(1993) 02 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

V.M. PARMAR APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 18-02-1993

Acts Referred:

Citation : 1993 2 CPJ 813 : 1993 2 CPR 154

Hon'ble Judges : S.A.Shah , R.K.Shah J.

Final Decision : Complaint allowed with costs

Judgement

1. THE complainant No. 1 has filed a complaint alleging that he is the owner of Tata Truck L.P. No. GTJ 5788 which was hypothecated with Mahavir Motor Finance Company Limited, the complainant No. 2. That he took insurance policy for the said truck from the opposite party and has paid premium of Rs. 5,553/-. It appears that thereafter he has also tried to the take the enhanced policy and alleged that he has paid the amount of the premium to the agent but due to the alleged indifference of the agent the policy was enhanced by Rs. 50,000/- w.e.f. 14.9.90 and, therefore, he is entitled to claim for the enhanced amount also since he has lost truck exceeding Rs. 1,50,000/-.

2. THAT the truck was stolen on 13.9.90 at night at about 2 a.m. THAT means that the truck was stolen in the early morning on 14.9.90 and, therefore, the second insurance which is dated 14.9.90 cannot cover the loss of theft being subsequent to the alleged theft. THAT one Mr. R.K. Makwana has filed a policy complaint on 14.9.90 wherein he has stated that he is the owner of the said truck and has purchased the same for Rs. 1,20,000/-. However, he has stated in the complaint also that the truck is in the name of his uncle''s son who has also taken the insurance policy which is valid upto 16.7.91. He has further stated that this truck has been stolen from the footpath at Chamanpura, Ahmedabad and that his cousin Mansukhbhai is a witness. The Insurance Company has rejected the claim by its memorandum dated 3.12.91 on the ground that in the claim preferred, the complainant has suppressed material facts while ma king the proposal to raise the sum insured and did not disclose that the vehicle was

already stolen at that time. Moreover, the claim papers and documents did not bear the claimant''s signature but the signature was put by another person. Ultimately, the Insurance Company has come to the conclusion that the complainant has resorted to fraudulent means and the Company has decided to reject the claim.

Mr. Kapil Bhatt, the learned Advocate appear- ing on behalf of the opposite party has raised the following submissions. - that the claimant has fraudulently raised the claim by Rs. 50,000/- after the truck was stolen. The claimant having not come with clean hands, the Insurance Company is entitled to reject the claim. - that even the claim papers were not signed by the claimant, but it is signed by his nephew, the person who has filed the FIR before the police which leads to the conclusion that the cousin was the real owner of the truck. - the complainant has transferred the truck to his cousin who was owner at the time when the truck was stolen and, therefore, also the claimant should be rejected.

3. FIRST we will deal with the contention that the complainant has made a fraud against the Insurance Company by raising the insurance after the truck was stolen. According to the complainant, the amount of premium was given earlier i.e. before truck was stolen. However, on account of the indifference of the Insurance Agent, the same was deposited on 14th and, therefore, the Insurance Company is obliged to issue a policy and pay the damages if suffered by the complainant. We have to consider this case keeping in mind that both the complainant No. 1 and his cousin are Harijans. In the instant case, the Insurance Company has not examined the agent. However, even the complainant is not able to prove that he has paid the additional premium prior to the date when the truck was stolen. There is a possibility that it might have been given after the truck was stolen. In absence of proof we are not in a position to come to any conclusion whether insurance agent was at fault or the complainant in enhancing the amount of the policy to commit fraud. What ever may be the position, we are not taking into consideration the additional liability at all. We have decided to decide the claim of the complainant only on the basis of first policy in absence of any proof by either party regarding the indifference of the agent or the fraud of the complainant. Even if the complainant has committed fraud that will not invalidate the previous policy which is given and admitted by the Insurance Company itself.

