(2004) 05 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

TARLOCHAN JIT SINGH APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LIMITED RESPONDENT

Date of Decision : 12-05-2004

Acts Referred:

Citation : 2004 4 CPJ 784

Hon'ble Judges : K.K.Srivastava , MajGenS.P.Kapoor J.

Final Decision : Appeal dismissed

Judgement

1. IN this appeal filed against judgment and order dated 3.2.2004 in Complaint Case No. 261 of 2002, the District Consumer Disputes Redressal Forum-II, U.T., Chandigarh [for short hereinafter referred to as the District Forum] has relegated the appellant/complainant to approach a Civil Court of competent jurisdiction for determination of the controversy involved in this case, which involve complicated questions of fact and law including evidence of handwriting experts and experts of the questioned documents.

2. THE controversy involved in this case is about the policy of insurance bearing No. 3135330113877 dated 26.2.2001 issued to the appellant by the Chandigarh Branch Office of New India Assurance Company Limited (for short hereinafter referred to as the Assurance Company) in lieu of cover note No. 366744 dated 24.2.2001. THE premium was of a sum of Rs. 4,702/- for the assured sum of Rs. 1,25,000/- in respect of motor vehicle bearing registration No. HNL 7090. THE risk involved by the policy was for the period from 24.2.2001 to 23.2.2002. THE motor vehicle in respect of which the said policy was taken by the appellant/ complainant met with an accident at Mubarkpur-Dera Bassi Road in the night intervening 12/13.2.2002. About this incident, FIR (Annexure C-3) was registered with the police. At the time of the accident, one Sartaj Singh was driving the car and he was holding a valid driving licence. Upon the receipt of the information regarding the accident, the Assurance Company appointed Shri J.K. Jalpur as Surveyor and he informed the complainant that his claim would be on the basis of total loss. However, in order to avoid delay, the appellant also

submitted the estimate for repairs. A second Surveyor Shri R.S. Arora was appointed by the Assurance Company who inspected the accidented vehicle at Dera Bassi and all the relevant documents, Driving Licence, Registration Certificate, Insurance Policy and other relevant documents were produced before the Surveyor. The Assurance Company after examining the whole matter informed the complainant that his claim could not be entertained or registered because the policy of insurance, referred to by him, did not exist. A copy of the repudiation letter dated 4.4.2002 was placed on record as Annexure C-6. It has been informed that the policy bearing No. 3135330113877 vide Certificate No. 0234175 had been issued in the name of one Narinder Saini.

The District Forum found that the same insurance policy bearing the same number on which the appellant relied had been issued to Shri Narinder Saini aforesaid. Shri Narinder Saini obtained the aforesaid policy of insurance covering comprehensive insurance of his private car whereas the complainant/appellant vide the same policy of insurance got his Eicher Canter 1998 model having engine No. 31633752 and chassis No. 80705609, insured for the period from 24.2.2001 to 23.2.2002.

3. IN Para 6 of the impugned judgment and order, the District Forum observed, inter alia, as under : "6. Now it is a tale of two insurance policies bearing the same number. The complainant has relied on the insurance policy bearing No. 3135330113877 in relation to the vehicle HNL 7090. On the other hand, the O.Ps. have relied on the insurance policy (R-I) bearing the same number but which is in respect of a Maruti Van owned by one Shri Narinder Saini......" It has been suggested by the complainant that his policy had been issued by Shri S.D. Sharma, Development Officer who had since been placed under suspension by the Assurance Company. The District Forum observed in Para 7 that such a plea, which was suggested as above, was not taken in the complaint. In para 9 of the impugned order, the District Forum held that prima facie some type of fraud or forgery had been committed in this case and the present case in which two insurance policies bearing same number for the same risk period in respect of two different motor vehicles insured in the name of two different persons have been relied on by the respective parties i.e., the complainant and the respondent and such a case was a fit case to be adjudicated after a full dressed trial by a Civil Court of competent jurisdiction.

