STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND, DEHRADUN

Date of Admission : 30.01.2019
Date of Final Hearing : 08.11.2024
Date of Pronouncement : 27.11.2024

First Appeal No. 09 / 2019

National Insurance Company Limited
Registered Head Office at 3 Middleton Street, Kolkata
Regional Office at 56 Rajpur Road, Dehradun
Through its Administrative Officer Ms. Deepika Kunwar
(Through: Smt. Savita Sethi, Advocate)
…..Appellant

VERSUS

Sh. Sachin Tyagi S/o Sh. Narendra Tyagi
R/o H. No. 167, Village Nagla Imarti
Roorkee, Pargana and Tehsil Roorkee, Haridwar
(Through: Sh. Shreegopal Narson, Advocate)
…..Respondent

Coram:
Mr. M.K. Singhal, Member (Judicial)
Mr. C.M. Singh, Member

ORDER

(Per: Mr. M.K. Singhal, Member (Judicial):

This appeal under Section 15 of the Consumer Protection Act, 1986 has been directed against judgment and order dated 12.12.2018 passed by the learned District Consumer Disputes Redressal Forum, Haridwar (hereinafter to be referred as the District Commission) in consumer complaint No. 55 of 2016 styled as Sh. Sachin Tyagi vs. Sh. Branch Manager, National Insurance Company Ltd. and Anr., wherein and whereby the District Commission has allowed the complaint case.

2. In brief, the facts of the complaint are as such that the complainant has purchased a vehicle registration No. UK08-L-6717, which was insured with the opposite party under policy No. 462204/31/12/6100001338 on dated 08.10.2012. The said policy was valid up to 20.09.2013 for Rs. 4,50,000/-. Premium was paid by the complainant and insurance certificate was provided to him by the insurance company. It was assured by the insurance company that if any accident or theft occurs, then the insurance company will pay Rs. 4,50,000/- to the complainant. The vehicle in question was stolen on dated 28.07.2013; an information to this effect was provided to the insurance company immediately through the agent of the insurance company. After the papers related to the vehicle in question were provided to the insurance company in the month of January, 2014, but the insurance company has not paid any claim amount to the complainant. In this regard, the insurance company has issued a letter dated 23.04.2015 to the complainant intimating the amount of Rs. 3,07,250/- as calculated, which is absolutely false / wrong. The insurance company has not paid Rs. 4,50,000/- to the complainant, inspite of notice sent by the complainant to the insurance company on 29.04.2015. Thereafter, the complainant has sent a legal notice to the insurance company on 16.05.2015, but all went in vain. Hence, the complaint has been submitted before the District Commission, Haridwar.

3. The opposite parties have filed their written statement alleging that the complainant has concealed the true facts, hence the complaint should be dismissed. According to the complainant the theft has occurred on 28.07.2013, but he has informed the insurance company after 25 days. So the complainant has violated the terms and conditions of the insurance policy. After getting information of theft, the answering opposite parties have investigated and it was found that the vehicle in question was being used by some Fariq Soraj, who has parked the vehicle in question outside

his house No. 234/8, Panipat, Haryana on 27.07.2013. In the next morning, the vehicle in question was not there. The complainant version that he has informed immediately, is false. Being breach of terms and conditions of the insurance policy, an amount of Rs. 3,07,250/- was offered on 23.04.2015 and the complainant has accepted this fact in the complaint case, but he has not complied with. The answering opposite parties have not committed any deficiency in service. The complainant is not entitled to receive more than the approved amount, i.e. Rs. 3,07,250/-. The claimed amount with interest is exaggerated. Hence, the complaint is liable to be dismissed.

4. The District Commission after hearing both the parties and after taking into consideration the entire pleadings, facts and material placed on record, passed the impugned judgment and order dated 12.12.2018 whereby the complaint was allowed and the opposite parties were directed to pay Rs. 4,50,000/- together with interest @ 6% per annum from the date of filing the complaint till the date of actual realization alongwith litigation charges Rs. 5,000/- to the complainant within one month from the date of judgment and order.

5. Aggrieved by the impugned judgment and order of the District Commission, the opposite party as appellant has preferred the present appeal stating that the District Commission, Haridwar has failed to consider that insurance is a contract between the insured and insurance company and both the parties are bound by the terms and conditions of the insurance policy. The District Commission has failed to consider that the insured was liable to be give intimation of the accident, i.e. theft immediately after the occurrence of the loss which is condition No. 1 of the insurance policy which states “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…”. Intimation was not given to the insurance company

