2011 2 CPJ 241

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Niharika Maurya	APPELLANT
Vs	
NEW INDIA ASSURANCE COMPANY LTD	RESPONDENT

Date of Decision: April 21, 2011

Citation: 2011 2 CPJ 241

Hon'ble Judges: Ashok Bhan , Vineeta Rai J.

Final Decision: Revision Petition allowed.

Judgement

1. PETITIONER herein, who was the complainant before the District Consumer Disputes Redressal Forum, Patna, Bihar (hereinafter referred to as "the District Forum", for short) has filed the present revision petition against the order dated 23rd June, 2010 passed by the State Consumer Disputes Redressal Commission, Bihar at Patna (hereinafter referred to as "the State Commission", for short) in Appeal No. 455 of 2007 wherein and whereby the State Commission reversing the order of the District Forum has held that repudiation of the claim of the petitioner by the Insurance Company was neither arbitrary nor unreasonable as the vehicle was being used for commercial purpose. The complaint has been ordered to be dismissed.

2. THE case of the complainant/petitioner as projected in the complaint, in brief, is that she after having purchased the new Tata Sumo vehicle bearing registration No. BR-lP-7998 got it insured comprehensively with the New India Assurance Company Ltd., the respondent herein, for a sum of Rs. 4,80,605 on 22nd September, 2002. The premium of Rs. 16,792 was paid. The policy was valid from 29th September, 2002 to 28th

September, 2003. On 19th May, 2003, she sent the aforesaid Tata Sumo from Patna to village Massa, Police Station Jaley, District Darbhanga to fetch her mother-in-law and father-in-law. The vehicle, which was driven by Vinod Singh did not return to Patna till late night. As the vehicle could not be traced, petitioner lodged the FIR with the police station on 22nd May, 2003. Subsequently, she came to know from her driver that her vehicle was forcibly stopped on 19th May, 2003 near Hazipur and three miscreants entered the car and the driver was forced to carry them to Muzaffarpur. The vehicle was snatched by the miscreants at gunpoint at Muzaffarpur after administering wine to the driver because of which he became unconscious. The driver, on regaining consciousness, found himself at Motipur Primary Health Centre. The matter was reported to the police station and FIR No. 129/03 dated 22nd May, 2003 was registered at Police Station Ahiyapur, District Muzaffarpur. Petitioner lodged a claim with the respondent on 27th May, 2003 on the basis of the reported theft of the vehicle. The respondents accepted the claim of the complainant to the extent of 49% of the total claim of Rs. 4,80,605 and paid Rs. 2,36,500 only on the ground that the said Tata Sumo was used for commercial purpose in violation of the terms of the policy. The claim was settled on non-standard basis. That the complainant accepted the sum of Rs. 2,36,500 on the assurance of the opposite party that she would be paid the full insured amount of the claim. On coming to know that the Insurance Company had finally settled the amount, she filed the complaint.

3. RESPONDENT-Insurance Company, on being served, entered appearance and filed its written statement. Stand taken by the respondents was that the Tata Sumo vehicle of the complainant was used for commercial purpose as per statement made by the driver in violation of the terms and conditions of the policy and, hence, the respondents settled the claim of the petitioner for Rs. 2,36,500 on non-standard basis which amount was accepted by the petitioner without protest. After giving the discharge voucher and accepting the sum of Rs. 2,36,500 without any protest petitioner was estopped from claiming any further amount. It was admitted that the petitioner had protested against the settlement of the claim at 49% subsequently to which a suitable reply was given.

4. THE District Forum, on appreciation of the pleadings and evidence led by the parties allowed the complaint and directed the respondents to pay the remaining part of the insured/claim amount of Rs. 2,44,105 within three months from the date of receipt of the order failing which the aforesaid amount shall carry interest at the rate of 10% p.a.

5. RESPONDENTS, being aggrieved, filed an appeal before the State Commission. The State Commission came to the conclusion that the vehicle was being used for commercial purpose in violation of the terms of the policy. Since the vehicle was being used for commercial purpose in violation of the terms of the policy the Insurance Company was justified in settling the claim on non-standard basis. In view of the findings recorded, the State Commission set aside the order of the District Forum and dismissed the complaint. Aggrieved against the order passed by the State Commission the present revision petition has been filed.

