

(2014) 02 NCDRC CK 0059

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

RAMPRASAD

APPELLANT

Vs

BAJAJ ALLIANZ

GENERAL

RESPONDENT

INSURANCE CO. LTD.

Date of Decision: Feb. 18, 2014

Citation: 2014 0 NCDRC 107 : 2014 1 CPJ 531

Hon'ble Judges: AJIT BHARIHOKE , SURESH CHANDRA J.

Advocate: VIKRANT SINGH BAIS , MANJUSHA WADHWA

Judgement

1. THIS revision is directed against the order of the State Commission dated 14.01.2013 whereby the State Commission set aside the order passed by the District Forum and dismissed the complaint filed by the petitioner.

2. BRIEFLY stated, the facts giving rise to this revision petition are that the petitioner had obtained an insurance policy in respect of his tractor having chasis no. N.G.N.L. -1465 and chasis no. N.G.N.L -1465 for a period of one year commencing from 19.11.2010. The tractor is stated to have been stolen on the night intervening 22nd & 23rd September, 2011 while parked in front of the house of his elder son at village and P.O. Kathautiya P.S. Manendergarh District Korla, Madhya Pradesh. The petitioner claim to have reported the theft orally at PS Manendragarh on 23.09.2011 whereupon the complainant was asked to search for the tractor. The complainant then went till District Rewa in search of the tractor and thereafter written information was given at PS Gohparu, District Sahdol, Madhya Pradesh on 23.09.2011. Another written complaint was submitted at PS Jaitpur District Sahdol on 24.09.2011. Thereafter on returning back to his village, complainant

lodged FIR on 26.09.2011. The intimation of theft is claimed to have been given to the respondent opposite party by fax on 05.10.2011 and by a registered letter dated 07.10.2011. Claim of the petitioner was repudiated which led to the filing of the consumer complaint.

Respondent opposite party in its written statement claimed that the insurance claim was repudiated on the ground of breach of policy condition.

3. THE District Forum on consideration of record did not find merit in the repudiation of claim by the opposite party and allowed the claim with direction as under:

""Therefore, accordingly this complaint is allowed and opposite party no.1 insurance company is directed to pay amount of Rs.4,28,702/- (price of the vehicle in question) to the complainant within 45 days of this order and are also liable to pay interest @ 9% per annum on this amount from the date of claim till the date of payment. This amount is to be deposited in office of this Forum for making payments to the complainant. Opposite party no.1 insurance company is also liable to pay costs of Rs.2000/- to the complainant which is also to be deposited in the office of this Forum. Opposite party no.1 to bear its own costs. On above said amount alongwith interest being deposited the same shall be paid to the complainant by account payee cheque. Complainant has unnecessarily made opposite party no.2 a party therefore he is liable to pay costs of Rs.2000/- for being paid to the complainant which is to be deposited in this forum within 45 days for being paid to opposite party no.2. ""

4. BEING aggrieved of the order of the District Forum, the respondent opposite party preferred an appeal. The State Commission relying upon the judgment of this Commission in the matter of New India Assurance Company Limited Vs. Trilochan Jane in First Appeal No. 321/2005 decided on 09.12.2009 allowed the appeal and dismissed the complaint. Relevant observations of the State Commission are reproduced thus:

""The appellant/Insurance Company sent letter Annexure A -7(1) to the respondent No.1/complainant on 16.01.2012. In this letter under the head reference, it has been mentioned that the date of loss was 22nd September, 2011 and the intimation was given on 30th November, 2011, whereas the copy of the postal receipt of the registered post by which intimation was sent to the Insurance Company by the respondent no.1/complainant

(Annexure A -5) shows that the registered post was sent on 07.10.2011, which was containing letter dated 05.10.2011 (Annexure A -4). Thus, it appears that respondent no.1/complainant informed the Insurance Company regarding the incident of theft by letter dated 05.10.2011, which was posted on 07.10.2011 and was received in the office of the Insurance Company on some later date. The incident of theft was happened during night intervening between 22.09.2011 to 23.09.2011 and thereafter after 14 or 15 days, the post was sent containing intimation to the Insurance Company, which was received by the Insurance Company after a further gap of a month or so. Thus, there was a great delay in giving intimation to the Insurance Company and there appears no satisfactory explanation for this delay. When Police was immediately informed by the respondent no.1/complainant orally, then intimation to the Insurance Company was also required to be sent at the earliest as per terms of the insurance policy. The Insurance Policy has been brought on record by the O.P./Insurance Company as document Annexure OP6. Condition No.1 of the Insurance Policy reads as under : - ""1. Notice shall be given in writing to the Company immediately upon the occurrence of any accidental 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 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 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 co-operate with the company in securing the conviction of the offender. ""

Thus under this condition notice to the Insurance Company was required to be given in writing immediately upon the occurrence of any accidental loss or damage and in the event of any claim. It has further been provided that in case of theft or criminal act which may be the subject of 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. Thus, it was necessary for the respondent no.1/complainant to act promptly and immediately in this regard and to inform the Insurance Company immediately. In the case of New India Assurance Company Limited Vs. Trilochan Jane, in First Appeal No.321 of 2005, decided on 09.12.2009, the meaning of word ""immediately "" has been taken into consideration in detail by Hon "ble National Commission and it has been opined that ""the delay in lodging the F.I.R. after 2 days of the coming to know of the theft and 9 days to the Insurance Company, can be fatal as, in the meantime, the car could have travelled a long distance or may have been dismantled by that time and sold to kabaadi (scrap dealer). ""After taking into consideration the meaning of the word ""immediately "", Hon "ble National Commission in the aforesaid reported case, has opined that the word ""immediately "" means ""within a reasonable time "" having due regard to nature and circumstances of the case.

