

Bachan Singh Vs. the Oriental Insurance Company Limited Ferozepur Through Its Branch Manager

Bachan Singh Vs. the Oriental Insurance Company Limited Ferozepur Through Its Branch Manager

SooperKanoon Citation : sooperkanoon.com/1107562

Court : Punjab State Consumer Disputes Redressal Commission SCDRC Chandigarh

Decided On : Feb-18-2013

Judge : THE HONOURABLE MR. INDERJIT KAUSHIK, PRESIDING MEMBER & THE HONOURABLE MR. JASBIR SINGH GILL, MEMBER

Appeal No. : First Appeal No.1479 of 2008

Appellant : Bachan Singh

Respondent : The Oriental Insurance Company Limited Ferozepur Through Its Branch Manager

Judgement :

Inderjit Kaushik, Presiding Member

1. Sh. Bachan Singh, appellant/complainant (In short the appellant) has filed this appeal against the order dated 24.09.2008 passed by the learned District Consumer Disputes Redressal Forum, Ferozepur (in short the District Forum).

2. Facts in brief are that the appellant filed a complaint under section 12 of the Consumer Protection Act, 1986 (in short, the Act) against the respondent/opposite party (hereinafter called as the respondent), narrating that on 10.09.2003, he purchased a new long body with 10 tyres truck commonly known as Trola for Rs.9,05,111/- from Sidh Motors Pvt. Ltd. which was financed by Sundram Finance Ltd., Moga, by advancing a loan amount of Rs.8.50 lacs. The said vehicle was purchased by the appellant for earning his livelihood. The said vehicle was registered in the name of the appellant and was allotted registration No.PB-05-J-9703 and the same was insured with the respondent vide cover note no.829533 for the period 10.09.2003 to 09.09.2004.

3. Sh. Sahab Singh is brother of the appellant and he is owner of two such trucks, one is of 2001 model bearing registration No.PB-05-G-9803 and the other of 2003 model with registration No.PB-05-J-9803. Both the brothers are joint and all the three trucks were collectively got insured from the respondent, by making the payment of insurance premium of Rs.58,114/- through cheque no.011735 dated 16.12.2004 drawn on Ferozepur Central Cooperative Bank Pvt. Ltd., Village Arif Ke, Tehsil and District Ferozepur and the insurance cover was for the period 17.12.2004 to 16.12.2005. The insurance policy of truck no.PB-05-J-9703 in the name of the appellant was issued by the respondent, having policy no.2452 with cover note no.61070 for a total premium of Rs.20,151/-. The insurance policy of truck bearing no.PB- 05-J-9803 was issued in the name of Sahab Singh, brother of the appellant, having policy no.2453 with cover note no.61071. Insurance policy of truck no.PB-05-G-9803 was issued in the name of Sahab Singh, having policy no.2454.

4. On 03.06.2005, the appellant and his brother Sahab Singh with two trucks having registration No.PB-05-J-9703 and PB-05-J-9803 along with driver Balwinder Singh and cleaner Kala went to Amritsar, but were unable to get goods and parked their trucks near Jagdambhey Transport Company at Amritsar-Tarn Taran Road and slept there for the night intervening 3/4-6-205. At about 3.00 a.m. on 04.06.2005, the appellant, his brother and driver Balwinder Singh went to Shri Harmandar Sahab Ji, to pay obeisance, while Kala cleaner stayed