6. LEARNED Counsel appearing for the petitioner contends that there is no evidence on record to show that the vehicle was being run for commercial purpose in violation of the terms of the policy. That the State Commission has erred in relying upon the admission made by the driver under the influence of liquor because the same had been withdrawn by him subsequently. Learned Counsel further contends that the petitioner did not accept the sum of Rs. 2,36,500 voluntarily. That the complainant''s signatures were taken on the Discharge Voucher on the pretext that the claim will be settled on non-standard basis which will be 100% of the insured/claim amount. That on coming to know that her claim was finally settled for Rs. 2,36,500 out of the claim amount of Rs. 4,80,605 complainant immediately lodged her protest against arbitrary settling of the claim. That the acceptance of the sum of Rs. 2,36,500 did not estop the petitioner from claiming the entire amount. Relying upon the judgment of the Supreme Court in National Insurance Company Ltd. v. Nitin Khandelwal, IV (2008) CPJ 1 (SC)=(2008) 11 SCC 259, in which it is held that in the case of theft of vehicle breach of condition is not germane it is contended that acceptance of the sum of Rs. 2,36,500 would not debar the petitioner from claiming the balance amount. As against this, the learned Counsel for the respondent contends that the Insurance Company was justified in settling the claim on non-standard basis. That even in the Nitin Khandelwal''s case (supra), the Supreme Court had upheld the order of the State Commission settling the claim on non-standard basis. In support of his contention he has placed reliance on a subsequent judgment in Amalendu Sahoo v. Oriental Insurance Co. Ltd., II (2010) CPJ 9 (SC)=II (2010) SLT 672=(2010) 4 SCC 536, wherein the Supreme Court after taking note of the Nitin Khandelwal''s case (supra), has observed as under: "In the case of Nitin Khandelwal (supra), the State Commission allowed 75% of the claim of the claimant on non-standard basis. The said order was upheld by the National Commission and this Court refused to interfere with the decision of the National Commission." Counsel for the parties have been heard at length.

7. THE first question to be considered is as to whether the mere execution of Discharge Voucher and acceptance of the insurance claim would estop the insured from making further claim from the Insurance Company. Hon''ble Supreme Court of India in United India Insurance v. Ajmer Singh Cotton and General Mills and Ors., II (1999) CPJ 10 (SC)=VI (1999) SLT 590=1999 (6) SCC 400, has observed that mere execution of the Discharge Voucher and acceptance of the insurance claim would not estop the insured from making further claim from the insurer. The question as to whether the Discharge Voucher was obtained by fraud, misrepresentation, undue influence or the like has to be decided in the facts and circumstances of each case.

8. THIS Commission in Raghuwans Mani v. The New India Assurance Co. Ltd. and Anr., R.P. No. 2626 of 2005, decided on 20th October, 2009 after a comprehensive analysis has held that the Insurance Company being in a dominant position paid the amount getting the Discharge Voucher but that does not mean that the Discharge Voucher was given voluntarily. Mere execution of the Discharge Voucher and acceptance of insurance claim would not estop the insured from making further claim. It was observed as under:

"This Commission in Oriental Insurance Company Limited and Ors. v. The Government Tool Room and Training Centre, reported in I (2008) CPJ 287 (NC), held as under: "4. In the present case, it is to be stated that such contention is raised despite the law being settled. As early as in 1986, the Apex Court discussed the concept of coercive bargaining in Central Water Transport Corporation Ltd. and Anr. v. Tarun Kanti Sengupta and Anr., (1986) 3 SCC 156, and held that where a man has no choice, or rather no meaningful choice, but to give his consent to a contract or to sign on the dotted line in a prescribed or other form or to accept a set of rules as part of contract, however unfair, unreasonable and unconscionable a clause in that contract may be the Courts will enforce and will, when called upon to do so, strike down as unfair and unreasonable contract or an unfair or unreasonable clause in a contract entered into between the parties who are not equal in bargaining power. In arriving at the aforesaid conclusion the Court referred to Chitti on Contracts (25th Edn. Vol 1, pr. 4) wherein it has also been observed that the Courts have developed a number of devices for refusing to implement exemption clauses imposed by the economically stronger party on the weaker. Thereafter, in the United India Insurance Co. Ltd. v. Ajmer Singh Cotton and General Mills and Ors., (1999) 6 SCC 400, wherein the Court observed that mere execution of discharge voucher and acceptance of insurance claim would not estop insured from making further claim from the insurer under

