

SUPREME COURT OF INDIA

Kamlesh

Vs.

Shriram General Insurance Company Ltd.

C.A.No.8796 of 2019

(Uday U.Lalit and Vinay Saran,JJ.,)

19.11.2019

ORDER

Uday Umesh Lalit.J.,

1. This appeal arises out of order dated 21.6.2019 passed by the National Consumer Disputes Redressal Commission ("National Commission" for short) at New Delhi in First Appeal No.797 of 2015.

2. In respect of an accident which had occurred in the night intervening 1st/2nd June, 2009 in which a truck owned by the appellant was damaged in fire, a claim was raised by the appellant. The claim was however, repudiated by the respondent-insurance company vide letter dated 9.9.2009 on the basis of a report of a Surveyor/Investigator that the fire was not natural. ("State Commission" for short), Lucknow, U.P. alleging deficiency on part of the respondent. The principal prayer made in the complaint was:

3. In the circumstances, Consumer Complaint No.81/2010 was filed by the appellant before the State Consumer Disputes Redressal

"a) That a direction may be issued to the opposite party no.1 for repudiating the insurance claim of the complainant amounting to Rs.13,50,000/- in his favour;"

4. The appellant also claimed compensation and costs. In its counter affidavit the stand taken by the respondent was as under:

"6. That the respondent appointed independent surveyor Shri S.K. Tiwari for spot survey on intimation of the alleged fire loss of the insured Truck. The Surveyor submitted spot report dated 23.6.2009 after inspecting the spot and vehicle on 3.6.2009. The spot surveyor in its report apart from pointing out the damages to the insured truck due to alleged fire, specifically gave observations to the effect that "it is the case of manipulations and fabrication. It needs further investigation". The

spot surveyor also submitted zerox copy of newspaper (Dainik Jagaran Daily) dated 3.6.2009. The observation of the spot surveyor to the effect that green grass and leaves etc. surrounding the burnt parts was well in order i.e. smiling, is very significant.

7. That in the light of observations and recommendation made by Spot Surveyor, the answering respondent got the matter investigated and through Sri Prabhakar Rai, Advocate who submitted is detailed report dated 31.8.2009. The investigator also categorically concluded in his report based upon various facts, statements and circumstances that the said incident of accident and fire is doubtful."

5. The matter was considered by the State Commission and by its order dated 11.8.2015. The State Commission rejected the case set up by the respondent that there was no natural fire and the vehicle was set afire. It was, therefore concluded as under:

"It is established from the evidence produced by the opponent insurance company that the truck of the complainant was found in burnt condition at the place of accident on the next day of alleged incident. In these circumstances, we are of the view that the opponent insurance company is deficient in services by repudiating the insurance claim of the complainant. The insured value of the Truck in question is admittedly Rs.13 Lakh 50 Thousand. Therefore, we are of the view that the complainant is entitled to this amount with interest from the opponent insurance company."

The claim of the appellant was accepted and following directions were issued:

"The opponent insurance company is hereby directed to pay the complainant 13,50,000 with 9% interest from the date of institution of the complaint till its payment within a period of one month. The opponent will also pay a Rs.10,000/- to the complainant as litigation expenses within the fixed period.

If the above amount is not paid within the time fixed then the opponent will be liable to pay interest at the rate of 12% on the entire amount to the complainant. Both the parties will bear their own litigation expenses."

6. The respondent being aggrieved, filed First Appeal No.797 of 2015 before the National Commission. It was observed that the incident occurred during the night of 1st/2nd June, 2009 but the intimation to the respondent was given only on 3.6.2009 and as such there was infraction on part of the appellant. Relying on the decision of this Court in *Amalendu Sahu vs. Oriental Insurance Co. Ltd'*. the National Commission quantified the claim at 60% of IDV of the vehicle. The matter was considered by the National Commission as under:-

"7. I have given a thoughtful consideration to the arguments advanced by the learned counsel for the parties. Though it has been argued by the learned counsel for the appellant

that the truck was deliberately put on fire to get the insurance claim, but no independent proof has been filed by the appellant to prove that the damage was stage managed. Even the statements of the reporter as well as of the sales man of the petrol pump relied upon by the investigator have not been filed because those persons have refused to give any statement in writing. This appeals to logic that if a truck is purchased only 2-3 months back, why the truck owner will put the truck into fire, because in any case the insurance claim can be awarded to the value of IDV at the most. Learned counsel for the Insurance Company has not been able to pin point any purpose behind the deliberate action of the owner of the truck to put the truck on fire. Clearly there is delay in giving intimation to the police and no proper justification has been given by the complainant. Though, it is true that it is not a case of theft where immediate intimation to the police is required yet the role of FIR in such a case cannot be minimised.