back. The appellant locked his trolly bearing no.PB-05-J- 9703 and instructed the cleaner to take care of the parked vehicles and when then came back at 6.30 a.m., then they found that one truck bearing no.PB- 05-J-9803 was parked at the site whereas the other truck was not there. The cleaner was sleeping and he was inquired about the truck, but he could not give any answer. The matter was reported to the police and the Incharge, Police Post, Varpal reached the spot and made inquiries and informed the appellant that earlier also, the trucks were stolen and subsequently, they were located deserted with the tyres removed and somebody might have taken the truck with a view to remove the tyres and the appellant was asked to make personal efforts to locate the truck and then approach the police. No FIR was recorded immediately. The appellant and his brother and driver made its efforts to trace the truck and on 06.06.2005, the appellant informed about the theft of the said truck to the Development Officer of the respondent, who suggested for getting the FIR registered. The appellant approached the police of P.P. Varpal but it was told that the site of the theft of truck falls within the jurisdiction of Police Post, Kot Mit Singh. The Incharge of Police Post, Kot Kit Singh asked the appellant to produce his brother Sahab Singh and Balwinder Singh, driver and Kala cleaner for recording their statements to register the FIR, but they were away to Rajasthan and on their coming, they were produced and FIR was registered bearing no.137 dated 26.06.2005 u/s 379 IPC in P.S. Sultanwind area of Amritsar. The police treated the case as untraced.

5. The appellant submitted the copy of the FIR and the claim form to the respondent and Sh. D.S. Chadha was appointed as investigator and said investigator vide letter dated 20.08.2005 wanted to know about the delay in registration of the FIR and submitting of incomplete claim forms and a detailed reply to that effect was submitted. The investigator put some more queries and ultimately, the claim was filed as no claim, by observing that the truck in question was never stolen, rather it was disposed of fraudulently with malafide intention. The delay in registration of FIR was on the part of the police, as fully detailed above, and the repudiation of the claim amounts to unfair trade practice and deficiency in service.

6. It was prayed that the respondent may be directed to pay Rs.6.40 lacs being the insured amount of the truck in question along with interest @ 18% p.a. from the date of submission of claim till realization, Rs.50,000/- as compensation on account of harassment and mental tension, Rs.1.00 lac as compensation on account of damages suffered by the appellant in lieu of the loss of his earnings during the period of submission of claim till date and Rs.10,000/- as litigation expenses.

7. In the written version filed on behalf of the respondent, preliminary objections were raised that complicated questions of law and facts are involved and the matter is to be referred to the civil court. The complaint is false and frivolous and is liable to be dismissed.

8. On merits, the insurance of the vehicle in question was admitted. It was further submitted that the report of the police regarding untraceable is false and is against the factual position and the same is manipulated by the appellant in connivance with the police. The investigator after investigating the case thoroughly, recording the statements of various persons and collecting the documents, concluded that the claim was false and ungenune, as no theft ever took place and the claim was filed as no claim. The delay in registration of FIR was also one of the reasons. The repudiation is just and fair and made with application of mind. Other similar pleas were repeated and denying allegations of the complaint, it was prayed that the complaint may be dismissed with costs.

9. Parties led evidence in support of their respective contentions by way of affidavits and documents.

10. After going through the documents and material placed on file and after hearing the learned counsel for the parties, the learned District Forum observed that it is impossible that the starting of the stolen truck at night had not made the cleaner Kala conscious. There is no goods receipt of the other truck bearing no.PB-05-J-9803 near to date of theft for loading of the goods in the same truck. Investigation report is very much detailed, explicit and reasoned. The Vehicle Inquiry Report Ex.R-14 shows that no theft of truck in question was brought into their knowledge. This letter has been issued by the Duty Officer, Incharge, Community

Policing Resources Center, Patiala. The complaint was dismissed.

11. Aggrieved by the impugned order dated 24.09.2008, the appellant has come up in appeal.

12. We have gone through the pleadings of the parties, perused the record of the learned District Forum and have heard the arguments advanced by the learned counsel for the parties.

13. Learned counsel for the appellant contended that the delay in lodging the FIR has been explained. The truck in question along with other trucks belonging to the appellant and brother of the appellant was fully insured and both the trucks were taken to Amritsar, where they could not get goods immediately and were parked. The appellant, his brother and the driver went to pay obeisance and when they came back, it was found that the truck was stolen. The appellant and his brother kept on searching for the truck and ultimately, the FIR was registered on 26.06.2005. The queries raised by the investigator were duly replied and the Inquiry Report Ex.R-14 relied upon by the District Forum is not relating to the truck in question. The report of the investigator could not be believed. The Untraced Report also was filed as even the police, after investigation, could not locate the truck and the respondent was duty bound to pay the claim. The order passed by the District Forum is against the facts, evidence and law and the same is liable to be set aside.

