IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 24.03.2014

Date of Hearing: 04.09.2024

Date of Decision: 18.11.2024

FIRST APPEAL NO.-301/2014

IN THE MATTER OF

MR. JASRATH,

S/O MR. MANNI LAL,

R/O H.NO. A-215, GOKULPURI,

DELHI - 110094

(Through: Mr. Rajesh Kumar Sharma, Advocate)

…Appellant

VERSUS

NEW INDIA ASSURANCE CO. LTD.,

THROUGH ITS REGIONAL MANAGER,

REGIONAL OFFICE-TOWER-II,

JEEWAN BHARTI BULDING-124,

CONNAUGHT PLACE,

NEW DELHI - 110001.

(Through: Mr. Abhishek Kumar Gola, Advocate)

…Respondent

CORAM:
HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: None for the Appellant.
Mr. Mukesh Gahlot, counsel for the Respondent.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT

JUDGMENT

1. The facts of the case as per the District Commission record are as under:

> *"…This complaint has been filed with the allegations that the complainant is a poor villager. He purchased a tractor for agriculture work vide No. UP-91-B-5674 which was financed by State Bank of India. This was insured by the OP from 21.03.2008 to 20.03.2009. In the month of January, he shifted to Delhi due to drought condition and was unable to earn his livelihood and to pay the installments of the bank. They started residing in Khajoori Khas and thereafter at Gokalpuri. There the tractor was stolen by thieves. FIR under Sec.379 IPC was lodged at No.20/2009 at PS Gokalpuri. The case was investigated by the police and final report was submitted. The intimation was given to State Bank of India and to the OP. They also submitted the required documents, but of no consequence. A writ petition was also filed at Hon'ble High Court of Judicature at Allahabad. A direction was issued to OP to decide the grievance of the complainant, but the same has not been complied with. The complaint was also made before the Distt. Consumer Forum, Hamirpur, UP vide complaint No.46/2010. The OP failed to raise any defense and the case proceeded exparte. The case was dismissed on*

technical ground that it has no jurisdiction and the complainant should filed the case before the court at Delhi. He has not been paid any amount under the policy No.421501/31/07/01/00005630 dated 27.03.2008. In these circumstances, the complainant has prayed for a sum of Rs.3,80,000/- along with interest @8% p.a., compensation of Rs.50,000/- towards mental pain and MER harassment as well as Rs.20000/- as cost of litigation."

2. The District Commission after taking into consideration the material available on record passed the order dated **01.01.2014**, whereby it held as under:

"In the case of insurance where the theft of the subject of the insurance has taken place, it is not material whether the vehicle was used for the commercial purposes, agricultural purposes or any other purposes unless there is a specific condition attached to the policy that the vehicle so insured shall only be used for agriculture purposes and it cannot be used for any other purposes. The policy of insurance which has been filed on record nowhere states that this policy has been issued only for the purpose of use of the vehicle (tractor) for agricultural purposes. In these circumstances, the plea raised by the OP that it was being used in violation of the terms and conditions of the policy will have no effect when the tractor in question has been stolen during the subsistence of the cover of the insurance.

The plea taken from the side of the OP with regard to the delay in information has been emphasized upon by the Counsel for the OP. As per the allegation in the FIR this tractor was stolen on 05.01.2009 and FIR was lodged at police station on 23.01.2009. There is a substantial delay in *lodging the FIR. It is also contended by the OP that there is no proof filed along with the documents on record that any information was given to the police regarding the theft just immediately after detecting the theft. No Daily Diary of any police station or any message to the police on 100 No. has been filed on the record.*

*The complainant counsel relied upon **2010 CPJ 167(NC)** in the matter of **National Insurance Co. Ltd. v/s Balwant Singh** wherein the Hon'ble National Commission relying upon the **Hon'ble Apex Court judgment in National Insurance Co. Ltd. v/s Nitin Khandelwal reported in IV (2008) CPJ 1 (SC) 2008 ACJ 2035** has held that the breach of terms of policy was not germane in case of theft of the vehicle. This judgement of the Hon'ble National Commission will not benefit the complainant as it pertains to the use of the vehicle in violation of the terms and conditions of the policy. The objection raised by the OP is with regard to the delay in informing the insurance company which is a part and parcel of the policy of the condition.*

If the complainant has failed to adhere to the terms and conditions of the policy, in such circumstances it will be a violation of the terms and conditions of the policy and the repudiation in such cases cannot be held to be unjustified. The Hon'ble Apex Court have ruled time and again that no court can substitute the terms and conditions agreed upon between the parties nor any of the terms and conditions can be altered by any court of law. If any such condition has been violated and the information has not been given just after the occurrence of the incidence, then in that case the OP shall be *at liberty to repudiate the claim taking the plea of the violation of the terms and conditions of the policy.*

The tractor in question was stolen from Delhi. The cause of action has arisen in Delhi. As such the court at Delhi has the jurisdiction in the present matter. We have all the sympathy with the complainant, but the terms and conditions of the policy since have not been followed by the complainant, we are unable to provide him any relief.