4. MR. Pankaj Chandgothia, Advocate referred to some judgments of the District Forum-I, U.T., Chandigarh wherein the District Forum-I in some what similar circumstances decided the Complaint Case No. 593 of 2002 vide judgment and order dated 5.2.2004 filed by one Shri Harish Kumar against Branch Manager, New India Assurance Co., SCF 9, Sector 27-C, Chandigarh and Sh. S.D. Sharma, Development Officer of the same New India Assurance Co. Ltd. The appellant filed his affidavit dated 29.11.2002. In para 16 of this affidavit, he deposed, inter alia, as under : "16. That it would not be out of place to mention here that the opposite parties vide its public notice dated April 18, 2002 published in The

Tribune have informed the public that Mr. S.D. Sharma, Development Officer has been placed under suspension and his authority to sign/issue Insurance Cover Note and/or collect Insurance premium also stand withdrawn. The public notice is annexed as Ex. C-7. It is interesting to know that both C-2 and R-1 have been issued by the said office in February, 2001." Shri Sudershan Bharija, Senior Divisional Manager of the Assurance Company, Sector 26, Chandigarh filed his affidavit dated 21.1.2003, wherein he deposed in Para 13, inter alia as under : ".......It is respectfully submitted that no valid and lawful claim of the complainant has been stopped by the O.Ps. The policy Annexure C-2 is a false document produced by the complainant and no claim is liable to be paid to the complainant on the basis of the same. Further, the present case evolves complex dispute of law and facts which cannot be dealt in a summary manner by this learned Forum, therefore, the present case may be relegated to the Civil Court for proper adjudication of the case...."

5. IN Para 16, it was deposed that Shri S.D. Sharma, Development Officer was not made a party in the complaint, hence, any allegation qua him can only be replied by him.

6. IN the Complaint Case No. 593 of 2002 filed by Shri Harish Kumar (supra) and decided by the District Forum-I, U.T., Chandigarh, Shri S.D. Sharma aforesaid Development Officer of the Assurance Company was impleaded as O.P. IN that case, the complainant filed a claim case in respect of his truck bearing No. HR 37-5288 insured comprehensively with the Assurance Company for the period from 20.6.2001 to 19.6.2002 through Shri S.D. Sharma, Development Officer who issued a receipt for Rs. 11,338/- and also issued cover note No. 365759. The truck aforesaid met with an accident on 22.11.2001 and was badly damaged. The complainant Shri Harish Kumar approached Shri S.D. Sharma, Development Officer for getting compensation from O.P. No. 1 i.e., Branch Manager, Assurance Company, Chandigarh but Shri S.D. Sharma/O.P. No. 2 instead of recommending his claim to O.P. No. 1, issued cheque No. 3609 dated 4.2.2002 for a sum of Rs. 13,800/- but the said cheque stood dishonoured for want of funds. The complainant brought this fact to the knowledge of Shri S.D. Sharma but he did not give any satisfactory reply. The complainant after enquiring learnt that the amount of Rs. 11,388/-, which was received by Shri S.D. Sharma was not deposited with the O.P. No. 1 - Assurance Company and as such, the said truck was not got insured with the O.P. No. 1 by Shri S.D. Sharma aforesaid. Shri S.D. Sharma/O.P. No. 2 filed his reply in the complaint case whereas the Assurance Company also filed a separate reply and contested the case. The District Forum-I decided the complaint and directed the complainant to furnish his claim with regard to the accident to O.P. No. 1 - Assurance Company with all requisite documents and O.P. No. 1 was directed to settle his claim within two months. The complainant was awarded costs of Rs. 550/-.

In the case of Shri Harish Kumar (supra), there is no controversy regarding the two insurance policies bearing the same number having been issued to two different persons in respect of two different motor vehicles. The complaint was filed about the fraud being committed by the Development Officer Shri S.D. Sharma aforesaid who did not deposit the amount of the premium with the O.P. No. 1 - Assurance Company and policy of insurance was not got issued. The facts of the case of Shri Harish Kumar (supra) are entirely different and distinct from the present case.

7. THE learned Counsel for the appellant submitted that the said judgment in the case of Shri Harish Kumar (supra) was cited on the ground that the Assurance Company was vicariously liable for the acts of the agent. That proposition of law is not the proposition involved in this case. In this case, the dispute, which requires to be settled is as to who is the genuine holder of the policy of insurance bearing the same number, which has been held by the another person in respect of their separate and distinct motor vehicles and such a question can undoubtedly be settled at a regular trial held by a Civil Court of competent jurisdiction. It may also be pointed out that the presence of Shri Narinder Saini who is the other person to whom the same insurance policy bearing the same number insuring his vehicle i.e., Maruti Van, has not been impleaded as a party in the complaint case before the District Forum. THE presence of Shri Narinder Saini would be needed as his interest would be adversely affected by any finding recorded in respect of the policy of insurance in question. Shri Narinder Saini would thus be not only a proper party but a necessary party to the civil case. We find that the District Forum has rightly relegated the complainant of his remedy of approaching a Civil Court of competent jurisdiction. The appeal deserves to be dismissed. Resultantly, the appeal is dismissed. The costs of appeal shall, however, be borne by the parties themselves. Copies of this judgment be sent to the parties free of charge. Appeal dismissed.