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Court : National Consumer Disputes Redressal Commission NCDRC

Decided On : Mar-18-2013

Judge : V.B. GUPTA, PRESIDING MEMBER & THE HONOURABLE MRS. REKHA GUPTA, MEMBER

Appeal No. : Revision Petition No. 1368 of 2012

Appellant : Darab Singh and Another

Respondent : National Insurance Company Ltd., Through Zonal Manager

Judgement :

Rekha Gupta, Member

This revision petition has been filed under section 21 (b) of the Consumer Protection Act, 1986 against the order dated 24.11.2011 passed by the State Consumer Disputes Redressal Commission, Circuit Bench, Jaipur, Rajasthan (in short, the State Commission) in appeal no. 573 of 2009, whereby the State Commission had dismissed the appeal confirming the judgment and finding given in the order dated 22.01.2009 passed by the District Consumer Disputes Redressal Forum, Karauli (in short, the District Forum) in complaint no. 152 of 2008.

The petitioner/ complainant has stated that the petitioner purchased a jeep no. RJ 34 P 0135 from the registered owner Shri Harhans Singh son of Hukam Singh a resident of Patel Nagar, District Karuali, Rajasthan through an agreement dated 11.01.2002 for Rs.2,62,100/-. Out of this, Rs.1,00,000/- was paid in cash to Harhans Singh and the rest in 13 installments of Rs.12,470/- (per instalments) totalling to Rs.1,62,110/- were also to be paid by the petitioner. The Mahindra Finance Company had also issued a letter dated 11.01.2002 to the RTO Karoli and the transfer procedure is pending with the District Transport Authority.

The above jeep was stolen by unsocial elements Kailash son of Shri Hari Kishan Gujar resident of Patoli Tehsil. Toda Bheem on 13.02.2003 at about 11 or 12 along with driver near Bus Stand. The driver however escaped from there clutches and came to him on 15.02.2003. Petitioner has stated it was learnt later that illegally the Mahindra Finance Company even after receiving all payment had taken away the Jeep through Kailash son of Hari Krishan Gujjar on 13.02.2003. In the above matter the ACJM Hindon City had directed to hand over the possession of the aforesaid jeep to the petitioner and on the order of the court the Jeep was handed over to the petitioner on 16.05.2003. Petitioner has stated that when the jeep was handed over, it was in a very bad condition and all the parts of the engine etc., were changed and damaged parts were put in. On the same day the petitioner filed a detailed loss report to the CI Police Station Hindon City.

On petitioners information the Insurance Company had deputed a surveyor to assess the loss. Petitioner had spent about Rs.70,000/- in the repairs.

The respondent/ insurance company had only allowed an amount of Rs.1,200/- only on repairs whereas the petitioner had incurred Rs.70,000/- in the repairs. Petitioner had written many letters and had requested several times to the respondent that petitioner should be paid the full expenses the petitioner had incurred.

All this was due to the deficiency in service and negligence of the insurance company.

The respondent has however, stated that the petitioner has mentioned wrong facts in the complaint. There is no consumer and service provider relationship between the petitioner and the insurance company. The petitioner is neither the owner of the vehicle nor is the insured hence, the petitioner has no right to file the complaint.

The Jeep no. RJ 34 P 0135 was in the name of Harhans Singh son of Hukam Singh and he is the registered owner. The insurance policy was also issued in his name which was valid from 15.10.2002 to 14.10.2003. It is wrong to say that the jeep was stolen. The fact is that the instalments were not deposited in time to the financier. The financier M/s Mahindra and Mahindra Finance Services Limited, Mumbai had taken away the jeep forcibly hence, the petitioners allegation of theft is totally wrong.

The insurance company had written several letters to the registered owner of the vehicle to co-operate and supply the relevant documents but the same were not given despite several letters by the insurance company. After receiving the information from the registered owner and the insured, the insurance company had appointed a registered, qualified and experienced surveyor Shri Sunil Kumar Goyal to assess the loss. The surveyor had investigated the matter at length and thereafter, submitted his report dated 13.10.2003 on 22.10.2003. The surveyor has assessed a loss of Rs.1,277/- only from which a salvage of Rs.10/- was to be deducted and thereafter an amount of Rs.1,267/- were only assessed. The insurance company after considering all the facts and survey reports had allowed the claim of Rs.1,267/- to be paid. The insurance company had written a letter dated 15.12.2003 to the registered owner to send the discharge voucher and collect the cheque. The registered owner and the insured even after receiving the letter from the insurance company did not send the discharge voucher, hence, the insurance company on 20.04.2004 had closed the file as no claim and had sent a letter to the registered owner on 20.04.2004.

