IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 13.01.2016
Date of Hearing: 04.10.2024
Date of Decision: 18.11.2024

FIRST APPEAL NO.- 15/2016

IN THE MATTER OF

ICICI LOMBARD GENERAL INSURANCE CO. LTD.,
4TH FLOOR, RED FORT CAPITAL PARSVNATH TOWER,
BHAI VEER SINGH MARG, GOLE MARKET,
NEW DELHI – 110001.

(Through: Mr. Navneet Kumar, Advocate)

…Appellant

VERSUS

SH. INDERJEET SINGH,
S/O – MR. NANNU MAL
R/O – A–140, DR AMBEDKAR NAGAR COLONY,
ANDHERIA MORE, CHATTERPUR,
NEW DELHI.

(Through: Mr. Bhupesh Kumar Chandna, Advocate)

…Respondent

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

Present: Mr. Navneet Kumar (through VC) E-mail: navneet.ky22@gmail.com & Mr. Harsh Sharan, counsels for Appellant.
Respondent in person alongwith Mr. Bhupesh K. Chandna, counsel for Respondent E-mail: advbchandna@gmail.com.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT

JUDGMENT

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

"It is not in dispute that complainant is the registered owner of Indica DLE car bearing registration number DL-3CU-4851 and the said car was duly insured with OP-1 vide cover note PA-216241 for a period of one year from 19.12.2004 to 18.12.2005 for IDV of Rs.2,40,331/-. It is not in dispute that on 09.01.2005 the aforesaid car met with an accident and for that a FIR No.13/2005 u/s 279/337/304A was lodged on 01.09.2005 in P.S. Tabru, District, Gurgaon, Haryana.

The case of the complainant is that he lodged claim with OP-1 and Op-2 but they failed to settle the claim amount till date. It is further stated in the complaint that complainant met OP-1 and OP-2 number of times in this regard but they always misled the complainant. At last on 26.9.2005 complaint sent a legal demand notice through his counsel which was duly served upon OPs. Since the claim was not settled hence this complaint has been filed.

OPs in the written statement took the plea that complainant failed to inform OP about the factum of the alleged accident and as such OP-1 did not find its record any claim against the subject policy. It is further submitted that as per the terms and *conditions of the policy there is a procedure for making claim which prescribed as follows:-*

- *Make a call to our call centre to get the advice on the next course of action, Provide the call centre with detailed information.*
- *Inform police in case the accident involves any other person's bodily injury, property, terrorism, malicious act etc in such a case, collect details such as same, contact numbers, address etc.*
- *Get a repair estimate from the tied up garage and fill up the claim form. The garage will be advised by us to start repairs.*

It is denied that the branch office of OP-1 is at A-one Motors, Mirkana Engineering Pvt. Ltd. It is stated that complainant has not disclosed from which branch office of OP-1, complaint purchased the subject insurance policy. In nutshell the case of the OP is that no claim was ever lodged in respect of the accident in question with OP-1."

2. The District Commission after taking into consideration the material available on record passed the order dated **05.11.2015**, whereby it held as under:

> *"We have heard Ld. Counsel for parties and carefully perused the record. Ld. Counsel for OP has drawn our attention to the terms and conditions of policy which provides that in case of accident, notice is to be given in writing to the company immediately upon the occurrence of any accidental loss or damage in the event of any claim. So far as terms and conditions of the insurance policy is concerned, it is settled law that insurance is a contract between the parties which entails that even the terms and conditions are to be got signed from the insured. In this case only a cover note was sent to the complaint and terms and conditions were never got signed or intimated to complainant. It is submitted by the Ld. counsel for OP-1 that no notice was given ever in writing to the OP-1.*
>
> *Complainant has specifically stated in the complaint that the claim was lodged with the insurance company. It is significant*

to note that immediately after the accident the vehicle in question was taken by the complaint to A-one Motors and they have assessed that the car was completely damaged. It is significant to not that complainant has specifically stated in his affidavit that he has visited the office of OP-1 and OP-2 number of times and they were assured that the claim will be settled. There is no reason to disbelieve the complainant.

Assuming for the sake of arguments that the claim was not lodged with OP-1, complainant has specifically mentioned in the legal notice that the claim of aforesaid damage was lodged with OP-1 and OP-2 and he met authorized agent M/s Hema Joshi number of times in this regard but of no avail.

In para 5 of the complaint, the complainant has specifically stated that complaint has sent legal notice to OPs on 26.9.2005 which was duly served on OPs. In the reply OP has not specifically denied that it has not received the aforesaid notice. Complaint has filed on record the copy of the UPC receipt by which the notice was sent.

OP-1 did not reply that notice starting that they have never received any claim from the complainant or that M/s Hema Joshi was not their authorized agent and M/s Hema Joshi has never intimidated them about this accident.

