

Case No. 90

1 (1998) CPJ 239

WEST BENGAL STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
CALCUTTA

*Present : Hon'ble Mr. Justice A.K. Bhattacharji, President; Mr. Monoranjan
Ghosh & Mrs. S. Dutta, Members*

SATYANARAYAN KAMALKUMAR

—Complainant

Vs

UNITED INDIA INSURANCE CO. LTD.

—Respondent

S.C. Case No. 62/O of 1996—Decided on 26.9.1997

Hire purchase agreement - vehicle involved in accident - delay by insurance company in settling claim - financier entitled to proceed against the insurance company for delay in the consumer forum.

Held: The loss of the vehicle itself has given right to the insurance claim and the loss is proved beyond doubt by the police report and by the report and the documents submitted by the complainant. No number of documents can improve the matter when the car itself is missing. In such circumstances, we do not see any reason to detain the claim or repudiate the same.

Held further: It is well settled principle recognised by the National Commission that inordinate delay in settling an insurance claim is a deficiency in service. In this case, the claim was kept pending for a pretty long time and there is apparently no justification for this delay. So, we hold that the opposite parties-Insurance Company is guilty of deficiency in service in settling the insurance claim.

Result : Complaint allowed

Cases referred :

1. II (1993) CPJ 1053
2. 1991 CPR 420Order

ORDER

Mr. Justice A.K. Bhattacharji, President — This is a complaint under Section 17 of the Consumer Protection Act, 1986. The complainant M/s. Satyanarayan Kamal Kumar carries on business in letting out motor vehicles on hire purchase basis. Opposite parties 1, 2 & 3 are the United India Insurance Company Limited. Proforma opposite party is the hire purchaser who entered into hire purchase agreement on 3.8.1991 with the complainant. The complainant's case is that he is the sole and absolute owner of Tata Truck Bearing Engine No. 692 D01 407 227, Chasis No. 344 673 393 670 and temporary Registration No. WB-03-T-1784. The complainant let out and made over possession of the aforesaid vehicle to the Proforma opposite party 4 on the terms and conditions set forth in the hire purchase agreement. Under the said agreement the complainant remained to be the sole owner of the vehicle and the same was insured with the opposite parties 1, 2 & 3 under a scheme of Comprehensive insurance on payment of a premium of Rs. 8,573/-. The opposite parties issued a certificate bearing the Policy No. 30900/21 /25183/91 dated 17th December 1991 and the same was valid up to 16th December, 1992. Under the terms of the agreement, the complainant as the owner of the vehicle was entitled to the benefits of the insurance. The complainant has come to understand from the Proforma OP-4 that the said vehicle was stolen from the possession of the Proforma OP on or about 21.11.1991 and in spite of best efforts it could not be traced out so far. The Proforma OP-4 lodged a Diary on 26.12.1991 with the Barhia Police Station, Bihar, informing that the said vehicle was stolen on 21.12.1991 at 9-00 p.m. The police pursuant to the FIR made a vigorous search to ascertain the whereabouts of the vehicle but could not trace out the same. The claim for insurance money was also duly lodged to the opposite party No 1. The Complainant submits that all necessary information that were available with him were furnished to the opposite party 1 on demand but the said opposite party neglected to settle the claim. On 10.7.1995, the complainant informed the opposite parties 1, 2 & 3 that in spite of submission of all relevant documents the opposite parties held and neglected to settle the claim. There was protracted correspondence between the parties regarding the settlement of the claim but the Insurance Company having not agreed to come to a settlement, this complainant it has been held claiming a total amount of Rs. 8,89,900/- including the insurance value of the vehicle, interest, compensation and cost.

2. The case is contested by the opposite parties by filing a written objection. The first objection raised is that the complainant is not a consumer as it carries on business in letting out vehicle on hire purchase. They also contend that the complainant has no *locus standi* to claim the insurance money as he is not

the owner of the vehicle. They have also raised objections regarding necessary particulars about the theft of the vehicle, the registration of the same etc. are doubtful and have not been found to be acceptable to the Insurance Company on proper investigation. They have also raised other minor objections like the violation of the rule regarding the appointment of expert drivers and concealment of the material facts by the complainant. The Insurance Company has stated that the claim is frivolous in nature and is not a genuine one.

3. The points for determination are—

- (1) if the complainant is entitled to maintain the claim;
- (2) if the claim is barred by limitation;
- (3) if the claim of theft is a genuine one and;
- (4) if the complainant is entitled to the reliefs sought for.