the circumstances which can be termed as exercise of undue influence or coercion or the like.

5. Before the State Commission, it was vehemently contended by the Insurance Company that the complaint was not maintainable for recovering the remaining amount because the Vice Chairman of the Government Tool Room and Training Centre has signed the voucher given by the Insurance Company as full and final settlement and, therefore, complaint under the Consumer Protection Act is not maintainable. 6. It is to be stated that if the Government department is required to accept the amount for one or other reason and sign the document as full and final settlement, think of the fate of a consumer whose entire factory is gutted by fire; when the banks are insisting for repayment of the loan amount and the creditors are harassing the owner of the factory by various means. In that set of circumstances, if a person requires the money and signs the voucher as receipt of full and final of claim, it amounts coercive practice by the Insurance Company. Various such illustrations can be given but this is only to highlight that wrong practice followed by the insurance companies in not paying the single pie without having a discharge voucher stating that the amount is received by the claimant as full and final settlement of his claim. In our view, it is a coercive practice. And, it is suggested that the insurance companies may abandon this practice and do not try to snatch away the right of the insured to approach the legal forum for getting just and reasonable reimbursement.

" (1) In support of its claim the Managing Director of the Government Tool Room and Training Centre, Bangalore, has filed an affidavit to the effect that Insurance Company informed that it was a standard format prescribed by them and unless and until voucher was signed, they would not release the fund. They also informed that it would be always open for the complainant to agitate the matter if they were not satisfied with the amount but so far as Insurance Company is concerned unless the voucher was signed the issue of release of funds could not be made. It appears that this wrong practice is required to be given up by the insurance company or in any set of circumstances we would suggest to IRDA to keep control upon such unfair trade practice. (2) It has been further stated that the Legal Department of the complainant i.e. Government Tool Room and Training Centre advised the complainant that this acceptance of the money by signing the voucher would not prejudice the claim of the complainant. We have to state that such advice is an erroneous one. But wrong and erroneous advice by a Counsel would be a sufficient ground for finding out the truth. (3) Even the Government department states on affidavit that the department was in dire/urgent need of funds to pay backlog salaries of their employees. This would be sufficient for holding that the voucher was not signed voluntarily but was signed under compulsion. (4) Further, it is to be stated that after receipt of the amount on 7.7.2000, on 31.7.2000 complainant wrote letter to the Insurance Company that deduction of Rs. 10,32,500 was unjustified. Not only that but even the receipt was a pre-paid stamped receipt for an amount of Rs. 16,37,000 and is taken prior to payment."

(Emphasis supplied)

9. IN the light of the aforesaid decision the question which calls for consideration is as to whether the petitioner had accepted the settled amount of Rs. 2,36,500 under protest or voluntarily. On the basis of the report submitted by the Surveyor the Insurance Company had agreed to pay Rs. 2,36,500 in full satisfaction of the claim of the petitioner. The petitioner accepted the said amount and gave the Discharge Voucher acknowledging receipt of Rs. 2,36,500. Admittedly, in the Discharge Voucher it is not mentioned that the petitioner had accepted the amount under protest. According to her she had accepted the amount on misrepresentation that her claim for the entire amount would be settled later. On realization that the claim had been finally settled, she lodged the protest by filing the complaint. The Insurance Company, being in a dominant position, paid the amount of Rs. 2,36,500 only subject to giving of the Discharge Voucher but that does not mean that the Discharge Voucher was given voluntarily. Mere execution of Discharge Voucher and acceptance of the insurance claim would not estop the insured from making further claim. Another thing to be noted is that the petitioner immediately after accepting the amount filed the complaint which shows that she had accepted the amount either on misrepresentation or misunderstanding or because she needed the money.