It is settled law that if before filing a complaint a legal notice is sent to OP and the same is not replied then the contents of the notice are deemed to have been admitted.

The complainant has taken comprehensive policy in respect of his car. It is not in dispute that the car met with an accident on 09.01.2005. For that the information was immediately given to the police and FIR was lodged. Complainant has specifically stated that insurance policy was taken through Ms Hema Joshi, authorized agent of OP-1 based on A-one Motors. Complainant has proved that the car was taken to A-one Motors after the accident. It is proved that M/s A-one Motors has given the repot that the car was completely damaged. So far as terms and conditions of the policy that the claim to be lodged in writing is *concerned, the same was not informed to the complaint even otherwise the complainant specifically stated that he has filed an application for the aforesaid claim the OPs. It is clear cut case of deficiency in service on the part of OP-1.*

The complainant is entitled for refund of Rs.2,40,331/- alongwith interest @ 10% p.a. from date of filing of the complaint. Complainant is also entitled for compensation of Rs.5,000/- as well as Rs.5,000/- for litigation expenses."

3. Aggrieved by the aforesaid order of the District Commission, the Appellant has preferred the present appeal contending that the District Commission erroneously held the Appellant liable for the deficiency of service on the ground that the Respondent failed to have intimated the Appellant about the occurrence of any accident of the Respondent's car (Tata Indica) bearing registration no. DL-3CU-4851. Furthermore, the Appellant submits that the impugned judgement of the District Commission has erred in equating the legal notice dated 26.09.2005 with the written intimation of the claim. The Appellant further submits that the Respondent had not produced any evidence on record to show any communication with the Appellant being the reason for the impossibility of the Appellant giving the terms and conditions to the Respondent. Pressing the aforesaid submissions, the Appellant prayed for setting aside the order of the District Commission.
4. The Respondent has filed short written submissions vide diary no. 6839 dated 10.09.2023 to the present Appeal, whereby, the Respondent denied all the allegations of the Appellant and submitted that there is no error in the impugned order as the FIR bearing no. 13/2005 was lodged immediately with the P. S. Taoru, Distt. Gurgaon, Haryana immediately. The Respondent claimed that only a cover note, and no terms and conditions were ever supplied by the Appellant. The Respondent also submits that the damaged vehicle was taken to the authorized workshop of

Tata Motors immediately, where it was assessed to be completely damaged. The Respondent vide their short-written submission has relied on judgments namely *Reliance General Insurance Co. Ltd. Vs. Ram Awadh Singh, RP/3957/2017 and Oriental Insurance Co. Ltd. Vs. Rajinder Singh, MANU/CF/0199/2017.*

5. The right of Appellant to file short written submissions was closed vide order dated 25.04.2024.

6. We have perused the Appeal, short written submissions of the Respondents and the Impugned Order.

7. The main question for consideration before us is ***whether the District Commission was right in holding the deficiency of service on part of the Appellant on the ground that the Respondent failed to intimate the Appellant in a timely manner making the insurance claim of the Respondent liable to be dismissed.***

8. A perusal of the record reveals that the Respondent promptly filed the FIR following the accident involving the vehicle in question. Moreover, the Respondent's claim falls well within the coverage period of the insurance policy. Therefore, any delay in notifying the Appellant should not be considered a valid ground for the dismissal of the claim. Additionally, the Appellant has not specifically denied receiving the legal notice from the Respondent.

9. The Appellant's contention that the District Commission incorrectly equated the legal notice sent by the Respondent with the required intimation of the accident is without merit. The Respondent clearly stated that the application was filed notwithstanding the fact that the terms and conditions of the insurance policy had not been provided to him by the Appellant.

10. Furthermore, the Respondent met with the authorized agent, M/s Hema Joshi, on several occasions and was assured that his claim would be

processed. In light of this, there is no reason to conclude that the Respondent failed to notify the Appellant about the accident. Additionally, there is no evidence to suggest that the Respondent violated the terms and conditions of the insurance policy.

11. Upon perusal of the impugned order, it is evident that the District Commission has thoroughly addressed and properly rejected the Appellant's unjustified claim of a lack of intimation from the Respondent, which was cited as the basis for repudiating the insurance claim.
12. From the above discussion, we find no infirmity in the order dated 05.11.2015. Consequently, we are in agreement with the reasons given by the District Commission and fail to find any cause or reasons to reverse the findings of the District Commission. Therefore, ***we uphold the order dated 05.11.2015 passed by the Consumer Disputes Redressal Forum – X, Government of N.C.T. of Delhi, Udyog Sadan, C–22&23, Institutional Area, New Delhi–110016.***
13. Resultantly, ***the present Appeal stands dismissed*** with no order as to costs.
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**

LR-SM