(1991) 01 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

SUSHILA GAUTAM APPELLANT

Vs

National Insurance Co. Ltd. RESPONDENT

Date of Decision : 31-01-1991

Acts Referred:

Citation : 1991 2 CPJ 3

Hon'ble Judges : R.N.Mittal , B.L.Anand , Avtar Pennathur J.

Final Decision : Complaint dismissed

Judgement

1. BRIEFLY, the case of the complainant is that her husband purchased a new Tata Truck in the year, 1982. It was registered by the Registering Authority and numbered as UPP-8645. He transferred that truck in the name of the complainant subsequently and the Registering Authority registered That in her name. The registration number was then changed to DIL-2562. The said truck required heavy repairs and for that purpose she arranged a loan of Rs. 50,000/- from M/s Sanjit Finance Company, New Delhi. On 3rd November, 1986, the vehicle was got insured with the respondent for comprehensive risk for the period from 3rd November, 1986 to 2nd November, 1987.

2. THE vehicle was got duly repaired in November, 1986. THE complainant, it is pleaded, found the truck missing from the place where it was parked alongwith registration book and insurance policy, which had been kept in the truck. On enquiry she was informed by some neighbours that Shri R.C. Misra had taken away the truck and one bearded person was driving the same. She lodged a report about the theft with the police at Police Station, Ghaziabad. On 12th December, 1986, she also reported about the theft of the truck to R.T.O. Delhi and the Insurance Co. Shri R.C. Misra was arrested by the police and was challaned under Section 379 of the Cr. P.C. That the respondent appointed Sh. Deepak Anand, Surveyor to survey and investigate her claim. It is alleged that the Surveyor did not make full enquiry and delayed the matter and ultimately she was informed by the respondent vide letter dated 10m August, 1989 that her claim could not be paid by the insurance. She claimed Rs. 1,60,000/- from the

respondent on account of the price of the truck. She further claimed interest on Rs. 1,60,000/- @ 18% per annum from 12.12.86 to 7.8.90, the date of filing the complaint, amounting to Rs. 1,05,258/-. Consequently, she filed a complaint for recovery of the total amount of Rs. 2,65,258/- with future interest @ 18% per annum from the date of filing the complaint till the date of payment of the amount

The complaint has been contested by the Insurance Company. They have inter alia pleaded that the State Commission could try the complaint received from the insured persons, if there was any deficiency, fault, imperfection shortcoming in the nature and manner of performance of the service provided by the underwriters but it could not determine the contractural obligations, liabilities or claims under the policy or the contract. ''Service'' does include the settlement of the claim of the insurer. It is alleged that the claim in the present case had been processed and was repudiated and therefore, no cause of action arose to the complaint against the respondent.

3. WITH regard to transfer of the truck in favour of the complainant by her husband, it was pleaded by the Insurance Company that they were informed by the husband that the complainant got the said truck transferred in her name by fraud and by producing false and forged documents with the motive of depriving him of his self acquired property. He also stated that he had never signed any letter to transfer the vehicle in her name. He therefore, requested that the claim be not paid to the complainant. The respondent has further pleaded that it was discovered from the investigation by the Surveyor that out of loan raised by the complainant from the financers, she repaid a sum of Rs. 50,000/- to the financers within a span of 25 days from the date of raising the loan and out of that amount an amount of Rs. 40,000/- was paid to the financers from the account of Shri R.C. Misra. Thereafter, Sh. R.C. Misra tried to sell the vehicle to one Shri Swami Manhara Nand at Varanasi. The Transport Authority there started making enquiries regarding the truck. Shri Misra in that situation slipped away from there. It is next pleaded, that the abovesaid facts go to show that the matter is complicated and the claim of the complainant had been rejected after full enquiries.

4. IN the circumstances, it is prayed that the complaint be dismissed on this short ground. It is argued by the learned Counsel for the respondent that the narration of facts as given in the complaint and the written statement show that the facts are complicated and there are allegations of fraud therein. The title of the complainant to the truck has also been denied. In the said situation, the proper Forum for claiming the amount was the Civil Court and not the State Commission. In support of this contention, he has placed reliance on a decision of the National Commission in M/s Janta Machine Tools v. Oriental Insurance Co. Ltd. (Original Petition No. 12/1990 decided on 21st August, 1990). On the other hand Mr. Aggarwal, agent for the complainant has argued that there were deficiencies in the services of the defendant and they without proper

investigation rejected the claim of the complainant. We have duly heard the counsel and considered their arguments. We however, agree with the contention of the learned counsel for the respondent. The narration of facts given in the complaint and written statement go to show that even the title of the complainant has been challenged by her husband. There are allegations of fraud levelled by the husband of the complainant against her. The defendant after investigation of the claim rejected the same. In such circumstances, if the complainant is not satisfied with the decision of the respondent he can file a Civil Suit and establish her claim there. For such disputes, the State Commission is not a proper Forum for adjudicating the same. We are fortified in our view by the observations of the National Commission in Janta Machine Tools'' case (supra) wherein it was observed as follows : "From the facts disclosed by the record and particularly the averments contained in the counter affidavit filed by the first respondent, it is seen that the Insurance Company had fully investigated into the claim put forward by the complainant, got surveys conducted and had finally come to the conclusion that the claim put forward by the complainant was false and accordingly informed the complainant that his claim was rejected. Thus, this is not a case where the Insurance Company did not take prompt and necessary steps for deciding the claim under the policies of insurance. It may be that the complainant is not satisfied with the said rejection of his claim by the Insurance Company. Having regard to the facts and circumstances of this case and the nature of the controversy between the parties we consider that this is a matter that should be adjudicated before a Civil Court where the complainant as well as the respondent will have ample opportunity to examine witnesses at length, take out Commission for local inspections etc. and have an elaborate trial of the case".

5. THE above observations are fully applicable to the present case.

6. FOR the aforesaid reasons we dismiss the complaint with no order as to costs. Complaint dismissed.