(2004) 08 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

SUBHASH CHANDRA CHATURVEDI APPELLANT

Vs

United India Insurance Company Ltd. RESPONDENT

Date of Decision : 03-08-2004

Acts Referred:

Citation : 2005 2 CPJ 571

Hon'ble Judges : Rachna , R.N.Prasad J.

Advocate : Rajneesh Kumar Srivastava , Vineet Srivastava

Judgement

1. THIS is a complaint under Section 12 of the Consumer Protection Act (hereinafter called the ''Act'') claiming compensation of Rs. 1,87,000/- along with Rs. 5,000/- as damages for harassment with the allegation that the complainant purchased a Mahindra jeep in April, 1991 for a sum of Rs. 1,87,000/- bearing registration No. MP 07 A-7287 and the said jeep was insured with the opposite party and its policy number was 080402/31/11/367/91. It was further alleged that during the absence of the complainant his brother-in-law Shri Satyendra Kumar Chaturvedi took the jeep informing the family members that since he had urgent work, he was taking away the jeep. He took the jeep at 5.00 p.m. on 19th September, 1991 from the house of the complainant. Later on the complainant came to know that his jeep has been forcibly taken away by some anti-social elements after tying hands of his brother-in-law as well as of the driver on 21st September, 1991 at about 6.00 p.m. near Bhind-Etawa bye-pass. Inspite of First Information Report the jeep in question could not be recovered and the culprits could not be brought to books. Finally claim was lodged with the opposite party but vide repudiation letter dated 15.12.1992 the claim was rejected. The plea of repudiation with mala fide intention and illegal repudiation was asserted. Consequently complaint was filed for claiming the amount stated above.

2. IN the written statement, the opposite party averred that the jeep in question was insured with the opposite parties for the period 27.3.1991 to 26.3.1992 having sitting capacity of 5 + 1 including the driver. It was further averred in the written statement that after investigation by two licensed Surveyors it came to

know that the jeep in question was being used for commercial purpose and was carrying passengers more than prescribed limit and at the time of the theft the passengers sitting in the jeep had paid Rs. 200/- for travelling from Sirsaganj to Agra. Repudiation of the claim was justified by averring that the breach of the condition was committed by the complainant as the vehicle was being used as commercial vehicle and was over-loaded. It was also argued that the circular filed as Annexure 6 by the complainant is of no consequence. We have heard the learned Counsel for the parties and also perused the material on record. The function of insurance of the Mahindra jeep in question which has been the subject matter of theft as a result of the forcible taking away by certain miscreants has not been denied by the opposite parties. The specific case of the opposite party for the justification of the repudiation is that initially the jeep in question was insured under private car B policy and was having the sitting capacity of 5 + 1 including the driver, but contrary to the breach of the contract and the conditions of insurance, at the time of forcibly taking away the jeep in question by certain miscreants, the same was found to be used for commercial purpose and was over-loaded with the passengers and as such no claim whatsoever was sustainable.

In B.V. Nagaraju v. Oriental Insurance Company Ltd., II (1996) CPJ 28 (SC), it has been specifically held that if the terms of the insurance policy provided that the insured vehicle is entitled to carry only six workmen including the driver and carried more passengers namely 9, then it cannot be assumed that the risk has in any way increased and there was no nexus between carrying more than the limited number and cause of theft. It cannot be assumed that the risk has increased. Further more in view of the circular of G.I.C. procedure of settlement of non-standard claim has been laid down which provides that even if there was a violation of limit to use of the vehicle, the opposite parties can deduct maximum of 25% of the claimed amount and since in the instant case claim has been totally repudiated the stand of the oppositie party cannot be held to be justified. The total claim in the instant case has been for Rs. 1,87,000/-. This figure is shown in the terms of contract. In view of the circular mentioned above, the maximum deduction in view of the breach of contract is possible to the extent of 25%. Consequently the complainant is entitled for a sum of Rs. 1,40,500/-. Since repudiation has been done wrongly the complainant is also entitled to get interest at the rate of 4% per annum, which is applicable from 1st March, 1993 which is the date around the time of filing of the complaint. No damage for harassment is possible. ORDER The complaint succeeds for Rs. 1,40,500/- along with interest at the rate of 4%. There will be no order as to the costs. Let copy as per rules be made available to the parties. Complaint disposed of.