10. FOR the reasons stated above, we do not find any substance in the submission made by the Counsel for the respondent that the petitioner is estopped from making claim for the balance amount.

11. THE State Commission relying upon the statement of the driver of the vehicle made under the influence of the liquor before the police which was later on retracted by him has come to the conclusion that the vehicle was being used for commercial purpose. Apart from this there is no evidence on record to show that the vehicle was being used for commercial purpose. In our opinion, the State Commission has erred in coming to the conclusion that the vehicle was being used for commercial purpose in violation of the terms of the policy.

12. EVEN if it is assumed for the sake of argument that the vehicle was being used for commercial purpose in violation of the terms of the policy, it is of no avail to the respondents as the Supreme Court in Nitin Khandelwal''s case (supra), has held that in the case of theft of vehicle breach of condition is not germane and the Insurance Company is liable to indemnify the owner of the vehicle in the case of a comprehensive policy for the loss caused to the vehicle. Para 13 of the said judgment reads as under:

"In the case in hand, the vehicle has been snatched or stolen. In the case of theft of vehicle breach of condition is not germane. The appellant Insurance Company is liable to indemnify the owner of the vehicle when the insurer has obtained comprehensive policy for the loss caused to the insurer. The respondent submitted that even assuming that there was a breach of condition of the insurance policy, the appellant Insurance Company ought to have settled the claim on non-standard basis. The Insurance Company cannot repudiate the claim in toto in case of loss of vehicle due to theft."

13. THE State Commission had allowed only 75% of the claim on non-standard basis. Since the insured had not filed any appeal against the said order, the Supreme Court did not decide the question as to whether the State Commission was justified in allowing the claim of the respondent on non-standard basis. Para 16 of the said order reads as under:

"The State Commission has allowed only 75% claim of the respondent on non-standard basis. We are not deciding whether the State Commission was justified in allowing the claim of the respondent on non-standard basis because the respondent has not filed any appeal against the said order. The said order of the State Commission was upheld by the National Commission."

14. IN Amlendu Sahoo''s case (supra), the Supreme Court, after noticing the judgment in Nitin Khandelwal''s case (supra), held that the decision of the State Commission allowing 75% of the claim on non-standard basis was not interfered with. The principle of law laid down by the Supreme Court in Nitin Khandelwal''s case that in the case of theft of vehicle, violation of the terms and conditions of the policy is not germane has not been elaborated

or differed with. Perhaps the observations made in para 16 of the Nitin Khandelwal''s case were not brought to the notice of the Hon''ble Judges wherein the Supreme Court had left the question as to whether the State Commission was justified in allowing the claim of the complainant on non-standard basis open. Though the question was left open, but in view of the observation made by the Supreme Court in para 13 of its judgment in Nitin Khandelwal''s case (supra) that in the case of theft of vehicle breach of condition is not germane, we are of the opinion that the Insurance Company is liable to reimburse the insured of the loss caused due to theft of the vehicle wherever the insured had taken a comprehensive policy.

15. FOR the reasons stated above we are of the opinion that the State Commission has erred in reversing the order of the District Forum and restricting the claim of the respondent to Rs. 2,36,500. The petitioner had taken a comprehensive policy and had got the vehicle insured for Rs. 4,80,605. As the vehicle has been stolen/snatched, the respondent would be entitled to the reimbursement of the entire amount irrespective of the fact that the vehicle was being run for commercial purpose in violation of the condition of policy. Although we are of the opinion that the vehicle was not being used for commercial purpose but even if it is assumed that the vehicle was being run for commercial purpose it will make no difference as the breach of terms and conditions of policy in the case of theft of the vehicle are immaterial.

16. FOR the reasons stated above, this Revision Petition is accepted and the order passed by the State Commission is set aside and that of the District Forum is restored. Parties shall bear their own costs. Revision Petition allowed.