

SHRIRAM GENERAL INSURANCE CO LTD Vs Mahender Jat Son Of Jagannath Jat

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Dec. 16, 2014

Citation: 2015 1 CPJ 74

Hon'ble Judges: AJIT BHARIHOKE , Rekha Gupta J.

Advocate: NAVEEN KUMAR CHAUHAN

Judgement

1. REVISION Petition no. 4749 of 2013 has been filed against the judgment and order dated 01.10.2013 passed by the Rajasthan State

Consumer Disputes Redressal Commission, Jaipur ("the State Commission") in First Appeal no. 328 of 2012.

2. THE facts of the case as per the respondent/ complainant are that the respondent's vehicle number RJ 01 SJ 9942 was stolen on the night of

17.12.2010 from the rented house of the respondent by some unknown person, for which an FIR no. 442 of 2010 had been lodged with police

station Kekri. The police submitted a final untraced report of the property.

3. THE respondent intimated the company regarding the theft of the above said vehicle on its Toll Free number 1800 180 7474 and intimated to

the agent on 18.12.2010 whereby the respondent was informed to give written information to the Branch Manager, Shriram General Insurance

Company Ltd., Third Floor, Amar Plaza Tower, Opposite Daulat Bagh, Ajmer along with copy of the FIR and other documents. The respondent

sent the copy of the FIR to the Branch Office at Ajmer immediately after receiving the same from the police station, after completion of all the

formalities the petitioner Insurance Company (herein) vide its letter dated 02.02.2011 repudiated the claim of the respondent stating that the

vehicle was stolen on 17.12.2010 and intimation regarding the theft of the vehicle was given to the company only 07.01.2010 for the first time

which amounts to violation of policy terms and conditions.

The above act on the part of the petitioner/ opposite party amounts to grave deficiency in service and he has suffered mental agony and financial

losses due to above illegal and negligent act.

4. THE respondent has prayed that the complaint be allowed and the insurance company be directed to award the following amounts to the

respondent:

(i) Insurance amount of Rs.30,000/- for the stolen vehicle no. RJ 01 SJ 9942 be awarded; (ii) Award Rs.5,000/- as litigation expenses to the

respondent; (iii) Award compensation of Rs.5,000/- for mental agony and financial losses to the respondent; and (iv) Any other relief which this

District Forum deems fit may be awarded.

5. THE petitioner/ opposite party - insurance company in their written statements have stated that the complaint was not maintainable because the

respondent in violation of the policy condition did not give written intimation regarding the incident to insurance company immediately which was an

important condition in case of vehicle theft and the respondent was very well aware of it. Due to the delayed intimation, after 21 days on

07.01.2011, the insurance company was deprived from carrying on investigation and to retrieve the vehicle. The relevant condition in the policy

was as under:

Conditions: This policy and schedule shall be read together and any word or expression to which a specific meaning has been attached in any part

of this policy or the schedule shall bear the same meaning wherever it may appear. 1. Notice shall be given in writing to the company immediately

upon the occurrence of any accidental loss or damage 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 copy thereof shall be forwarded to the Company

immediately on receipt by the insured. Notice shall also be given in writing to the company immediately the insured shall have knowledge of any

impending prosecution, inquest or total 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 co-operate with the

company in securing the conviction of the offender".

Therefore the complaint of the respondent is liable to be dismissed in violation of the policy condition of the complainant.

6. THE respondent never intimated the insurance company regarding the theft of the vehicle on 18.12.2010 and no such intimation was given

through Toll Free number. Neither has the respondent declared the name of any agent nor the complaint number. The respondent could have

intimated regarding vehicle theft through telegram, notice or written report through post in compliance to policy condition but no such action was

taken by him and this clearly violated the policy conditions. Further, the respondent was duty bound to take appropriate steps to safeguard the

vehicle but the respondent was intentionally negligent and parked the motorcycle on the public road and left it without any safety measure.

Therefore, the respondent himself was liable for the theft of the vehicle. The respondent could also have approached the branch office of the

insurance company to intimate regarding the theft of the vehicle in compliance of the policy conditions and got registered the theft intimation with

immediate effect or could have intimated through post but no such action was taken by the respondent and no such intimation was given to the

insurance company till 07.01.2011. Yet the insurance company being fair enough acted upon natural justice and gave an opportunity to the

respondent to explain the cause of delayed intimation vide its letter dated 18.01.2011. This letter was not replied to by the respondent but rather

he preferred the present complaint before the District Forum.

