(2017) 03 NCDRC CK 0084

In the National Consumer Disputes Redressal Commission

Case No : 1449 of 2016

UNITED INDIA INSURANCE COMPANY LTD. APPELLANT

Vs

BHUNDU RAM & 3 ORS. RESPONDENT

Date of Decision : 08-03-2017

Acts Referred:

Citation : 2017 2 CPR 378

Hon'ble Judges : V.K. Jain

Advocate : Amit Kumar Singh, Rekha Aggarwal, Amicus Curiae

Judgement

1. This revision petition is directed against the order of the State Commission dated 9.2.2016 whereby the said Commission dismissed the appeal filed by the petitioner company against the order of the District Forum dated 19.11.2014.

2. The complainant owned a vehicle which he got insured with the petitioner company. The said vehicle was stolen in the night intervening 27 th /28 th January 2009. The complainant lodged a complaint for reimbursement in terms of the insurance policy which he had taken a from the petitioner company. The claim was repudiated vide letter dated March 30, 2010, on the ground that the insured vehicle was being used on hire and reward, against the terms and conditions of the insurance policy. Being aggrieved the complainant approached the concerned District Forum by way of a consumer complaint.

3. The complaint was resisted by the insurance company on the several grounds, including that there was a delay of 8 days in lodging the FIR and a delay of 15 days in intimating the theft to the insurer. It was also alleged that the vehicle was being used on hire and reward at the time it was stolen.

4. The District Forum directed the petitioner company to pay a sum of Rs.341250/- to the complainant. The appeal against that order having been dismissed, the insurer is before this Commission.

5. As noted earlier, the claim lodged by the complainant was repudiated only on

the ground that the vehicle was being plied as a taxi. The delay in lodging the FIR and intimating the theft to the insurer was not one of the grounds for repudiating the claim. It is settled legal proposition that an insurer cannot be allowed to go beyond the repudiation letter issued by it, meaning thereby that it cannot be allowed to plead grounds on which it had not taken for repudiating the claim. A reference in this regard may be made to the following view taken by the Hon''ble Supreme Court in Civil Appeal Nos. 8884-8900 of 2010 - M/s. Galada Power and Appellant(s) Telecommunication Ltd. Vs. United India Insurance Co. Ltd. and Another Etc., decided on 28.7.2016:- " 12. In this regard, Mr. Mukherjee, learned senior counsel appearing for the appellant has commended us to a decision of High Court of Delhi in Krishna Wanti v. Life Insurance Corporation of India , wherein the High Court has taken note of the fact that if the letter of repudiation did not mention an aspect, the same could not be taken as a stand when the matter is decided. We approve the said view.

17. In the instant case, the insurer was in custody of the policy. It had prescribed the clause relating to duration. It was very much aware about the stipulation made in clause 5(3) to 5(5), but despite the stipulations therein, it appointed a surveyor. Additionally, as has been stated earlier, in the letter of repudiation, it only stated that the claim lodged by the insured was not falling under the purview of transit loss. Thus, by positive action, the insurer has waived its right to advance the plea that the claim was not entertainable because conditions enumerated in duration clause were not satisfied. In our considered opinion, the National Commission could not have placed reliance on the said terms to come to the conclusion that there was no policy cover in existence and that the risks stood not covered after delivery of goods to the consignee."

In view of the aforesaid said legal proposition, the complaint cannot be contested on the ground that there was a delay in registration of the FIR and/or intimating the theft to the insurer.

6. As far as plying the vehicle for hire and reward is concerned, the matter is squarely covered by a decision of Hon''ble Supreme Court in National Insurance Co. Ltd. Vs. Nitin Khandelwal [IV (2008) CPJ 1 SC] where the Hon''ble Supreme Court directed the insurer to reimburse the complainant on non-standard basis in a case where vehicle registered as a private vehicle was being used for hire and reward. In view of the above-referred authoritative pronouncement of the Hon''ble Supreme Court, the insurer is required to settle the claim on a non-standard basis. The Fora below having directed the insurer to pay only 75% of the admissible claim, the orders passed by them do not call for any interference by this Commission in exercise of its revisional jurisdiction. The revision petition is, therefore, dismissed. The fee of the amicus curiae be paid as per rules.

