(1992) 08 NCDRC CK 0057

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO.-/Opp. Party APPELLANT

Vs

BUDH RAM YADAV RESPONDENT

Date of Decision : 17-08-1992

Acts Referred:

Citation : 1992 2 CPJ 797 : 1993 2 CLT 215

Hon'ble Judges : S.S.Sandhawalia , Basanti Devi , S.Kulwant Singh J.

Final Decision : Appeal dismissed with costs

Judgement

1. THIS appeal seeks to challenge the order of the District Forum, Rewari, whereby the appellants have been directed to pay Rs. 72,250/- to the insured for the loss of his vehicle as assessed by the Company''s surveyor.

2. THE complainant-respondent Budh Ram had purchased a Maruti Van No. HNM-1286 on the 14th of January, 1988 for an amount of Rs. 85,000/-. THE vehicle was admittedly insured with the appellant Insurance Company and the policy was valied upto the 23rd of February, 1990. However, this van was stolen within the District of Ghaziabad on the 21st of January, 1990. THE driver of the vehicle had duly reported the matter on the very same day at police station, Hafijpur vide F.I.R, No. 8 of 1990 and a case under Section 379 I.P.C was registered. In the said F.I.R two persons by the name of Raju and Shokeen were named as the culprits and during investigation, it was discovered that they were already lodged in jail, but the Maruti van could not be recovered from them. Apparently, the police closed the case on the 22nd of December, 1990 with an untraceable report. The complainant-respondent inevitably lodged his claim with the appellant Insurance Company. However, the said company procrastinated inordinately and the claim was neither settled nor repudiated. Aggrieved thereby, he was compelled to knock at the door of the District Forum to claim relief to the tune of Rs. 85,000/- with commercial interest @ 18% thereon.

On notice being issued to the appellants, a written statement was filed on their behalf, in which apart from merits, objections with regard to the territorial jurisdiction of the District Forum were raised, to which reference is now unnecessary because they have not been pressed before us. The basic stand taken was that on the date of theft the van was being used for a commercial purpose, which was contrary to the terms of the policy, and therefore, the liability thereon was sought to be evaded. It was stated therein that according to the report of the surveyor and loss assessor Shri Dalip Singh, who was appointed by the Insurance Company, the vehicle was being driven by its driver Lal Singh from Hapur to Delhi on the 20th of January, 1990 and on the way two strangers Raju and Shokeen asked him for a lift to their village Hafijpur and the driver obliged them. However, at the said village when the driver had got out from the van for taking water, the aforesaid two persons decamped with the vehicle. From this, it was sought to be inferred that the said persons must have hired the vehicle and, therefore, it was being used for a commercial purpose contrary to the terms of the policy. It was further alleged that the complainants were asked to produce an untraceably certificate regarding the van from a competent authority, but the same was not furnished.

3. THE complainant supported his case with all the relevant documentary evidence the authenticity of which was not at all challenged on behalf of the opposite party. Apart from this the affidavit evidence of Lal Singh, the driver of the vehicle was placed on the record and his testimony was equally not challenged by way of any cross-examination. THE appellants rested themselves content with the filing of the report of Dalip Kumar, Consulting Engineer who was appointed as a surveyor for investigation and assessment by the company itself. The District Forum on consideration of the materials before it, rejected objection to the territorial jurisdiction on the firm foundation that the vehicle in question was insured with the appellants Branch Office at Rewari. It further rejected the basic stand of the Insurance Company that the vehicle was being used for a commercial purpose, as being wholly without substance and granted the relief in the terms noticed at the out-set.

