(2008) 08 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO LTD — APPELLANT

Vs

MD ABDUL FAZAL CHOUDHARY — RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:

Citation : 2008 4 CPJ 267

Hon'ble Judges : R.C.Jain , P.D.Shenoy J.

Advocate : Atul Nanda , H.U.Choudhury , Sandeep Bajaj

Judgement

1. -THE present revision petition is directed against the order dated 23. 2. 2006 passed by the State Consumer Disputes Redressal Commission, Assam, Guwahati (for short ''the State Commission'') in revision petition No. 3/2005. By the impugned order, the State Commission has dismissed the revision petition filed by the Petitioner-Insurance Company against the order dated 30. 8. 2005 passed by the District Consumer Disputes Redressal Forum, Kamrup in Miscellaneous Case No. 8/2005 viz. execution proceeding. The facts and circumstances of the case leading to the present revision petition are amply noted in the impugned order and need no repetition. However, for the sake of brevity it may be noticed that a complaint filed by the Respondent, Abu Fazal Choudhary for indemnification of the loss sustained to his insured vehicle, was allowed by District Forum by an order dated 11. 3. 2005. Operative part of the District Forum''s order reads as under: "in the result the Complainant''s case is allowed. The OP is directed to pay Rs. 4,14,500 to the Complainant as repairing costs of the vehicle as assessed by the surveyor. The Complainant shall get Rs. 3000 as compensation for mental agony and harassment and Rs. 1,000 as costs of the case. The OP is directed to pay the said amount to the Complainant within 45 days from the date of receipt of the copy of the judgment failing which they shall be liable to pay interest at the rate of 9% per annum on the entire amount from the date of receipt of the copy of the judgment till the payment so made. Send a copy of the judgment to the parties. "

2. IT would appear that in compliance of the said order, the Petitioner-Insurance

Company remitted a sum of Rs. 4,18,500 to M/s. Tata Motors Ltd. from whom the complainant had purchased the vehicle, although the vehicle was financed by and hypothecated with Tata Finance Ltd. As the awarded amount was not paid to the Respondent, he took out execution for realisation of the amount under the order passed by the District Forum. Before the District Forum, the Petitioner-Insurance Company pleaded that they had paid the awarded amount to Tata Motors Ltd. in discharge of the balance amount outstanding against the vehicle which was financed and hypothecated by Tata Finance Ltd. and the said payment discharged them from their liability to pay the awarded amount under the order of the District Forum and they were therefore not liable to pay any further amount to the complainant. The said plea of the Insurance Company did not find favour with the District Forum and the District Forum vide an order dated 30. 8. 2005 directed the Insurance Company to deposit the amount under award by making the following observations: "case record is put up. We have heard learned Counsel of both the parties. We have also gone through the order and judgment dated 11. 8. 2005. Also perused petition under Section 27, CPC together with the objection petition filed by O. P. /respondent. Having considered the materials on record, we allow the O. P. /respondent to make the payment together with the interest already accrued to the complainant on or before 15. 9. 2005 failing which panel provision under Section 27, CPC will be involved. "

The Insurance Company assailed the said order before the State Commission by means of a revision petition under Section 17 (1) (b) of the Consumer Protection Act, 1986, once again raising the same plea that the Insurance Company having paid the entire amount of Rs. 4,18,500 under the award to performa party i. e. Tata Motors (Tata Finance) on 31. 5. 2005, they being the legal owner of the vehicle under the policy, they could not have been called upon to pay the amount again to the complainant. The State Commission declined to interfere in the order passed by the District Forum thereby holding that the scope of the proceedings under Section 17 (1) (b) was limited and they could not find any illegality or jurisdictional error in the order passed by the District Forum. Still not satisfied, the petitioner-Insurance Company has filed the present revision petition. After issuing the notice, this Commission entertained the revision petition and issued notice to the OPs. During the pendency of the revision petition on 13. 9. 2007, the Commission directed the Insurance Company to deposit the amount as ordered by the District Forum in its order dated 11. 3. 2005 with interest before this Commission within a period of four weeks from the date of the said order. The said order was not complied with initially and was complied with belatedly by depositing the amount with the District Forum.