immediately, but was given after 25 days. The District Commission has failed to consider that even when there was non-compliance of the condition of the policy still after investigations etc. reason being vehicle was in the custody of some other person when the incident of theft has taken place and the loss took place at District Panipat in Haryana State. The District Commission has failed to consider that there were so many problems in settling the claim still company went ahead and gave proposal under non-standard basis and settled the claim for Rs. 3,07,250/-, but it was insured who will not accept less than insured amount, while he has not fulfilled the obligations and duties imposed on him. The District Commission should have considered the fact that the insurance company opened to audit etc. and it cannot act in a whimsical way to satisfy every consumer even when he is unreasonable and his claim merits repudiation. The District Commission has failed to consider that when this fact has come before the Commission below that insurance company has volunteered to settle the claim even after violation of condition of the policy, which is infact a mirror to the conduct of insured that he did not inform insurance company as was required and expected from him as a person of prudence, his claim was to be thrown on the threshold. The District Commission has failed to consider that the complaint of the complainant was liable to be dismissed at the very outset, but instead of dismissing it, the District Commission saddled the insurance company with the liability which neither is legal nor equity demands so. The District Commission has failed to consider that even after the loss, it is insured / complainant who has stated that he completed the papers in January, 2014 which he was liable to provide to insurance company, which has been stated / admitted in para No. 5 of the complaint, although he completed paper formalities after 23.04.2015. So whatever the delay was, it was on the part of the complainant and not of insurance company, so no liability can be fastened upon the insurance company. The District Commission has failed to consider that the complainant has no cause of action to file the consumer complaint against the opposite party – insurance company. The District Commission has failed to consider that the present claim has been lodged to give wrongful loss to insurance company for getting wrongful gain. The impugned judgment and order of the District Commission is against law, facts and evidence of the case. Therefore, the impugned judgment and order dated 12.12.2018 is liable to be set aside and the complaint of the complainant be dismissed with costs to the insurance company.

6. Learned counsel Smt. Savita Sethi for the appellant as well as learned counsel Sh. Shreegopal Narson for respondent has appeared.

7. We have heard learned counsel for both the parties and perused the record available before us.

8. Leaned counsel for the appellant has vehemently urged that the complaint was filed after the limitation period, however the theft of vehicle was occurred on 28.07.2013 and the complaint was filed before the District Commission on 15.01.2016. So it is beyond the limitation period. In addition to this, it has been raised by the counsel for the appellant that the complaint was filed without delay condonation application. In this regard, learned counsel for respondent has argued that that the theft was occurred on 28.07.2013, but the complainant – respondent has informed the appellant about the theft in due time, thereafter, sent a legal notice on 16.05.2015 which was received by the appellant – insurance company and the appellant has declined to pay the insured amount and the cause of action has arisen on 23.04.2015; he has submitted that the cause of action is a bundle of facts and it arose when the appellant has declined to pay the claim amount.

9. In support of appellant's version, learned counsel for the appellant has submitted following citations:-

1. **Kandimalla Raghavaiah & Co. Vs. National Insurance Co. & Anr.; 2009(5) Supreme 377**

2. **Haryana Urban Development Authority Vs. B.K. Sood; Supreme Court of India, 2005 4 CPJ (SC) 1**

3. **State Bank of India Vs. M/s B.S. Agricultural Industries (1); 2009(2) Supreme 784**

4. **Union of India Vs. British India Corporation Ltd., 2003 0 Supreme (SC) 345**

10. But in the case in hand, it is clear that the respondent's vehicle was stolen / theft on 28.07.2013. It is still clear that the vehicle was insured with the appellant (copy of insurance policy paper Nos. 24 to 30) and it is not denied by the appellant. Information of theft was given by the respondent although with delay of 25 days.

11. Paper Nos. 32 to 42 shows that there was a correspondence between the appellant and the respondent and finally when the respondent's claim was denied / repudiated by the appellant, the complaint was filed by the respondent. Hence, the cause of action is not singly date, but is bundle of facts. Hence, the version of the appellant that the complaint was not filed within limitation period, it cannot be accepted because there was a continuous correspondence between the appellant and the respondent. Hence, in the instant case, the citations submitted by the learned counsel

for the appellant are not applicable. In addition to this, it has not been denied by the appellant that the theft of the vehicle in question is doubtful. Police has also submitted its report (paper No. 33), hence in the light of the above observation, the impugned judgment and order passed by the District Commission, Haridwar is based on the facts and evidence filed by both the parties.

12. Thus, we are of the considered view that the learned District Commission has exercised the jurisdiction which was vested in it. There is no illegality and irregularity in passing of the impugned judgment and order. Accordingly, we hold that the impugned judgment deserves to be affirmed and the appeal is liable to be dismissed.

13. Accordingly, the appeal is dismissed. Impugned judgment and order dated 12.12.2018 passed by the District Commission, Haridwar is hereby affirmed. No order as to costs of the appeal.

14. A copy of this Order be provided to all the party free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the party. A copy of this Order be sent to the concerned District Commission for record and necessary information.

15. File be consigned to record room along with a copy of this Order.

(Mr. M.K. Singhal)
Member (Judicial)

(Mr. C.M. Singh)
Member

Pronounced on: 27.11.2024