7. THE policy is based on utmost good faith. As the insurance policy was a contract, therefore when the respondent stated that the policy was

based on utmost good faith he was also bound by the conditions of contract. Therefore, the claim of the respondent was rightly repudiated by the

insurance company, because the respondent was not entitled to any compensation in violation of the policy conditions.

8. THE District Consumer Disputes Redressal Forum, Ajmer (Rajasthan) ("the District Forum") vide their order dated 17.02.2012 has dismissed

the complaint. The District Forum has held that:

the National Commission in its order dated 01.09.2011 in Revision Petition no. 1362 of 2011 Rang Lal (Deceased) through Legal

Representatives vs United India Insurance Co. Ltd., and Ors settled the legal position that immediately after the incident of vehicle theft the

insurance company should be intimated and First Information Report should be registered, but the complainant violated the policy conditions by

not doing so, therefore, he is not entitled to claim any compensation. The National Commission in its order dated 09.12.2009 in New India

Assurance Company vs Trilochan Jane, Appel no. 321 of 2005 held that not giving intimation to insurance company for 9 days after theft is fatal, in

this time period the vehicle may be taken to far distance means it may be sold out to scrap dealer and such delay is fatal for investigation. The

counsel for the complainant failed to explain how the above authority is not applicable to the present case. In our opinion giving intimation to

opposite party after 21 days of incident shows negligence on the part of complainant and the complainant has neither produced authentic proof of

intimation regarding theft of vehicle to the insurance company and nor disclosed the name of the agent to whom the complainant allegedly intimated.

We are of the opinion in the above circumstances and keeping in view the judicial authorities not deficiency in service on the part of opposite party

insurance company by repudiation of claim of the complainant. Therefore, complaint of the complainant is liable to be dismissed"".

9. AGGRIEVED by the order of the District Forum, the respondent filed an appeal before the State Commission. The State Commission while

accepting the appeal has observed that:

in our opinion the Toll Free number belongs to opposite party and opposite party has records of it. Therefore, the burden was on the opposite

party to prove that no such intimation was received on Toll Free number. Complainant filed affidavit in support of giving intimation on Toll Free

Number. Therefore, intentional delay in claim intimation is not proved. The claim of the complainant is repudiated on false grounds. Therefore, in

the above facts, circumstances and consideration the appeal of the appellant/ complainant is accepted and order dated 17.02.2012 passed by

District Forum, Alwar is set aside and opposite party insurance company is directed to pay the complainant claimed amount of Rs.30,000/- and

pay Rs.5000/- as compensation for mental agony and litigation expenses within 30 days. If the order is not complied within 30 days the interest at

the rate of 9% will be payable on the above amount. Consequently the appeal is disposed of.

10. DIS -satisfied by the order of the State Commission, the Insurance Company has filed this present revision petition.

11. WE have heard the learned counsel for the petitioner and the respondent in person. The counsel for the petitioner argued that the State

Commission had failed to observe that the respondent had willfully violated the condition no.1 of the insurance policy and he had given information

regarding the theft of the vehicle to the petitioner company after an inordinate and unexplained delay of 21 days. The State Commission has

accepted the appeal and overturned the order of the District Forum without appreciating the facts that the respondent had failed to give any

evidence to prove that he had called on the Toll Free Number to report the complaint. In fact, nowhere has he given any complaint number, name

of the persons or the agent to whom he had reported the matter of theft on 18.12.2010. Further, the State Commission had erred in holding that

the onus of proving that no intimation regarding theft of the vehicle was given on the Toll Free number lay on the petitioner. He further, argued that

the terms of the policy were very clear that all intimation regarding theft had to be given in writing to the company immediately upon the occurrence

of the incident. The respondent/ complainant, on the other hand, argued that he had given information to the petitioner on the Toll Free number and

the delay of 21 days occurred in collecting the documents as advised on phone.

