

Sunil Vs. the Branch Manager, Canara Bank Ltd. and Another

Sunil Vs. the Branch Manager, Canara Bank Ltd. and Another

SooperKanoon Citation : sooperkanoon.com/1107850

Court : Kerala State Consumer Disputes Redressal Commission SCDRC
Thiruvananthapuram

Decided On : Oct-30-2012

Judge : The Honourable Mr. M.K. Abdulla Sona Member

Appeal No. : First Appeal Nos.401 of 2012 & 67 of 2012

Appellant : Sunil

Respondent : The Branch Manager, Canara Bank Ltd. and Another

Judgement :

COMMON JUDGMENT:

SHRI. M.K. ABDULLA SONA, MEMBER

This appeal prefers from the order passed by the CDRF, Palakkad in CC No.90/2011 dated: 31.10.2011. The complainant is the appellant and the opposite parties are the respondents. This appeal preferred by the appellant that the Forum below directed the 1st opposite party to pay Rs.11,280/- as the insured amount to the complainant both opposite parties are jointly and severally directed to pay Rs.10,000/- as compensation or mental agony and ordered to pay Rs.1,000/- as cost. But in appeal 67/12 the appellant is the 1st opposite party and the respondents are the complainant and the 2nd opposite party respectively. This appellant also prefers this appeal from the very same order. The 1st appeal preferred by the appellant for the enhancement of the amount ordered by the

Forum below and other appellant in appeal 67/12. The appellant prefers this appeal from the very same order for setting aside the impugned order passed by the Forum below.

2. On this day both appeals came before this Commission for final hearing respective counsels appeared and argued their own appeals. On the basis of the fact, circumstance and evidence, the appellant/complainant argued that the order is illegal and irregular not accordance with the provisions of the law and evidence. The Forum below failed to appreciate the value of the camera and ordered the amount without any basis. But the 1st opposite party/appellant argued that the order passed by the Forum below is not accordance with the provisions of law and evidence.

3. In short, the complainant was running a photo studio and he availed a loan from 1st opposite party and purchased a new zoom lens, Vivitar camera, Nikon 1:1.4 lens and 10 film rolls, which were insured under the 2nd opposite party. The premium of the insurance policy was paid by the 1st opposite party from the account of the complainant deducted automatically from the instalments remitted. On 9/02/07 when the complainant reached his shop it was found that the equipments were stolen from the studio. The incident was reported to the police officials and the opposite parties in time. When no positive response was received regarding the claim amount. The complainant sent a letter to the 1st opposite party on 15.2.2007. Who is turn informed the 2nd opposite party by a letter dated: 26.02.2007 for compensation. The 1st opposite party also informed the 2nd opposite party regarding the theft and for granting compensation for lost articles as per the policy covered under 2nd opposite party again on 6.3.2008 on request of complainants letter dated 4.03.2008. On repeated demands by the complainant there was no positive response except the reply made by 1st opposite party that the matter will be looked into at the earliest as per letter dated: 20.8.2010. The complainant has availed loan and has paid the premium directly from the account of complainant to 2nd opposite party. The 2nd opposite party being the insurer is liable to compensate the complainant for loss suffered. The complainant has lost his equipments worth Rs.24,300/-. The theft has affected the complainants business in all sense including financially and mentally. The act of the opposite

parties has caused much mental agony, hardship and irreparable injury to the complainant. Hence the complaint.

4. The 1st opposite party filed version and contended that the theft is alleged to have taken place on 9.2.07. But the 1st opposite party admitted that the complainant is running a photos studio. It also admitted that premium of the insurance policy was paid by debiting the account of the complainant. The assets were insured under Standard Fire and Special Perils Policy and Burglary and House Breaking Policy from the 2nd opposite party. This was done to facilitate the borrower to get compensation of loss in case of any eventuality like fire, theft etc. and to ensure that the claim amount route through the bank so as to set off the liability under the term loan. The complainant intimated the 1st opposite party regarding theft only on 15.2.2007. The 1st opposite party has intimated the 2nd opposite party insurer by letter dated 26.2.2007. If any loss is occasioned to the complainant on account of theft it is for the 2nd opposite party insurer to satisfy the claim covered by the policy. The 2nd opposite party vide letter dated: 25.9.2007 rejected the claim stating that the policy commence from 00.00 hrs of 9.2.07 and the theft was taken place in the night of 8.2.07, hence the claim is beyond the purview of policy issued. The matter was clarified to the insurance company vide letter of the Bank dated 16.10.2007 stating that the bank has credited the insurance renewal premium in their current account on 8.2.2007 and the theft was taken place during the period covered by the policy on 9.2.2007. Upon the reminder of the 1st opposite party dated 12.12.2007 requesting earlier settlement of claim the 2nd opposite party vide letter dated: 18.2.2008 addressing the complainant with a copy to 1st opposite party informed that the claim could not be entertained as it was submitted after 14 days of the event cause to the knowledge of the insured, in terms of the general conditions of the policy. The 1st opposite party has intimated the 2nd opposite party regarding the theft on 26.2.2007 within the period of 14 days from the date on which it was intimated to the bank. There is no delay on the part of the 1st opposite party in intimating the 2nd opposite party within 14 days. The bank has taken the insurance policy in the name of the complainant with lien to the bank covering the value of assets purchased out of the loan proceeds to protect the interest of the complainant. The intention of the complainant is only to avail the compensation from 2nd opposite party by

projecting a false story. Repudiation was intimated as early as 27.9.2007. But the complaint is filed on 14.6.2011. Both parties prayed to dismiss the complaint.

5. The evidence consisted of the proof affidavits of the complainant and opposite parties and marked Exts.A1 to A9 on the side of the complainant and Ext.B1 to B8 marked on the side of the opposite parties.

6. The Forum below heard both parties and perused the available evidence and considered all the points came before them for considering and answering accordingly. The Forum below taken a view that in Ext.B4 the 1st opposite party intimated the event of theft on 26.02.2007 it is the violation of policy condition but the complainant intimated the 1st opposite party on 15.2.2007 within 14 days from the date of theft. The Forum below assessed 75% of the net assessed amount allowed on non standard basis and ordered the above order accordingly.

7. This Commission considered the hearing of the counsels appeared for both sides and perused the entire evidence which adduced by both sides. According to Ext.A3, the complainant informed the theft on 15.02.2007 to the 1st opposite party. The 1st opposite party intimated this Forum on 26.02.2007 to the opposite party/ insurance company. On the part of the 2nd opposite party there is no documentary evidence produced to support their version in toto. As per the evidence, facts and circumstances of this case the Forum below taken a right and correct legal view adopted in this case and assessed the amount on non-standard basis. As per the Supreme Court decisions in this type of cases the claim can be ordered to be settled on non-standard basis. This Commission is seeing that the amount ordered by the Forum below is very reasonable and legally sustainable. There is no interest ordered. But this Commission decided to interfere in the order passed by the Forum below. This Commission is ordered to pay an interest @12% on an amount of Rs.11,280/- from the date of the complaint by the 1st opposite party and this Commission set aside the cost ordered as Rs.1,000/- it need not ordered both compensation and cost simultaneously.

In the result, both appeals are allowed in part. This Commission directed the 1st opposite party to pay Rs.11,280/- with 12% interest from the date of the complaint to the complainant. And both opposite parties are jointly and severally directed to

pay Rs.10,000/- as compensation for mental agony to the complainant.

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