
(2017) 09 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

Case No : 2520 of 2017

VANDANA VERMA

APPELLANT

Vs

IFFCO TOKIO GENERAL INSURANCE CO. LTD.

RESPONDENT

Date of Decision : 07-09-2017

Acts Referred:

Insurance Act, 1938, Section 64U -
Establishment of Tariff Advisory Committee

Citation : 2017 4 CPR 71

Hon'ble Judges : V.K. Jain

Advocate : Vinod Kumar

Judgement

1. Late Shri Sanjay Verma, husband of the complainant / petitioner, owned a car which he had got insured with the respondent. On 21.9.2008, the aforesaid car met with an accident and the husband of the complainant died in that accident. The case of the petitioner / complainant is that information of the accident was given to the insurer after 5-6 days and one Mr. Panjwani was appointed as the Investigating Officer to inspect the site, take photographs and assess the loss. The aforesaid policy also provided a Personal Accident Cover of Rs.2.00 lacs to the insured, provided he was himself driving the vehicle at the time of the accident and was holding a valid driving license at that time. The grievance of the petitioner / complainant in the subject complaint was only with respect to non-payment of the personal accident benefits of Rs.2.00 lacs. The petitioner / complainant claimed the aforesaid amount along with interest and compensation, thereby making an aggregate of Rs.3,46,500/-.

2. The complaint was resisted by the respondent, which denied having received any information of the accident from the complainant 5-6 days after the accident and alleged that no claim having been lodged with it, the complaint was premature. It was also alleged that the complainant had failed to produce the driving license of the deceased.

3. The District Forum having ruled in favour of the complainant and having

directed payment of Rs.2.00 lacs along with interest, compensation quantified at Rs.10,000/- and the cost of litigation quantified at Rs.5,000/-, the insurer approached the concerned State Commission by way of an appeal. The appeal was allowed by the State Commission on the ground that the complainant had failed to prove that the deceased was holding a valid driving license at the time of the accident. Being aggrieved, the petitioner / complainant is before this Commission by way of this revision petition.

4. As stated in the letter of the insurer dated 30.7.2009, the intimation of the accident was given to them only on 29.7.2009, about ten months after the date of the accident. Though, the complainant has alleged that intimation of the accident was given to the insurer after 5-6 days, there is absolutely no documentary evidence to prove the aforesaid allegation. In the absence of any proof of such information having been given, I see no reason to reject the case of the respondent as regards the date on which the intimation of the accident was given to it and therefore, conclude that there was delay of about ten months in intimating the accident to the insurer.

5. There is absolutely no explanation from the petitioner / complainant for the abnormal delay of about ten months in intimating the accident to the insurer. The consequences of the unexplained delay in intimating the loss to the insurer came to be considered by this Commission in Reliance General Insurance Co. Ltd. Vs. Vinod Kumar, Revision Petition No. 157 of 2016, decided on 20.7.2016, and the following view was taken: " 11. In Oriental Insurance Company Limited Vs. Parvesh Chander Chadha, Civil Appeal No.6739 of 2010, decided on 17.08.2010 , the car in question was stolen between 18.01.1995 and 20.01.1995. The FIR was lodged with the police on 20.01.1995 but intimation of the said theft was given to the insurance company only on 22.5.1995. The claim having been repudiated on the ground of the breach of the conditions of the policy, a complaint was filed by the insured before the concerned District Forum, seeking compensation along with interest. The complaint was resisted by the insurance company on the ground that he had violated the conditions of the policy by not intimating the alleged theft for almost five months. The District Forum, State Commission as well as National Commission, having ruled in favour of the complainant, the matter was agitated by the insurance company before the Hon"ble Supreme Court. Allowing the appeal filed by the insurance company, the Hon"ble Supreme Court inter-alia held as under:

"Admittedly, the respondent had not informed the appellant about the alleged theft of the insured vehicle till he sent letter dated 22.5.1995 to the Branch Manager. In the complaint filed by him, the respondent did not give any explanation for this unusual delay in informing the appellant about the incident which gave rise to cause for claiming compensation. Before the District Forum, the respondent did state that he had given copy of the first information report to Rajender Singh Pawar through whom he had insured the car and untraced report prepared by police on 19.9.1995 was given to the said Shri Rajender Singh

Pawar, but his explanation was worthless because in terms of the policy, the respondent was required to inform the appellant about the theft of the insured vehicle. It is difficult, if not impossible, to fathom any reason why the respondent, who is said to have lodged First Information Report on 20.1.1995 about the theft of car did not inform the insurance company about the incident. In terms of the policy issued by the appellant, the respondent was duty bound to inform it about the theft of the vehicle immediately after the incident. On account of delayed intimation, the appellant was deprived of its legitimate right to get an inquiry conducted into the alleged theft of vehicle and make an endeavour to recover the same. Unfortunately, all the consumer foras omitted to consider this grave lapse on the part of the respondent and directed the appellant to settle his claim on non-standard basis. In our view, the appellant cannot be saddled with the liability to pay compensation to the respondent despite the fact that he had not complied with the terms of the policy.

In the result, the appeal is allowed, the impugned order as also those passed by the District Forum and the State Commission are set aside and the complaint filed by the respondent is dismissed".

This issue was discussed by this Commission at length in Reliance General Insurance Co. Ltd. , Revision Petition No.2479 of 2015 and connected Vs. Jai Prakash 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.

(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

1. 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.

1. 1. 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.

1. 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, I am of the considered view that since the petitioner / complainant failed to explain the delay of about ten months in intimating the accident to the insurer and thereby committed breach of a mandatory term of the insurance policy, the respondent cannot be directed to pay the claim on account of the alleged accidental death of her husband. I therefore need not go into the question as to whether the husband of the complainant held a valid driving license at the time of the accident or not.

7. For the reasons stated hereinabove, I do not find any good reason to interfere with the order passed by the State Commission. The revision petition is therefore dismissed, with no order as to costs.