8. In the present case, the truck body has been burned as stated by surveyor/investigator, still the matter could not be investigated by the police properly as information was given to the police on 06.06.2009 with delay of 4 days. It is also important to note that the intimation to the Insurance Company has been given on 03.06.2005 whereas the condition No.1 of the policy requires that in case of accident immediate notice will be given to the Insurance Company to enable the Insurance Company to appoint a surveyor to have the spot inspection as quickly as possible. Here, the surveyor could only be appointed on 03.06.2005 who could not verify the recovery of truck by the crane which is a crucial factor in the present case. Definitely the respondent/complainant has violated the condition of the policy by not immediately giving information to the Insurance Company. The State Commission has not given any importance to this delay and has allowed the insurance claim for full IDV of the vehicle. Clearly, the delay in giving intimation to the Insurance Company is an important factor, which should be taken into consideration while deciding the insurance claim. As observed above, the accident of the vehicle and consequently the vehicle catching fire are the proved facts, respondent/complainant is entitled to insurance claim. Hon'ble Supreme Court in *Amalendu Sahu vs. Oriental Insurance Co. Ltd*². Has observed:

"14. In this connection reference may be made to a decision of National Commission in the case of *New India Assurance Company Limited v. Narayan Prasad Apparasad Pathak*³, reported in In that case also the question was, whether the insurance company can repudiate the claims in a case where the vehicle carrying passengers and the driver did not have a proper driving licence and met with an accident. While granting claim on non-standard basis the National Commission set out in its judgment the guidelines issued by the Insurance Company about settling all such non-standard claims. The said guidelines are set out below:-

Sl. No.	Description	Percentage of settlement
(I)	Under declaration of licensed carrying capacity	Deduct 3 years' difference in premium from the amount of claim or deduct 25% of claim amount, whichever is higher
(ii)	Overloading of vehicles beyond licensed carrying capacity	Pay claims not exceeding 75% of admissible claim.
(iii)	Any other breach of warranty/condition of policy including limitation as to use.	Pay upto 75% of admissible claim.

9. Relying upon the above guidelines given by the Hon'ble Supreme Court, it is seen that in the present matter one of the policy conditions has been clearly violated and that being an important condition, I deem it appropriate to allow the insurance claim @ 60% of the IDV of the vehicle.

10. On the basis of the above discussion, the first appeal No.797 of 2015 is partly allowed and the order of the State Commission is modified to the extent that instead of full IDV Rs.13,50,000/-, the appellant Company shall be liable to pay 60% of the IDV i.e. Rs.8,10,000/- (rupees eight lakh ten thousand only). This amount shall be paid by the Insurance Company along with 7% p.a. interest from the date of filing of the complaint. The litigation expenses of Rs.10,000/- awarded by the State Commission is maintained. The appellant is directed to comply with the order within 45 days from the date of service/receipt of this order."

7. In this appeal questioning the correctness of the decision of the National Commission, Mr. Ajay Kumar, learned advocate for the appellant submitted that the intimation was given as early as possible and there was no delay on part of the appellant; that reliance on the decision in Amalendu Sahu was not quite correct; and that the National Commission ought not to have reduced the claim amount. Ms. Meenakshi Midha, learned advocate appearing for the respondent supported the decision of the National Commission and submitted that there was delay in intimating the Insurance Company and as such there was breach of warranty/condition of Policy. She also submitted that the intimation to Police was given only on 6.6.2009 and therefore, the National Commission was justified in

reducing the claim amount.

8. We have gone through the policy in question. Under the caption "conditions" which are part of the Policy, the relevant condition states:-

"1. Notice shall be given in writing to the Company immediately upon the occurrence of any accidental loss or damage in the event of any claim and thereafter the insured shall give all such information and assistance as the Company shall require. Every letter claim writ summons and/or process or copy thereof shall be forwarded to the Company immediately on receipt by the Insured. Notice shall also be given in writing to the Company immediately the Insured shall have knowledge of any impending prosecution, inquest or fatal inquiry in respect of any occurrence which may give rise to a claim under this Policy. In case of theft or criminal act which may be the subject of a claim under this Policy the Insured shall give immediate notice to the police and co-operate with the Company in securing the conviction of the offender."

9. The aforesaid condition has two limbs:-

i) Notice shall be given in writing to the Company immediately upon the occurrence of any accidental loss or damage; and

ii) In case of theft or criminal act which may be the subject of a claim under this Policy, the Insured shall give immediate notice to the police. The second limb contemplates issuance of immediate notice to the police only in cases of theft or criminal act. In the event of an occurrence of any accidental loss or damage, the condition does not contemplate issuance of any notice to the police.

10. The case that the appellant came up with was of an accidental loss, and, therefore, if no immediate notice was issued to the police, there was no infraction on part of the appellant. The accident had occurred during the night of 1st and 2nd June, 2009 and the intimation was given to the respondent on 3rd of June, 2009. In our view, the notice was not delayed on any count and did satisfy the requirements contemplated by the conditions in the policy.

11. The decision of this Court in Amalendu Sahoo (supra) had dealt with fact situation where, in violation of the terms of the policy, the vehicle in question was being used for hire and, therefore, the guidelines, as set out in para 8 of the order impugned herein were referred to and relied upon. As there was no violation on part of the appellant, the principle on the basis of which the admissible claim could be reduced, does not apply.

12. In our view, there was thus no reason for the National Commission to hold that there was any violation of the requisite conditions on part of the appellant and there was no justification to reduce the claim to the extent of 60% of the IDV of the vehicle. The conclusions drawn and the directions issued by the State Commission, in our view, were quite correct and did not call for any interference.

13. We, therefore, allow this appeal, set aside the view taken by The National Commission and restore the order dated 11.08.2015 passed by the State Commission.

14. The appeal is thus allowed without any order as to costs.

Judgment Referred.

¹(2010) 4 SCC 0536

²(2010) C.P.J. 0009 (SC)

³(2006) CPJ 0144 (NC)