The complaint deserves to be dismissed and it is accordingly dismissed."

3. Aggrieved by the aforesaid order of the District Commission, the Appellant/Complainant has preferred the present appeal, submitting that the District Commission failed to appreciate the documents placed on record by the Appellant. The Appellant further submitted that the District Commission failed to establish the deficiency on the part of the Respondent. Pressing the aforesaid submission, the Appellant has prayed for setting aside the impugned order passed by the District Commission.
4. The Respondent, on the other hand, denied all the allegations of the Appellant and submitted that there is no error in the impugned order as the entire material available on record was properly scrutinized before passing the said order.
5. During the course of proceedings, the parties were directed to file written submissions The written submissions have not been filed by the Appellant till date. On the other hand, the written submissions have been filed by the Respondent and the same have been considered.
6. We have perused the material available on record and heard the counsel for the Appellant.
7. The ***main question*** for consideration before us is ***whether the District Commission has erred in dismissing the case of the Appellant on account of***

delay in intimating the police authorities as well as the Respondent insurance Company.

8. On perusal of record, we find that the Appellant bought a tractor in 2008 for agricultural work which was financed by the State Bank of India in Hamirpur, Delhi, for Rs. 3,10,000/- and insured by the Respondent company from 21.03.2008 to 20.03.2009. However, on 05.01.2009, the vehicle in question was stolen in Delhi. Further, the Appellant filed an FIR bearing No. 20/2009 under Section 379 at PS Gokulpuri, Delhi, who investigated the matter but failed to find any leads, eventually closing the case as "untraceable" on 29.08.2009. The Appellant also intimated the State Bank of India and the Respondent insurance company about the theft, however, the claim of the Appellant was rejected by the Respondent on the ground that there is a delay of one month and seven days in intimating the Respondent about the alleged theft, which violated the terms and conditions of the policy.

9. At this stage, we deem it appropriate to refer to the ***Revision petition no. 1261 of 2016*** titled as ***"Beena Acharya vs. Manager, Oriental Insurance Co. Ltd."*** decided on ***23.08.2021***, wherein in a similar case, the Hon'ble National Commission held as follows:

> *"6. I have carefully considered the arguments advanced by the Learned Counsel for both the Parties and have examined the record. In a recent case, Larger Bench of the Hon'ble Supreme Court in Gurshinder Singh vs. Shriram General Insurance Co. Ltd., and Anr., (Supra) observed that delayed intimation to the Insurance Company would not forfeit the total insurance claim if FIR had been lodged immediately within a reasonable time and all other conditions are met. The claim of the insured can be considered, even if the intimation to the Insurance Company had been given with delay, provided information to the Police is given within a reasonable time. <u>In the present case the FIR was lodged after 12 days. There was a delay in giving intimation to the Police, even though the Learned Counsel for the Petitioner stated that the information was given to the Police on 3 August</u>*

itself, but the Police did not lodge the FIR. No evidence, however, has been filed in this regard nor the same been pleaded in the Complaint. In these circumstances, I find that one of the important conditions of the Policy has been grossly violated. The Hon'ble Supreme Court observed in Amalendu Sahoo Vs. Oriental Insurance Company Limited, MANU/SC/0192/2010 : (2010) 4 SCC 536, that if any condition of the Policy has been violated then the claim may be settled on non-standard basis up to 75% of the otherwise admissible claim. In the present case, neither the Police was intimated immediately nor information given to the Insurance Company within a reasonable time. The Police, however, filed a final report in the matter after investigation and it was found that culprits could not be apprehended. This lays support to the occurrence of theft of the vehicle, in the absence of any other claim by the Insurance Company. In the circumstances, I deem it appropriate to allow the insurance claim at 70% of the IDV of the vehicle.”

10. Furthermore, we deem it appropriate to refer to ***Revision Petition No. 292 of 2015*** titled ***Oriental Insurance Co. Ltd. vs. Brahmanand Javvadi*** decided on ***29.09.2020,*** wherein the Hon’ble National Commission while dealing with similar facts has held as under:

> *“9. We have carefully considered the arguments advanced by the learned counsel for the parties and have examined the record. Larger Bench of the Hon'ble Supreme Court in the case of Gurshinder Singh vs. Shriram General Insurance Co. Ltd. and Anr., (Supra) has observed that delayed intimation to the insurance company will not forfeit the total insurance claim of the insured if the FIR has been lodged immediately within a reasonable time and all other conditions are met. The Hon'ble Supreme Court in the case of National Insurance Company Ltd., vs. Nitin Khandelwal has clearly observed that in the case of theft of vehicle breach of policy conditions is not germane. Clearly, there is a breach of condition no. 1 of the policy in the present case, that immediate intimation was not given to the police, nor the insurance company was informed immediately. In the matter of theft, intimation to the insurance company may not be much relevant as per the*