4. MR. Kaushal, the learned Counsel for the appellants was faced with the somewhat uphill task of assailing the firm findings of the District Forum and supporting the somewhat dubious case sought to be set up by the appellants at the trial, it was first attempted to be argued that the factum of the theft has not been fully established on the record. It was suggested that the vehicle had been hired by Raju and Shokeen and at best they had misappropriated the same. The aforesaid contention has only to be noticed and rejected. It is the admitted position that immediately after the theft the First Information Report was lodged at the police station having jurisdiction. Nor is it in doubt that the police authorities investigated the matter or that the two culprits were arrested also either earlier or in the investigation of this very case itself. However, the vehicle has remained apparently untraced till today. There is on the record a report of the police station Hafijpur dated the 22nd of December, 1990 closing the investigation of the theft case on that ground. What is even more significant in this context is the fact that no such plea about the factum of the theft being not established was ever taken in the written statement. The primal defence taken in

terms therein was that at the time of theft the vehicle was being used for a commercial purpose. Even the appellants own surveyor and loss assessor Dalip Kumar in his report which is the sheet-anchor of the appellant''s case give the lie direct to any such plea. Therein he had categorically concluded that the vehicle had infact been stolen away. However, he had only cast a suspicion that at the time of the said theft it was-not being used gratuitously to give a lift to the culprits, but had probably been hired by them. Therefore, the contention that the factum of theft had not been established, has no legs whatsoever to stand on in this regard and, therefore, must be unhesitatingly rejected. As regards the tenuous suggestion that the transaction amounted to misappropriation only, the same is concluded by the order of the National Commission in II (1991) CPJ 700 (NC) ''S. Bhagat Singh v. The Oriental Insurance Co. Ltd.'' Therein it has been concluded that even where a vehicle had been dishonestly taken away by its driver and had remained untraced, the offence would be one of theft fully covered by the Insurance Policy. In the alternative Mr. Kaushal had then argued that there were indications on the record that the vehicle was being plied as a taxi and having been so used for commercial purpose, the exclusion clause, of the insurance policy would be attracted. The basic factual ground for this was that the vehicle having been registered in Rewari, its presence in the Delhi-Hapur region was somewhat suspicious and unexplained.

5. THERE is no merit in the aforesaid suggestion on a closer analysis. What is significant is the fact that the affidavit of Lal Singh, the driver of the vehicle was placed on the record which clearly stated that he had taken the vehicle with the permission of the owner to immerse the ashes of his grand-mother in the Ganges. It was not disputed before us that Garmukteshwar is a venerated point on the banks of the said river in proximity to the area where from the vehicle was stolen. It bears repetition that the straight forward affidavit evidence of Lal Singh on this point was never challenged by the appellants by way of cross-examination. The presence of the vehicle in the region thus stands, more than fully explained. Nor is there any evidence whatsoever to indicate, far from establishing, that the said vehicle was being used for a commercial purpose. It is not disputed that it had continued to remain registered as a private vehicle. THERE is not the least testimony that even as an isolated case any charge or hire was paid by Raju and Shokeen afore-mentioned for the lift charitably given to them by the unsuspecting driver. On the other hand, the affidavit evidence of Lal Singh is again categoric on the point that these persons were being carried totally free of charge. It is otherwise well settled that mere suspicion cannot take the place of proof. In order to evade the liability on the insurance policy duly issued in favour of the complainant, the burden lay heavily on the appellant to prove the exclusion clause, if any. They have miserably failed in doing so and merely casting suspicion or aspersions is not enough. In this context, the evasion of liability by the appellants is patently arbitrary and points clearly to a deficiency in the services, they had undertaken to render to their clients. 10-A. Lastly another, factor against the appellants is equally worthy of pointed notice. The

theft admittedly took place on the 22nd of January, 1990 and inevitably the complainant had lodged his claim soon thereafter. Surprisingly for nearly two years, the appellant Company neither settled the claim nor in terms ever repudiated the same till the filing of the complaint on the 20th of January, 1992. Apparently, they chose to sit tight on the respondent''s claim by making specious demands of documents etc. for well-nigh two years, whilst the complainant ran from pillar to post seeking redress at their hands. This by itself speaks volumes for the deficiency in the service of the kind rendered by the appellants which obviously demands an expeditious disposal of claims one way or the other.

6. FOR the foregoing reasons, this appeal must fail and is hereby dismissed with costs. These are assessed at a sum of Rs. 300/- only. Appeal dismissed with costs.

