not done so. Whereas, in the facts of the present case, the Bank had requested the insurance company to issue a policy, but the policy was issued for another premises. Considering the hypothecation agreement between the parties, it was not obligatory upon the Bank to obtain insurance policy, but even then it obtained insurance policy and therefore if this fact was not communicated by the Bank to the insurance company or there was some

communication gape between the complainant and the insurance company in respect of change of address then merely on account of this position, the Bank cannot be held responsible for any loss, particularly when now the complainant has settled his dispute with the Bank and has paid the amount of loan after getting reasonable relief in the total amount, to be paid, as per calculation of the Bank. Therefore, considering the facts of the case, we do not find the Bank/OP No. 2 guilty of any deficiency in service.

3. IN our view, the order passed by the State Commission is based on correct and proper appreciation of the respective pleas, evidence and material brought on record and is also in consonance with the law as laid down by the Supreme Court and this Commission in several cases. We do not see any good ground to interfere with the well-reasoned order of the State Commission. IN the result, the appeal fails and is hereby dismissed in limini.