
(1998) 07 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

UMESH V.MANDREKAR

APPELLANT

Vs

National Insurance Co.Ltd.

RESPONDENT

Date of Decision : 13-07-1998

Acts Referred:

Citation : 1998 3 CPJ 163 : 1999 1 CPR 67

Hon'ble Judges : B.N.Krishnan , Y.V.Rao , Mangala Sanes J.

Final Decision : Appeal allowed

Judgement

1. THE appellant was the complainant in Complaint No. 14/94 -on the file of Consumer Disputes Redressal Forum, North Goa and being aggrieved by dismissal of complaint, has preferred this appeal.

2. THE complaint was lodged by him alleging that he was the owner of vehicle No. GA-01-M- 1113 Make "Yemeha" and he had insured it with opposite party and on 1.5.1991 he had gone to Saligao, Bardez-Goa to attend a dance party. He had parked the vehicle and after he returned from dance party he found that the vehicle was missing and therefore, he lodged the complaint with the concerned police station who in the first stage registered under F.I.R. No. 107/91 as missing report, and later registered under No. 68/91 under Section 379 of Indian Penal Code, and thereafter, theft of vehicle was reported to the opposite party. It did not settle his claim and therefore, he sought for recovery of value of vehicle i.e. Rs. 19.000/- with interest at the rate of 25% per annum from 1.5.1991 till the actual payment with compensation of Rs. 25,000/-. This complaint was resisted by the opposite party. It is disputed that there was any theft of vehicle in question. The case of theft put forward by the complainant has been disputed. It has been stated that the complainant has manipulated his case only to get money from Insurance Company. The opposite party engaged the services of Chanakya Investigating Agency to investigate the matter who reported that there was no theft of vehicle. Therefore, it is to be seen whether there is any liability of opposite party to pay the value of vehicle with interest. The complainant filed his affidavit and also affidavits of two other persons to speak about the theft of

vehicle in question. On behalf of opposite party, the affidavit of Divisional Manager has been filed. The affidavit of Vassudevan stated to have been appointed by opposite party has also been filed. After examining the material placed by the parties, the District Forum came to the conclusion that the case of theft had not been made out and believed the findings of Investigating Agency, that the motor cycle was hired by third person and therefore, there is no deficiency in service and accordingly the complaint was dismissed. It is the correctness and legality of this order that have been questioned by the complainant in this appeal.

The District Forum has not considered the affidavits of Kabir Shirodkar and Nandkumar Harmalkar that have been filed by the complainant in respect of theft of vehicle in question. Further it may be noticed that the persons who are stated to have given the material informing the Investigating Agency to disprove the theft are not examined or their affidavits have not been filed. It is stated by the District Forum, that Investigators came to know from Anil Mandrekar and Tony D'Souza and the receptionist stated that the complainant was merely engaged in hiring business of vehicles and he hired the said motor cycle to one Mr. Godman. Without their evidence, the investigation report by itself cannot be put to any use to hold that there was no theft. There is no scope under the Consumer Protection Act to accept such a report and hold that there was no theft. Therefore, we are satisfied that the District Forum was not right in not even adverting to the material placed by the complainant before it and also not even noticed that the material which ought to have been placed by opposite party had not been placed by the opposite party. The District Forum appears to have holding against the complainant because he failed to produce the key of vehicle. That may be not sole factor to discard the case of complainant. Therefore, it is clear that the order of District Forum dismissing the complaint cannot be sustained and the matter should be remanded back to its file with a direction to dispose the case according to its law. In the result, the order of District Forum is set aside and the case is remanded back to its file to dispose the case according to law, in the light of observations made above. In the result, the appeal is allowed only to the extent as indicated above. Appeal allowed.