

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

REVISION PETITION NO. 2235 OF 1999

(From the order dated 5.10.1999 passed in Appeal No.2106 of 1999 of the State Commission, Uttar Pradesh)

National Insurance Co. Ltd.
Jeevan Bharti Building
Connaught Circus
New Delhi.

... Petitioner

Versus

Mrs. Maya Gandhi
W/o Shri Prem Lal Gandhi
Nai Basti, Satipur
Philibhit Bye Pass Road
Bareilly (U.P.)

... Respondent

BEFORE :

HON'BLE MR. JUSTICE M.B. SHAH, PRESIDENT
MRS. RAJYALAKSHMI RAO, MEMBER

For the Petitioner : Mr. Sunil Kapoor, Advocate

For the Respondent : Mr. R.C. Mishra, Advocate

Dated the 22nd day of January, 2007

ORDER

M.B. SHAH, J., PRESIDENT

.I. Exercise of jurisdiction under Section 27 of the Consumer Protection Act, 1986:

Before dealing with the matter on merits, we would caution the Fora constituted under the Consumer Protection Act, 1986, all over the country, that powers vested in the Consumer Fora under Section 27 of the Consumer Protection Act 1986 are to be exercised cautiously and are not to be misused or used in arbitrary manner. The equitable jurisdiction conferred on the Consumer Fora is to be exercised in just and equitable manner.

In this case, it is the contention of the learned counsel for the petitioner that for extraneous reasons, against the Chairman-cum- Managing Director of the National Insurance Company Ltd. non-bailable warrants were issued by the District Forum despite the fact that the District Forum was informed that the insurance company has preferred an Appeal against the order passed by it. Further, the warrants were issued even though the District Forum had attached the account of the insurance company with the Punjab National Bank, Bareilly, on 13.12.1999. Surprisingly, the District Forum has also observed that for recalling the warrants, an undertaking should be given by the Divisional Manager of the insurance company to the effect that no Appeal would be filed or if filed, the same would not be pressed.

On the basis of the said threat, the Divisional Manager of the insurance company wrote that the insurance company has deposited the amount with the learned forum and that after recall of the warrant issued under Section 27 of the Consumer Protection Act against all officers of the company, no further Appeal would be filed in any higher forum and if filed, shall not be pressed by the insurance company.

Learned counsel appearing on behalf of the complainant submitted that the insurance company has stated so on its own. In our view, this is unbelievable and the learned counsel ought not to have believed the same.

In our view, the Consumer Fora, all over the country, should take care and caution before issuing such warrants or summons. This power is vested in the Consumer Fora for rendering justice and not for harassing.

No doubt, the Consumer Fora is required to exercise equitable jurisdiction so that harassed consumers do not suffer. But, that would not empower

the Consumer Fora to exercise jurisdiction under Section 27 of the Act in any arbitrary and unjustified manner.

In our view, the order of issuance of warrants by the Consumer Fora against the judgment and taking of an undertaking from the officers of the Insurance Company that appeal would not be filed against the order passed by the District Forum was totally arbitrary, unjustified and de-hors judicial norms. District Forum ought to have considered that filing of appeal by the aggrieved party is statutory right. That right cannot be curtailed. Secondly, Section 15 of the Act itself provides how the consumer is to be protected in case an appeal is filed. Hence, we strongly condemn the act of the District Forum in issuing warrants against the Chairman of the National Insurance Company Ltd. and also taking of an undertaking from its officers not to file appeal against its order.

.II. On merits:

On merits, learned counsel appearing on behalf of the insurance company submitted that as per the Claim Form tendered by the complainant, it is clear that the vehicle was not used but was kept standing at the premises of the complainant since 1990 and she has mentioned the same at four places in the Claim Form. He, therefore, submitted that for a vehicle, which was not in use for more than four years, there is no question of theft being committed. He further submitted that there were arrears of Road-tax and Passenger-tax and Fitness Certificate was also not in existence at the relevant time. It is also pointed out that the State Bank of India had financed the vehicle and the dues were not paid by the complainant. The preliminary Police Investigation also reveals that there was no theft as per the Final Report submitted before the Magistrate. He, therefore, submitted that on the face of it, the complaint was bogus and, therefore, the District Forum as well as the State Commission committed error in passing the impugned order.