Hon'ble Supreme Court in the case of Gurshinder Singh vs. Shriram General Insurance Co. Ltd. and Anr., (Supra), however, immediate intimation to the police is very important because then the police can search for the vehicle and culprits may be apprehended before they take the vehicle to far off places and succeed in dismantling the vehicle. Clearly all the conditions of the policy are meant to be observed by both the sides, i.e., insurer as well as insured. In the case of National Insurance Company Ltd., vs. Nitin Khandelwal (Supra), the driver has lodged the FIR after theft so that no question mark was raised on the incident of theft. Learned counsel for the complainant has stated that in the present case, FIR has been lodged and final report has been filed by the police, therefore, the genuinity of the theft is proved but this cannot be accepted in this simple manner. For 12-13 days of theft, no action could be taken by the police because the police was not informed and no FIR was lodged. Even if we believe the letter dated 03.08.2012 of the complainant written to the insurance company informing the incident of theft, it is stated therein that the police was contacted on 01.08.2012. Clearly the complainant contacted the police only after about 5 days of his return from Hyderabad. No reason has been given by the complainant for not informing the police in these 5 days about the theft of the vehicle. Thus, the complainant has allowed the culprit to take the vehicle to far off place in this period and even involvement of the complainant in the theft cannot be ruled out. It is not only a technical breach of the condition of the policy, rather, it has vide and far reaching ramifications as already mentioned. In these conditions, clearly the complainant has breached the very important condition of the policy that the complainant should have informed the police and insurance company immediately after the incident of theft. The Hon'ble Supreme Court in the case of Amalendu Sahoo Vs. Oriental Insurance Company Limited (Supra) has held that if the policy condition is violated in a motor vehicle policy the claim may be settled by the insurance company on non-standard basis upto 75% of the otherwise admissible claim. It is not necessarily to settle the claim in all cases of violation @ 75% of the insurance claim.

10. This Commission in a similar case of United India Insurance Company Limited vs. Aji Pal and Ors. (in RP no. 2089 of 2019) decided on 13.02.2019, where FIR as well as

> ***intimation to the insurance company were delayed, has allowed the insurance claim @ 50% of the IDV. Relying on this judgment, we deem it appropriate to allow the insurance claim @ 50% of the IDV.***
>
> *11. Based on the above discussion, the revision petition no. 292 of 2015 is partly allowed and the petitioner insurance company is directed to pay Rs. 2,57,812/- (Rupees two lakh fifty seven thousand eight hundred twelve only) (i.e., 50% of the IDV of Rs. 5,15,625/-) to the respondent/complainant within a period of 45 days from the date of this order along with interest @ 6% per annum from the date of filing of the complaint, i.e., 14.08.2013 till the actual payment. The order of the District Forum in respect of compensation of Rs. 10,000/- for mental agony is set aside, as the interest is being allowed in the form of compensation only. The litigation cost of Rs. 2,000/- as well as the cost of appeal of Rs. 3,000/- awarded by the State Commission are allowed."*

11. Undoubtedly, in the present case also, there appears to be delay in intimating to the Respondent insurance company as well as to the Police authorities about the theft but that cannot be a ground for the repudiation of the claim in its totality. Moreover, untraced report dated 29.08.2009 has been prepared by the police officials for the said vehicle. Therefore, taking into consideration the aforesaid dicta of the Hon'ble National Commission, we are of the view that the repudiation of the entire claim is not called for and the Appellant is entitled to the insurance claim on non-standard basis.

12. ***Consequently, we set aside the order dated 01.01.2014 passed by the District Consumer Disputes Redressal Commission (East), Saini Enclave, Delhi-110092. Resultantly, the present Appeal stands allowed.***

13. Based on the above discussion, in our considered view, the Appellant/Complainant is entitled for 50% of the Insured Declared Value, on non-standard basis, i.e. an amount of Rs. 1,06,500/- (50% of Rs. 2,13,000/-). The Respondent/ Opposite Party is directed to pay the aforesaid amount to the Appellant/Complainant within ***one month*** from the date of present judgment

i.e. on or before ***18.12.2024***, failing which, the Respondent/ Opposite Party shall be liable to pay a simple interest on the aforesaid amount calculated ***@9% p.a.*** from the date of filing of the Complaint Case No. 14/2013 before the District Commission till the actual realization of the amount.

14. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
15. The Judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
16. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:
18.11.2024

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