(2017) 04 NCDRC CK 0072

In the National Consumer Disputes Redressal Commission

Case No : 3120 of 2016

UNITED INDIA INSURANCE COMPANY — APPELLANT

Vs

DHEERAJ CHAHAR — RESPONDENT

Date of Decision : 19-04-2017

Acts Referred:

Insurance Act, 1938, Section 64 U

Citation : 2017 2 CPR 539

Hon'ble Judges : V.K. Jain

Advocate : Animesh Sinha

Judgement

1. There is small delay of about 7 days in filing the revision petition. The delay is condoned. The application stands disposed of. RP/3120/2016 The complainant/ respondent purchased a car and got the same insured for the period 20.9.2004 to 19.9.2004. The aforesaid car was allegedly stolen from the residence of the complainant in the night intervening 13 th & 14 th September 2004. The case of the complainant/respondent is that though he visited the concerned police station on 14 th & 15 th Sept., 2004, the FIR was not registered as a result of which, he had to file the complaint before the Court on 16.9.2004. Thereafter an FIR was registered by the police. However, no immediate intimation of the theft of the vehicle was given to the insurer as the said intimation came to be given on 9.11.2004 after a delay of almost eight weeks. The claim was repudiated by the insurer on account of the delay in intimating the theft of the vehicle to it.

2. Being aggrieved from the repudiation of the claim, the complainant approached the concerned District Forum by way of a consumer complaint. The complaint was resisted by the insurer primarily on the same ground on which the claim had been repudiated.

3. The District Forum having dismissed the complaint, the complainant approached the concerned State Commission by way of an appeal. Vide impugned order dated 26.7.2016, the State Commission partly allowed the appeal by directing the insurer to make payment to the complainant on non-

standard basis. Being aggrieved from the order passed by the State Commission, the insurer is before this Commission by way of this revision petition.

4. As it is not in dispute that one of the conditions of the insurance policy issued to the complainant required him to give immediate intimation of the theft of the vehicle to the insurer. It is also not in dispute that the said intimation to the insurer came to be given after almost eight weeks. There is no worthwhile explanation from the complainant for the delay in intimating the theft of the vehicle to the insurer. This is more so considering the fact that the complainant seems to be a vigilant person, he having approached the Judicial Magistrate on 16.9.2004, i.e., after two days of detection of the theft of the vehicle. In the absence of an explanation for the said delay, the insurer was entitled to repudiate the claim and deny reimbursement of the loss suffered by the complainant on account of breach of a mandatory term of the insurance policy by the complainant.

5. This issue came up for consideration before this Commission in Reliance General Insurance Co. Ltd. Vs. Jai Prakash , Revision Petition No.2479 of 2015 and connected matters, decided on 11.1.2016 and after considering the standard form of insurance prescribed by Tariff Advisory Committee established under section 64U of the Insurance Act 1938 and the decision of the Hon''ble Supreme Court in Parvesh Chander Chadha (supra), the following view was taken:- "12. Since the terms and conditions of the insurance policy, which the insured had issued to the complainant in Parvesh Chander (supra), had not been reproduced in the order of the Hon''ble Supreme Court, we perused the order passed by this Commission in the above referred case. However, the terms and conditions of the policy were not reproduced even in the judgment of this Commission. It however, became evident from a perusal of the judgment that the insurance policy was issued for the period from 17.1.1995 to 16.01.1996.

On further examination of the issue, we found that standard form for private car policy was prescribed by the Tariff Advisory Committee from time to time, which is binding upon all the insurance companies. The relevant clause of the insurance policy, applicable at the time the complainant in Parvesh Chander (supra) took the insurance policy, reads as under:

"Notice shall be given in writing to the company immediately upon the occurrence of any accident or loss or damage and in the event of any claim and thereafter the insured shall give all such information and assistance as the Company shall require. Every letter, claim, writ, summons and/or process or a copy thereof shall be forwarded to the Company immediately on receipt of the insured. Notice shall also be given in writing to the company immediately the insured shall have knowledge of any impending prosecution, Inquest or Fatal Inquiry in respect of any occurrence which may give rise to a claim under this policy. In case of theft or criminal act which may be the subject of a claim under this policy the insured shall give immediate notice to the police and cooperate with the company in securing the conviction of the offender".

The standard form of the insurance policy applicable to Motor Vehicles was amended by the Tariff Advisory Committee with effect from 01.07.2002 and the revised policy contains the clause extracted in para-8 hereinabove.

13. Section 64 U of the Insurance Act, 1938 provides for establishment of a Committee to be called the Tariff Advisory Committee to control and regulate the rates, advantages, terms and conditions that may be offered by the insurers in respect of general insurance business.