(1) Regarding point No. 1:

4. It is argued by the opposite parties that the complainant has no subsisting interest to claim the insurance money under the policy of insurance and that he is not a proper authority to file the case. We have seen the relevant hire purchase agreement. From the agreement it appears that the complainant from whom the party hired the vehicle is the owner of the same for the purpose of the insurance. Clause 14 of the agreement for hire purchase, clearly shows the owners can claim the benefit of insurance in the present case where the car has been lost before its proper use. The complainant had also produced certain judgments in support of his claim. Thus in a case decided by the Tamil Nadu State Commission reported in II (1993) CPJ 1053, *S. Pushpa Devi Jamad v. The New India Assurance Company Ltd. & Another*, it was held that the financier is considered as the owner and the purchaser of the vehicle as the hirer and the policy of the insurance taken by the purchaser is for the benefit of the financier. The complainant in such a case has been held to be a consumer. Such a view was also taken by the State Commission, Assam, in 1991 CPR 420. We, therefore, hold that the complainant has the authority to file the case as a consumer.

(2) Regarding point No. 2:

5. Although the incident of theft took place in December 1991, the Insurance Company has so far failed to settle the claim and kept the matter pending. This

case was filed in 1996, but till the filing of the claim no settlement was made neither was any definite repudiation of the claim. In such circumstances, the case cannot be said to be barred by limitation. This point is, thus, disposed of.

(3) Regarding point No. 3 & 4:

6. The complainant's case is that the new car was taken by opposite party No. 4, Ram Tapashy Singh on 21.11.1991 and on 12.12.1991 the Chassis & Engine were handed over to Patna City Builders for construction of the body upon the chassis and engine. The said chassis alongwith the engine was comprehensively insured with the United India Insurance Company Ltd. on 17.12.1991. After the chassis & engine were converted into a truck, it was stolen. The documents filed by the complainant show that an FIR was lodged with Barhia P.S. The police took up the investigation from the report submitted by the Sub-Inspector, Barhia P.S. on 3.9.1992, it appears that the truck could not be traced out and the opinion of the police was that the truck has been sold somewhere and the driver & Khalasi had been thrown after being killed. Whatever might be the actual fact, it is clear that the truck was untraceable and the police investigated the case. The truck could not be traced out and there is nothing to show that the truck was not lost from the custody of opposite party 4. So, we have no other alternative but to hold that the truck has been lost for-ever.

7. The existence of an insurance policy with the opposite parties 1 to 3 is not denied. It is, however, suggested that there was suppression of facts and documents on the side of the complainant. We have seen all the documents that have been filed here. We have also seen the policy of insurance. There was temporary registration of the truck and before it can be registered permanently the truck was lost. It has been stated by the opposite parties 1, 2 & 3 in their written objection that due to material irregularities and discrepancies and constant non-co-operation from the complainant, the investigation could not be completed from the side of the Insurance Company. It appears that after taking the chassis from the French Motor Car Co. on 19.11.1991 the opposite party 4 took the same to Patna City Workshop Body Builders on 20.11.1991 and after completion of the body works, the vehicle was taken to Village Barhia. The vehicle was lost from Barhia and we have seen all the papers regarding the building of the body and the report to the Police. After the vehicle was lost whatever documents were still available, were shown to the Insurance Company. It is not understood for want of what particular papers the claim was kept pending. It is stated that the Insurance Company apprehended that there was some

foul motive behind the claim. We have, however, not been able to find any foul motive behind the case. The loss of the vehicle itself has given right to the insurance claim and the loss is proved beyond doubt by the police report and by the report and the documents submitted by the complainant. No number of documents can improve the matter when the car itself is missing. In such circumstances, we do not see any reason to detain the claim or to repudiate the same.

8. It is well settled principle recognised by the National Commission that inordinate delay in settling an insurance claim is a deficiency in service. In this case, the claim was kept pending for a pretty long time and there is apparently no justification for this delay. So, we hold that the opposite parties-Insurance Company is guilty of deficiency in service in settling the insurance claim.

9. The complainant is, therefore, entitled to get the insurance money covered by the policy. It appears from the insurance policy that the car was insured for Rs. 4,30,000/-. As it is a case of total loss, the complainant is entitled to receive the entire money. The case is, therefore, allowed for an amount of Rs. 4,30,000/- with an interest @ 18% p.a. It appears from the letter dated 3.9.1992 from the Sub-Inspector, Barhia P.S. that the fact of permanent loss of the vehicle was intimated to the United India Insurance Company on the said date i.e. 3.9.1992. The claim ought to have been settled within 2/3 months from that date. So, in our opinion the interest should run from 1.1.1993 on the principal amount of Rs. 4,30,000/- until payment. Other claims of the complainant are disallowed. The opposite parties 1,2 & 3 are, therefore, directed to pay Rs. 4,30,000/- to the complainant with an interest @ 18% p.a. from 1.1.1993 until payment, within a month after receipt of this order.

The case is, thus, disposed of. There will be no order for cost.

Complaint allowed.