He further contended that the State Bank of India had financed the loan, but, as the complainant was not in a position to pay the said amount, the story of theft is concocted. He further pointed out that after receiving the information of the alleged theft, the insurance company has given investigation to the International Security Detective Services, Lucknow, who reported that the vehicle was not stolen. The police also found that the vehicle was not stolen and a lot of amount was due in the form of taxes etc. Therefore, the complainant has concocted a false story. Thereafter, police report was presented before the Court on 2.3.1994. On the objection raised by the complainant, the court referred it for second investigation. Learned counsel for the insurance company submitted that this was not justifiable. It is his contention that in any count there is no reason to doubt the Claim Form submitted by the complainant wherein at four places she has stated that the vehicle was not in use.

As against this, the learned counsel appearing on behalf of the complainant submitted that there is nothing to disbelieve the version of the Complainants. The officers of the insurance company visited the place, saw the vehicle and thereafter the Insurance Cover was given. He further contended that if the officers of the Insurance Company commit any fraud, they should be prosecuted, but, without any basis, the complainant should not be penalized. It is his contention that the Claim Form was filled in by the agent of the Insurance Company and the complainant, who is a woman, has merely signed the same in Hindi, without knowing what was being written. He further submitted that the insurance company had appointed a surveyor and the surveyor assessed the loss but the same is not produced on record. Therefore, there was no alternative for the District Forum but to pass an order on the basis of the sum assured.

In our view, it is quite possible that something wrong has been done by the insurance agent or the officers of the insurance company, but we cannot help in such a situation. It is for the insurance company to take appropriate action against the concerned defaulting officers.

In Survey Report it is specifically mentioned that the vehicle was a 1986 model, transferred in the name of the complainant in December 1990 and was hypothecated with the State Bank of India with effect from 5.5.1986. The Road Tax was paid on 30.6.1993 with effect from 1.4.1993. Passenger Tax was not paid. In the column meant for Fitness Particulars, it is mentioned that the validity was up to 19.6.1990.

The vehicle was stolen in the night of 3rd/4th March, 1994, for which first information report was lodged with the Police Station. Information was also given to the Insurance Company, on 4th March, 1994. The Insurance Company rejected the claim on the ground that the vehicle at the time of the theft did not have a fitness certificate.

Further, the documents produced on record do justify the contention that the vehicle was stationary or that there was no fitness certificate. Annexure R-3 collectively produced on record mentions that the fitness certificate was to expire on 5th March, 1994. The application for temporary permit was granted to the Complainant on 6th March, 1993.

In view of the survey report as well as the documents which are produced on record the repudiation by the Insurance Company cannot be justified.

Hence, it is directed that on the basis of the loss assessed by the surveyor the Insurance Company is required to reimburse the amount of Rs.2,23,500/- and the orders passed by the District Forum and the State Commission

directing the Insurance Company to pay the sum of Rs.3,50,000/- requires to be modified.

Ordered accordingly.

Further, it is to be stated that the Insurance Company was compelled to deposit a sum of Rs.5,79,016/- on the basis of the order passed by the District Forum. The said amount was deposited in December, 1999, which is withdrawn by the Complainant. In this view of the matter, the Complainant is directed to refund the excess amount recovered within a period of eight weeks from today, with interest at the rate of 12% p.a.

The Revision Petition is disposed of accordingly. There shall be no order as to costs.

Once again we would reiterate that the Consumer Fora all over the country should take care and caution before issuing summons or warrants under Section 27 of the Act. The power is to be exercised for doing justice and not for harassment.

.....Sd/.....J.
(M.B. SHAH)
PRESIDENT

.....Sd/.....
(RAJYALAKSHMI RAO)
MEMBER