The petitioner then filed a consumer complaint before the District Forum in its order dated 22.01.2009 came to the conclusion that it is proved from the registration that the registered owner was Harhans Singh and in the insurance policy also Harhans Singh is the owner of the vehicle. That on the date of the accident neither the registration nor the insurance policy was in the name of the petitioner. In the case of **CompliInsulations Pvt. Ltd., vs New India Assurance Co.**, the Supreme Court has held that without the change of name in the insurance policy the complaint was authorised to file claim. Because in this case also Darab Singh has not got the insurance policy changed in his name and the complaint has been filed on behalf of power of attorney holder. As such in our humble opinion the complaint of the petitioner is not maintainable and deserves to be dismissed. Hence, the complaint is dismissed, cost made easy?.

Aggrieved by the order of the District Forum, the petitioner filed an appeal before the State Commission. The State Commission vide its impugned order dated 24.11.2011, cited the judgment given by the respondent in appeal no. 1359 of 2009 dated 16.11.2022 " **National Insurance Company vs Murlidhar** in which it was held unless registration certificate and insurance certificate is transferred no claim is payable.

In this matter it is not disputed that the original registration certificate and insurance certificate was not transferred and are still in the name of Harhans Singh. The claim was also filed by Harhans Singh which was accepted for Rs.1,267/- as such the complainant has no locus standi. Only because in the case of Mahindra Finance Company the petitioner was accepted as consumer it is not necessary that he should be treated consumer in this case also.

Hence, there is no substance in the present appeal which deserves to be dismissed?.

Dissatisfied with the order of the State Commission, the petitioner has filed this present revision petition.

We have heard the learned counsel for the petitioner and have also gone through the records and citations carefully.

Undisputedly, as per the facts of the case, the original registration certificate and the insurance certificate are still in the name of Harhans Singh. The claim was filed by Harhans Singh which was accepted for Rs.1,267/- and as such the petitioner has no locus standi.

The present revision petition has been filed after a delay of 14 days. The petitioner in his application has given the following reasons for the delay:

œThe petitioner was sick and was on bed rest and was advised not to move out of home from 06.02.2012 to 21.03.2012. Hence, the petitioner was unable to contact the advocate at Jaipur about the case and its position. On 29.03.2012, when the petitioner went to Jaipur and contracted his advocate Shri J P Sharma, he was informed that the matter was decided on 24.11.2011 and had given the certified copies and the file on 01.04.2012. Thereafter, on the same day, the petitioner contacted Shri Sandeep Saxena, Advocate to discuss and file appropriate revision petition before the National Commission. Shri Saxena prepared the revision petition on the instructions of the petitioner on ___/04/2012 and the same was presented without any further delay. This delay in filing the revision petition is due to the above sickness of the petitioner which needs sympathetic consideration and the delay caused may kindly be condoned. If the delay is not condoned, the petitioner will suffer irreparable loss, for no fault of his and a good matter will be thrown at the outset, without considering the merits. Hence, the above delay was unintentional which may kindly be condoned in the interest of justice?.

The medical certificate dated 22.03.2012 issued by the Goyal General and Dental Hospital, Dausa, reads as under:

œCertified that Shri Darab Singh son of Shri Kalyan Singh aged 52 years whose signature is given below was suffering from Fever c Severe anaemia and was under my treatment as OPD patient since 06.02.2012 to 21.03.2012, i.e., for 43 days. Now he is fit for 22.03.2012?.

Learned counsel for the petitioner has cited the case of this Commission in **BanowarilalAgrawallia vs National Insurance Co. Ltd., and Anr.** [IV (2005) CPJ 110 (NC)]. The cited case is not applicable to the case on hand.

The petitioner has failed to give sufficient cause to condone the delay.

In view of the foregoing reasons we find that there is no jurisdictional error, illegality or infirmity in the order passed by the State Commission warranting our interference. The revision petition is dismissed both on the count of limitation as well as on merit with cost of Rs.5,000/- (Rupees five thousand only).

Petitioner is directed to deposit the cost by way of demand draft in the name of Consumer Welfare Fund as per Rule 10 A of Consumer Protection Rules, 1987, within four weeks from today. In case the petitioner fails to deposit the said cost within the prescribed period, then it shall be liable to pay interest @ 9% per annum till realisation.

List on 29th April 2013 for compliance.

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