(1993) 05 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd. APPELLANT

Vs

Mohan Lal RESPONDENT

Date of Decision : 11-05-1993

Acts Referred:

Citation : 1994 2 CPR 699 : 1995 1 CPJ 317

Hon'ble Judges : S.S.Dewan , R.L.Gupta J.

Final Decision : Appeal partly allowed

Judgement

1. THE opposite-party, i.e. United India Insurance Co. Ltd. before the District Forum is the appellant before us.

2. THE complainant-respondent hired the services of the United India Insurance Co. Ltd. (hereinafter called the appellant) by getting Maruti Van No. PB-13-2668 insured with the appellant-Co. THE policy was endorsed in favour of the complainant-respondent by the appellant-Co. on 3-8-1990. THE van in question was stolen at Delhi on 8.3.1991. FIR to that effect was lodged with the Police at Delhi on 15-3 1991. THE claim for the insured amount was lodged with the appellant-Co. on 18.3.91. THE untraced report concerning the van dated 27.5.91 was handed over to the appellant-Co. in June 1991. THE investigator appointed by the appellant-Co. conducted the investigation in July 1991 and the survey was done in September, 1991. THE parties settled the claim only for Rs. 92,000/- on 22.4.1992. THE settled amount was disbursed to the respondent on 304-1992. After the receipt of the amount of Rs. 92,000/- and aggrieved by the settled amount, the respondent filed the complaint before the District Forum, Sangrur on 20.5.1992. Vide its impugned order dated 16.10.1992, the District Forum has allowed the complaint. The learned Counsel, appearing for the appellant-Co. has submitted that the complainant had executed a letter of subrogation and receipt in favour of the Insurance Co., accepting Rs. 92,000/- in full and final settlement of his claim and hence, he is estopped and debarred from making any further claim under the Consumer Protection Act, 1986 (''the Act in brief). He relies upon the decision of Haryana State Consumer Disputes Redressal Commission, in case

Ashwani Aggarwal of Kalka v. United India Insurance Co. Ltd., II (1992) CPJ 674.

The learned Counsel for the complainant has not disputed the execution of the letter of subrogation. Supporting the impugned order, he has submitted that despite the execution of the subrogation letter, the complainant was within his right to file the present claim". He has submitted that the complainant was compelled to execute the subrogation letter and give the receipt in full and final discharge of his claim, because the appellant-Co. was not otherwise releasing the amount. He has placed reliance upon decisions of the National Commission, in Col. Bhim Singh v. Regional Manager, National Insurance Co. Ltd. & Anr. 1991 (1) CPR 438 and Consumer Disputes Redressal Commission, UT, Chandigarh in H.S. Sandhu v. New India Assurance Co. Ltd., I (1992) CPJ 148.

3. WE have gone through the letter of subrogation dated 23-4-92. It has been executed by the complainant in English, he signed the same in English and it has been attested by the Executive Magistrate, Sangrur. Vide the said letter, he has inter alia executed: "In consideration of your paying us the sum of Rs. 92,000/- (Rupees ninety two thousand only) in full and final settlement of our claim for the theft of the above said Maruti Van insured vide C/Note No. 111701/31/1/2820/90 Dated insured on the above mentioned case. WE hereby assign, transfer and abandon to you all our rights and full powers to you, to take use all lawful ways and means in your own name and otherwise at your risk and expenses to recover the said loss and we hereby assign and of subrogate to you the same rights, we have consequences of or arising from the said loss. WE also authorise you to use our name in any suit or action or proceedings. You may bring in relation to any of the matter hereby assigned and transferred to you. WE undertake ourselves to concur in any matter of proceedings and to execute all documents which may be necessary to assist them in all means in our power."

From the facts and circumstances of the case, we find that the letter of subrogation 234-92 has been executed by the complainant voluntarily, intentionally and without any coercion from outside. We are .of the considered view that the complainant cannot claim the amount over and above the principal amount for which he has given the subrogation letter and receipt in full and final settlement of his claim for the theft of the Maruti Van insured with the appellant-Co. The learned District Forum Has erred in law in awarding the principal amount to the claimant over and above the settled amount of Rs. 92,000/-. We find that the respondent is entitled to the settled amount of Rs. 92,000/- and is estopped from claiming any principal amount over and above the same.

4. WE are of'' the firm opinion that the execution of subrogation letter and receipt, in full and final discharge of the claim, cannot absolve the liability of the appellant-Co. for delaying the settlement of the amount and payment thereof. There has been inordinate and unjustified delay in the settlement of the claim of the insured. The claim was lodged with the appellant-Co. on 18.3.1991 and the untraced report about the Maruti Van of the Police was filed with the Insurance Co, in June 1991. The investigator appointed by the Insurance Co. conducted its

investigation in July, 1991, and the surveyor submitted his report in September, 1991, but the payment has been made on 30.4.1992. Without any sustainable reasons, the Insurance Co. had delayed the matter and payment of the amount for which the complainant has paid the premium to it. The appellant-Co. has been negligent and deficient in rendering prompt service to the respondent, as required under the Act and thereby it cannot escape the liability of paying interest over the delayed amount. WE are fortified by the decision of National Commission in First Appeal No. 147 of 1992 decided on 13.4.1993. Hence we direct the appellant-Co. to pay interest at the rate of 18% P.A. over Rs. 92,000/- after four weeks of the submission of the claim, i.e. 18.3.1991 till 30.4.1992 when the claim amount was paid. The claimant would also be entitled to the amount of Rs. 5,000/- for pursing his remedy before the District Forum and before this Commission and for the mental strain and harassment etc. on account of undue delay on the part of the appellant-Co. For the reasons recorded above, we partially accept the appeal and modify the impugned order of the District Forum and direct the appellant-Co. to pay interest at the rate of 18% P.A. over Rs. 92,000/- from 18.3.1991 till 30.4.1992 and the respondent would also be entitled to Rs. 5,000/- in addition to the interest, as awarded. Copies of this order be sent to the parties concerned free of costs. Record be consigned. Appeal partly allowed.