Section 64 UC (1) of the Insurance Act, 1938 to the extent it is relevant, reads as under:

64UC. Power of the Advisory Committee to regulate rates, advantages, etc. ?

1. The Advisory Committee may, from time to time and to the extent it deems expedient, control and regulate the rates, advantages, terms and conditions that may be offered by insurers in respect of any risk or of any class or category of risks, the rates, advantages, terms and conditions of which, in its opinion, it is proper to control and regulate, and any such rates, advantages, terms and conditions shall be binding on all insurers.

2. Every decision of the Advisory Committee shall be valid only after and to the extent it is ratified by the Authority, and every such decision shall take effect from the date on which it is so ratified by the Authority, or if the Authority so orders in any case, from such earlier date as he may specify in the order.

(4) The decisions of the Advisory Committee in pursuance of the provisions of this section shall be final.

(5) Where an insurer is guilty of breach of any rate, advantage, term or condition fixed by the Advisory Committee, he shall be deemed to have contravened the provisions of this Act".

Thus, the terms and conditions prescribed by the Tariff Advisory Committee uniformly apply to all the insurance policies.

14. On a comparison of the Clause applicable in the year 1995-96 and the clause applicable in the subsequent policies, we find that whereas the previous clause required the insured to intimate the insurance company immediately ''upon the occurrence of any accident or loss or damage'', the later clause required him to give such intimation upon the ''occurrence of any accidental loss or damage''. Since theft of a vehicle is also a loss, the earlier clause obviously required immediate intimation of the theft of the vehicle to be given to the insurance company. Therefore, the question which arises for our consideration is as to whether there is any change in the obligation of the insured in this regard, considering that the expression ''accidental loss or damage'' is used in the clause contained in the later policies. If the clause contained in the later policies read in isolation, it may give an impression that the notice to the insurance company is required to be given only in the event of the loss or damage to the vehicle due to

an accident as it is normally understood, if the insured intends to lodge a claim with the insurer for reimbursement of the loss or damage sustained by him. But, a deeper scrutiny of the later insurance policies, we are satisfied that even a loss or damage, due to theft of the vehicle, is required to be reported to the insurance company immediately after the theft is detected, in case the insured intends to lodge a claim with the insurer for reimbursement of the loss or damage sustained by him.

15. The revised standard form uses the term ''accidental loss'' at a number of places, as extracted herein below: Standard form for private car package policy Whereas the insured by a proposal and declaration dated as stated in the Schedule which shall be the basis of this contract and is deemed to be incorporated herein has applied to the Company for the insurance hereinafter contained and has paid the premium mentioned in the schedule as consideration for such insurance in respect of accidental loss or damage occurring during the period of insurance.

"The Company shall not be liable under this Policy in respect of Any accidental loss or damage and / or liability caused sustained or incurred outside the geographical area:

4 (i) Any accidental loss or damage to any property whatsoever or any loss or expense whatsoever resulting or arising there from or any consequential loss".

The term accidental loss or damage, wherever, it appears in the standard form of the insurance policy will have to be given the same meaning. If the aforesaid term is interpreted to exclude loss due to theft, as the contention of the complainant is, it would imply that the proposal submitted by the insured which forms the basis of the contract of insurance does not provide insurance against theft of the vehicle, and consequently the insurer is not liable to reimburse the insured for such a loss. This obviously is not the case either of the insurer or of the insured. Similarly, this could not have been the intention of the parties to exclude the consequential loss in case of loss or damage to property due to an accident while not excluding such a loss on account of theft of a vehicle. Hence, there is no escape from the conclusion that the substitution of the term ''accident or loss or damage'' in the old standard form by the term ''accidental loss or damage'' in the new standard form does not change the scope of the insurance policy issued in respect of a motor vehicle and therefore, the decision of the Hon''ble Supreme Court in Parvesh Chander (supra) would equally apply in respect of the insurance policies issued after 30.07.2002 when the revised standard form came into force.

16. For the reasons stated hereinabove, we have no hesitation in holding that the insured was under a contractual obligation to intimate the theft of the vehicle to the insurer immediately after the said theft came to his knowledge and mere intimating the police or lodging an FIR does not amount to sufficient compliance with the terms and conditions of the insurance policy. Since admittedly, there

was substantial delay in intimating the theft of the vehicle to the insurance company in both these cases, the insurer was entitled to repudiate the claim on account of the aforesaid default on the part of the insured."

6. For the reasons stated hereinabove, the revision petition is allowed and the impugned order is set aside. The complaint is consequently dismissed with no order as to costs.