4. THE next question that has been raised by Mr. Bhatt and vehemently argued is that the claimant is not the owner of the truck on the date when the same was stolen. THE policy is in the name of the complainant. THE complainant has made a proposal for additional insurance on 14.9.90. That means at that date he was the owner. THE R.T.O. book is in the name of the complain- ant and the hypothecation is also registered in the R.T.O. book. All documents have been produced at the time of survey. Complainant No. 2 who has advanced the big amount of truck is also joined as a complainant. THE F.I.R. lodged by third party claiming to be the owner cannot bind the complainant. He might be interested in

the truck either on account of relation being a cousin brother or any other financial interest but so far the truck is concerned he is the owner who has taken insurance. R.T.O. registration book is in his name, he has taken loan on hypothecation and on the date the truck was stolen, he claimed to be the owner against which not other evidence except the FIR has been produced by the Insurance Company. According to our opinion the burden to prove that the truck has been transferred to somebody else is on the Insurance Company and in absence of any evidence we cannot jump to the conclusion that the truck has been transferred without any document to support the said contention. THE decision quoted by Mr. Bhatt is in respect of the truck which is proved to have been transferred and claim made after transfer. In the instant case there is no such proof and we a re not inclined to accept the submission of Mr. Bhatt in absence of any positive proof given by the opposite party. It is well known position of law that suspicion cannot take the place of proof. No doubt, there is some suspicion. But the truck having not been actually transferred and both complainant Nos. 1 and 2 have filed affidavit against which there is no positive evidence, we have to come to the conclusion that the truck has not been transferred on the date when the theft took place. We are, therefore, of the opinion that the complainant is entitled to the claim under the policy. Even if there is subsequent fraud, they cannot invalidate the previous policy. After the policy is taken the Insurance Company is also in the same disability as the complainant is when making a proposal. They should also act bonafidely and should not repudiate the right claim on extraneous considerations which are not connected with the truck i.e. the original policy. So far the amount claimed by the complainant is concerned, the complainant has produced certain bills to show that after the truck was purchased he has made certain repairs and spent about Rs. 85,000/-. However, considering the modus operandi of the complainant to enhance the claim, we are not inclined to accept all the bills. However, there is one positive evidence on record which shows that the value of the truck at the date when it was stolen was Rs. 1,30,000/-. The report of the Surveyor dated 13.4.91 at page 68 produced by the Insurance Company reads as under : " To my opinion the market value of said make, model can be considered Rs. 1,30,000/-." Even if the complainant has repaired the truck and spent the amount as stated by him, assuming that the truck was also used by him and since there is an independent opinion that the market value of the truck was Rs. 1,30,000/-, we are inclined to accept this evidence as produced by the opposite party. We are, therefore, of the opinion that the complainant is entitled to Rs. 1,30,000/- as assessed by the Insurance Company.

5. SINCE the complainant has succeeded, he is entitled to interest and cost. The theft occurred on 14.9.90. In such a case atleast there months'' time can be said to be reasonable in investigating the claim and there is no averment anywhere by the Insurance Company that the truck was not stolen. We are, therefore, of the opinion that the Insurance Company must pay interest from 1.1.91 @ 15% p.a. with cost which is quantified at Rs 2,000/-.

6. MR. Bhatt relies upon the F.I.R which states that he had purchased the truck for Rs. 1,20,000/- from Bhupendrabhai. This averment in the complaint cannot bind the complainant because even if he has purchased it for Rs. 1,20,000/-, he has alleged to have spent some money-Rs. 85,000/- plus. Again, this argument cannot be accepted because the estimated cost of the truck by the Insurance Company is Rs. 1,50,000/- and according to the survey report the cost is Rs. 1,30,000/- which we accept. We, therefore pass the following order : ORDER The Insurance Company shall pay Rs. 1,30000/- with interest at the rate of 15% p.a. from 1.1.91 till the amount is paid and shall also pay cost of Rs.2,000/-. The payment shall be made within three weeks from the date of receipt of this order. Complaint allowed with costs.