14. On the other hand, learned counsel for the respondent has contended that there is no infirmity in the impugned order and the same is legal and valid and the appeal may be dismissed.

15. We have considered the respective submissions advanced on behalf of the parties and have carefully examined the entire record placed on the file.

16. As per version of the appellant, he along with his brother Sahab Singh and driver Balwinder Singh went to Amritsar on 03.06.2005 along with their two trucks bearing registration No.PB-05-J-9703 and PB-05-J-9803 and one truck bearing registration no. No.PB-05-J-9703 was stolen in the intervening night of 3/4-6-2005, when they were away for paying their obeisance, except cleaner Kala Singh. As per the version of the appellant, intimation was given to the insurance company on 06.06.2005 and thereafter, the respondent appointed the investigator. FIR No.137 dated 26.06.2005 was registered U/s 379 IPC at P.S. Sultanwind area of Amritsar. Untraced Report Ex.C-12 was also filed by the police. The investigator vide letter Ex.C-15 sought certain queries from the appellant and recorded the statement of the appellant. Vide Ex.R-1, the investigator wrote to the Regional Manager of the respondent, giving the detail of the investigations and also mentioned that the theft of the truck is shown on 04.06.2005 and FIR was lodged on 26.06.2005 and the claim was reported on 04.07.2005 at 5.00 P.M. at Ferozepur and all this need deep investigation to reveal the truth. After detailed inquiry and seeking the report from the inquiry report of NCRB, it was concluded that the vehicle has not been stolen. The investigator even has given the remarks against the Branch Manager A.K. Wadhwa and Pardeep Dhingra, Development Officer, but that has no bearing on the present case and it may be relevant inter-se with the respondent and its employees. The investigator has recorded the statements Ex.R-2 to Ex.R-8. As per the Vehicle Inquiry Report Ex.R-14, the vehicle bearing no.PB-05-J-9703 was not stolen. The chassis number was different.

17. The counsel for the appellant has rightly pointed out that this inquiry report is not of the truck in question, but that itself is not sufficient to discard the overwhelming evidence collected by the investigator and the fact that the matter was not reported to the police immediately. Even if as per the version of the appellant, the FIR was not registered, even then he should have moved some application to set the law in motion regarding the theft and the same could be investigated, but the appellant kept quiet for 22 days and then came forward with the present FIR and the claim was also lodged with the respondent, as per the investigator, on 04.07.2005 i.e. after a gap of one month. Honble National Commission in Revision Petition No.3900 of 2011 Rajesh Kumar Vs New India Assurance Co.Ltd., decided on 23rd March, 2012, observed in Para-5 (relevant portion) as follows:-

Lodging of an FIR in the case of a theft should be an immediate concern for any owner of a vehicle and under

the terms of the policy he is required to inform the insurance company and file the claim at the earliest.

18. In another case New India Assurance Co. Ltd. Vs Trilochan Jane, F.A. No.321 of 2005 decided on 09.12.2009, the Honble National Commission after detailed discussion and interpreting the word immediately, held as follows:-

In the present case, the respondent did not care to inform the insurance company about the theft for a period of 9 days, which could be fatal to the investigation. The delay in lodging the FIR 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).

19. In view of the law laid down in the above authorities by the Honble National Commission, this delay is fatal to the case of the appellant. The order of the District Forum is legal and valid and there is no ground to interfere with the same.

20. Accordingly, the appeal filed by the appellant being without any merit is dismissed and the impugned order under appeal dated 24.09.2008 passed by the District Forum is affirmed and upheld. No order as to costs.

21. The arguments in this appeal were heard on 06.02.2013 and the order was reserved. Now the order be communicated to the parties.

22. The appeal could not be decided within the stipulated timeframe due to heavy pendency of court cases.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com