In the nature and circumstances of the case in hand, it appears that insured vehicle was stolen between the night intervening 22.09.2011 to 23.09.2011. The Police was also intimated orally and the searches were made hear and there. Ultimately when no effort could work out and it was found that vehicle was not traceable, then First Information Report was lodged to the Police on 30.09.2011 and thereafter there remains no reason for not intimating the Insurance Company immediately. The complainant did not act immediately thereafter for drafting letter of intimation. He took around four days for the same and then three further days for dropping the envelope in the post box and getting the letter registered. These all shows that respondent no.1/complainant was not intending to inform the Insurance Company immediately that is why immediately after occurrence of theft, the Insurance Company was not informed. We find that in the facts of the present case, the delay in informing to the Insurance Company was fatal to the complainant and as held by Hon "ble National Commission in the aforesaid case of New India Assurance Company Limited Vs. Trilochan Jane(Supra) the complainant is non -suited on this ground.

Learned counsel for the petitioner has contended that order of the State Commission is not sustainable because it is based upon incorrect reading of condition no.1 of the insurance policy. Learned counsel has taken us through condition no.1 of the policy and contended that so far as the case of theft of insured vehicle is concerned, the petitioner was under obligation to give immediate information of theft to the police and cooperate with the insurance company in securing the conviction of the offender. It is argued that aforesaid condition does not stipulate about giving of immediate information of theft to the insurance company. Therefore, it cannot be said that petitioner has violated the condition no.1 of the insurance policy.

5. LEARNED counsel for the respondent on the contrary has argued in support of the impugned order. She has contended that State Commission has correctly construed condition no.1 of the insurance policy. Learned counsel has further contended that even the intimation of theft of tractor was not given to the police immediately. In this regard she has drawn our attention to the allegations in the complaint stating that the FIR pertaining to the theft of the tractor was registered at PS Manendragarh, three days later on 26.09.2011.

6. WE have considered the rival contentions and perused the record. The question which needs determination is whether or not the delay in giving intimation of theft to the insurance company is fatal to the claim of the respondent. This question came up before the Supreme Court in the matter of Oriental Insurance Co. Ltd. Vs. Parvesh Chander Chadha in Civil Appeal No. 6739 of 2010 arising out of SLP (C) No. 12741 of 2010 decided on 17.08.2010, where the Hon "ble Supreme Court held thus:

""Admittedly, the respondent had not informed the appellant about the alleged theft of the insured vehicle till he sent letter dated 22.05.1995 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 not 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 19.09.1995 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 20.01.1995 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 this case also, admittedly the theft took place on the night intervening 22nd & 23rd September, 2011 and the intimation of theft was given by the petitioner to the respondent much later by fax on 05.10.2011 and by registered post vide letter dated 07.10.2011. Thus in view of the law down by the Supreme Court, the respondent insurance company cannot be saddled with the liability to pay compensation to the petitioner who himself has not complied with the terms of the insurance policy.

7. EVEN otherwise, the story of the complainant regarding immediate information of theft given to the police is highly suspect. As per allegations in the complaint, the theft took place in front of house of elder son of the petitioner situated at village Kathautia, main road Tiraha within the jurisdiction of P.S. Manendragarh. FIR pertaining to the theft was

admittedly registered at P.S. Manendragarh three days after the theft on 26.09.2011. Case of the petitioner is that theft was orally reported to the Police Station Manendragarh and the complainant was told to search the tractor himself. Thereafter, the complainant made efforts to search the tractor and when the tractor was not found, information regarding theft was given in writing at PS Gohparu District Sahdol, M.P. on 23.09.2011. Thereafter, another complaint dated 24.09.2011 was given at PS Jaitpur. Ultimately on coming back, FIR was registered at PS Manendragarh. We are not inclined to believe story of the petitioner particularly when no one from the PS Manendragarh has been examined to corroborate the version of the petitioner regarding oral intimation of theft to the police. Further, there is no explanation as to why the complainant instead of submitting written information of theft at the concerned PS Manendragarh, approached PS Gohparu as also PS Jaitpur who had no jurisdiction to investigate the theft which took place within the jurisdiction of Manendragarh Police Station. Further, on perusal of letter dated 23.09.2011 as also letter dated 24.09.2011 respectively addressed to SHO PS Gohparu Sahdol and the SHO PS Jaitpur, it transpires that in these letters, there is no mention of the petitioner earlier having approached PS Manendragarh with intimation of theft and that he was told by officials of those Police Station to search for the tractor himself. Under these circumstances, we are not inclined to believe the story put forth by the petitioner. Thus, it is also not established that the theft was immediately reported to the police.

8. IN view of the discussion above, this is a clear case of violation of terms of insurance policy. As such, we do not find any fault in concurrent finding of the fora below which may call for interference by this Commission in exercise of its revisional jurisdiction. Revision petition is, therefore, dismissed.