3. WE have heard Mr. Atul Nanda, learned Counsel representing the petitioner-Insurance Company and Mr. H. U. Chaudhary, learned Counsel representing the respondent No. 1 but have had no opportunity of hearing the other respondent, namely, Tata Motors Limited as none appeared on their behalf despite service. The only question which has arisen and which will decide the fate of the revision petition is "whether the payment of Rs. 4,18,500 made by the petitioner-

Insurance Company to M/s. Tata Motors Limited from whom the complainant had purchased the vehicle, the said vehicle being hypothecated with another company namely Tata Finance Limited can be said to be the due payment made to the complainant and would discharge them of their liability under the order dated 11. 3. 2005 passed by the District Forum in the complaint of the respondent Abu Fazal Chaudhary".

4. MR. Atul Nanda has made a vehement plea before us that in view of the factual position that the vehicle in question was purchased by the complainant from M/s. Tata Motors Ltd. and was got financed and hypothecated with Tata Finance Limited to whom the complainant owed the balance amount. In this connection he has invited our attention to certain documents more particularly the agreement between the complainant and Tata Finance Limited. Various receipts of payment of instalments made by the complainant to Tata Finance Limited and on the strength of the same it is urged that the complainant had not yet become the owner of the vehicle in asmuchas he was to pay a large sum of money and, therefore, the Insurance Company had rightly remitted the amount to Tata Motors Limited in discharge of the liability of the complainant under the agreement of hypothecation. After going through the material on record there is no dispute about this factual position that the respondent-complainant had purchased the vehicle from Tata Motors Limited and got the same hypothecated with Tata Finance Limited and had paid certain instalments but still some amount was payable by him to M/s. Tata Finance Limited. Therefore, the question is as to whether the payment by Insurance Company to Tata Motors Limited can be said to be due discharge of their liability under the award made by the District Forum dated 11. 3. 2005. Learned Counsel for the respondent-complainant has invited our attention to letter dated 16. 9. 2005 issued by the Insurance Company to Tata Motors Ltd. The letter is important and reads as under: To, m/s. Tata Motors Ltd. C/o Abhishek Motors (P) Ltd. Guwahati, Assam dear Sir, re: Payment of claim a/c Md. Abul Fazal Chaudhary apropos of above please recall that the motor claim of Md. Abul Fazal Choudhary has been settled and paid to you vide our cheque No. 565421 dated 31. 5. 2005 drawn on UCO Bank/dispur Br for an amount of Rs. 4. 18,500. You will appreciate that insurance contract is binding on three parties viz insurer, owner of the vehicle and the Financier. We have paid the cheque to you in good faith towards settlement of the claim, assuming that the owner of the vehicle and yourself will adjust your dues as per your agreement, etc. Since the insured did not submit any ''no OBJECTION'' from you. Since the complainant filed a case against us for payment of claim in favour of them and Hon''ble Forum upheld their complainant and directed us to pay to the complaint directly, we would request to you to repay the sum of Rs. 4,18,500 enabling us to comply the Hon''ble Forum''s order within stipulated time. You may however take up the matter separately with your borrower for adjustment of outstanding dues, if any. Hon''ble Forum allowed one week time for payment to the complainant, hence, you may please issue cheque of Rs. 4,18,5000 within 21. 9. 2005 without fail.

On the strength of this letter learned Counsel for the respondent has emphatically urged before us that the payment made to Tata Motors Limited, the seller of the vehicle was wholly uncalled for. Even as per the reckoning of the Insurance Company, they considered remission of this payment to Tata Motors Ltd. as unauthorized payment and not the payment to the complainant-respondent and that is why they had called upon M/s. Tata Motors Limited to refund the amount of cheque to them so as to discharge their liability. The said contention cannot be said to be devoid of merits.

5. HAVING considered the matter from all possible angles, we must hold that payment made by the petitioner-Insurance Company to Tata Motors Limited or Tata Finance Limited in compliance of order dated 11. 3 2005 passed by the District Forum cannot be deemed to be payment to the respondent-complainant and it had not discharged them of their liability under the said award. It was under these circumstances that this Commission had called upon the petitioner-Insurance Company to deposit the awarded amount along with interest, which we are informed has now been deposited. Therefore, the impugned order passed by the State Commission cannot be faltered on any count. The revision petition merits dismissal and is, accordingly, dismissed. The respondent-complainant shall be entitled to withdraw the amount deposited by the petitioner-Insurance Company from the District Forum. Before parting with the matter, we would like to observe that the petitioner-Insurance Company would be free to work out its remedy for retrieval of the money paid by them to Tata Motors Limited or Tata Finance Limited. Similarly, the Tata Finance Limited who had financed the vehicle would be free to work out their claim against the complainant in accordance with law. With these observations, revision petition stand disposed of. Revision Petition disposed of.