12. IT is an admitted fact that the first written information given by the respondent to the petitioner regarding theft was on 07.01.2011 when he

filed the insurance claim intimation slip. We see from the record that this was received at 12.52 pm on 07.01.2011. In the said intimation slip no

details of the FIR have been given. Thereafter, we note that the petitioner had addressed a letter to the respondent dated 18.01.2011 stating as

under:

Dear Sir (s)/ Madam Subject : Reason for delay in intimation of Claim Re: Claim Number : 10000/31/11/C/034662

Vehicle Details : Registration

no. RJ 01 SJ 9942 Engine number 34572 Chasis Number 34469 Policy number : - 106002/31/11/002964 Nature of Loss : Theft of entire vehicle

With reference to above claim, this is to inform you that date of loss is 17.12.2010 and date of intimation is 07.01.2011. There is a delay of 21

days. You are requested to please clarify the reasons for the delay intimation of claim. We expect your reply within 7 days of receipt of this letter

failing which we will presume that you are not interested in this claim.

13. AS mentioned in the written statement of the petitioner before the District Forum, the respondent/ complainant failed to reply to the said letter

to clarify the reasons for the delayed intimation of the theft and the claim. Thereafter, the petitioner vide letter dated 02.02.2011 repudiated the

claim stating that:

Reference : Claim no. 10000/31/11/C/034662 Vehicle no. RJ 01/SJ 9942 Policy no. 106002/31/11/002964 Dear Sir,
With reference to above

mentioned theft claim, you have informed us dated 07.01.2010 that your Hero Honda Splendor Plus bearing registration no. as above was stolen

on 17.12.2010. As per the terms and conditions of policy (Condition no.1) Notice shall be given in writing to the company immediately upon

occurrence of any claim. Since claim intimation has been given to us almost 21 days from the date of theft of vehicle. We regret that theft claim of

your vehicle is not admissible due to violation of policy conditions. We accordingly, repudiate your claim which please note. Thanking you and

assuring you of our best services at all the times.

14. THE respondent/ complainant then filed the complaint on 18.03.2011. As per the terms and conditions of the policy no. 1, the respondent/

complainant was bound to give notice of the theft in writing to the company immediately upon the occurrence of the theft as also to give immediate

notice to the police and cooperate with the company for securing the conviction of the offender. Nowhere in the terms and condition, the petitioner

have mentioned or indicated that the intimation of theft may be given to the petitioner on a Toll Free number are that the first intimation regarding

loss by theft is to be accompanied by any document.

15. THE law on this matter is well settled. The Hon"ble Supreme Court in the case of Oriental Insurance Co. Ltd. vs. Parvesh Chander Chadha,

Civil Appeal No. 6739 of 2010 decided on 17.8.2010 as also the judgment in the matter of Dharambir vs. The Oriental Insurance Co. Ltd. in RP

No.1542 of 2012 decided on 10.10.2013 and in the matter of New India Assurance Co. Ltd. vs. Trilochan Jane in First Appeal No.321 of 2005

decided on 9.12.2009.

16. WE have considered the rival contentions. Hon"ble Supreme Court in the matter of Oriental Insurance Co. Ltd. vs. Parvesh Chander Chadha

dismissed the complaint holding that in terms of the policy issued by the insurance policy, the insured was duty bound to inform about the theft of

the vehicle immediately after the accident. Delay in intimation deprives the insurance company of its legitimate right to get enquiry conducted into

the alleged theft of vehicle and make an endeavour to recover the same. It was further held that the insurance company could not be saddled with

the liability to pay the compensation to the insured despite the fact that he has not complied with the terms of the policy. Relevant observations of

the Supreme Court read 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 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 the vehicle and make an

endeavor to recover the same. Unfortunately, all the consumer forums 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.

17. THE said judgment has been followed by coordinate Bench of this Commission in the matter of Dharambir vs. Oriental Insurance Co. Ltd. .

From this it is evident that the issue raised in this revision petition is no more res integra. Admittedly the intimation of theft was given to the

insurance company 21 days after the theft. Thus, finding of the State Commission allowing the claim by the respondent is not justified.

18. IN view of the foregoing we allow the revision petition and set aside the order of the State Commission and confirm the order of the District

Forum and dismiss the complaint.