

SILIGURI CIRCUIT BENCH
of
WEST BENGAL STATE CONSUMER DISPUTES REDRESSAL COMMISSION
2nd MILE, SEVOKE ROAD, SILIGURI
JALPAIGURI - 734001

First Appeal No. A/25/2023
(Date of Filing : 22 Feb 2023)
(Arisen out of Order Dated 28/06/2022 in Case No. CC/60/2018 of District Cooch Behar)

1. THE BRANCH MANAGER, CANARA
 BANK, TUFANGANJ BRANCH
 TUFANGANJ BRANCH, P.O TUFANGANJ, P.S.
 TUFANGANJ
 COOCHBEHAR-736159
 WEST BENGAL

.....Appellant(s)

Versus

1. ABANINDRA BARMA & OTHER
 S/O LATE JITENDRA NATH BARMA, VILL.
 CHARALJANI, P.O CHARALJANI, P. S. TUFANGANJ.
 COOCHBEHAR-736156
 WEST BENGAL

2. THE BRANCH MANAGER, UNITED INDIA INSURANCE
 COMPANY LTD., COOCHBEHAR BRANCH
 UNITED INDIA INSURANCE COMPANY LTD,
 COOCHBEHAR BRANCH ,M.J.N. ROAD, P.O.
 COOCHBEHAR.
 COOCHBEHAR-736101
 WEST BENGAL

.....Respondent(s)

BEFORE:

HON'BLE MR. KUNDAN KUMAR KUMAI PRESIDING MEMBER
HON'BLE MR. SWAPAN KUMAR DAS MEMBER

PRESENT:

Dated : 21 Jun 2024

Final Order / Judgement

KUNDAN KUMAR KUMAI

This is an appeal u/s 15 of the Consumer Protection Act, 1986, preferred against the final order dated 28/06/2022, passed by the Ld. DCDRF, Cooch Behar in CC/60/2018.

Brief fact of the Appellant's case is that, the Respondent no.1/Complainant, being a small businessman had purchased a Hero Super Splendor Motor Cycle being no. WB-64K-6818, which was registered on 03/02/2015, with finance from the Appellant/Bank. On 20/07/2017 at about 1:15 PM – 2 PM, the above motor cycle with documents, had been stolen from the gate of Natabari Hospital under Tufangunj PS, when the Respondent no.1/Complainant had been taking tea, from a nearby stall. The Respondent no.1/Complainant, had searched for the motor cycle and on not finding the same, had lodged a written complaint before the Tufangunj PS, but failed

to mention the date in the FIR as 20/07/2017. On 21/07/2018, the Appellant/Bank had been informed, being the agent of Respondent/OP no.1, as the Policy being no.0351013116P114949592 was valid from 08/02/2017 to 07/02/2018. The Respondent no.1/Complainant, received letter from the Respondent/OP no.1 dated 14/08/2017, wherein the Respondent/Complainant, was requested to file the documents, to show the reasons for delay, in intimating the Police on 01/08/2018, when the occurrence had taken place on 20/07/2017. On receiving the letter, the Respondent/Complainant had gone to the Police Station, to find that the police had registered the case on 01/08/2017, even though the Respondent/Complainant had lodged the complaint verbally on 20/07/2017. The Respondent/Complainant further received a letter dated 09/10/2017 repudiating the claim. On 29/11/2017 the Respondent/Complainant issued a letter explaining that the complaint had been lodged on 20/07/2017, but as there was no response the Respondent/Complainant lodged a complaint before the Ld. DCDRF, Cooch Behar praying for necessary relief from the Respondent/OP no.1.

The Respondent/OP no.1 appeared to contest the claim by filing written version wherein the case of the Complainant was not only denied, but also stated that the Respondent/Complainant had violated the terms and conditions of the Insurance Policy, when he did not intimate the occurrence of theft immediately after the occurrence on 20/07/2017. In fact, the Respondent/OP no.1 had been intimated about the matter by the Appellant/Bank. Hence, for such violation the Respondent/Complainant was not entitled to the claim as prayed.

The Appellant/Bank did not appear to contest and as such the case had been heard ex-parte, against them.

After going through the materials and evidence on record, the Ld. DCDRF, Cooch Behar passed the impugned order directing the Respondent/OP no.1 to pay a sum of Rs.42,340/- (Rupees forty-two thousand three hundred forty) only and the Respondent/OP no.1 and the Appellant/Bank to jointly and severally pay and the Respondent/OP no.1 could recover it from the Appellant/Bank, Rs.10000/- (Rupees ten thousand) only and Rs.20000/- (Rupees twenty thousand) only for mental pain and agony and for deficiency in service respectively, within 30 days from the date of the order failing which interest @ 6% per annum would be levied till the date of realization.

Being aggrieved by the above order the Appellant/Bank preferred this instant appeal on the ground that the Ld. DCDRF, Cooch Behar had erred in law and facts, while passing the impugned order.

Decisions with Reasons

Ld. Advocate for the Appellant/Bank at the time of final hearing, had submitted that the role of the Appellant/Bank was limited to the extent of providing finance to the Respondent/Complainant, for purchasing the motor cycle in question and the same had been cleared, prior to filing of the case before the Ld. DCDRF, Cooch Behar. It was further argued that the impugned order had been passed in a mechanical manner, without prescribing any reasons for the involvement of the Appellant/Bank, especially when the Respondent/Complainant had not prayed for any specific directions upon the Appellant/Bank. Under the circumstance, the involvement of the Appellant/Bank could not be equated with the deficiency of service of the Respondent/OP no.1 and therefore the instant appeal be allowed.

The Respondent/Complainant did not appear to contest the appeal and therefore the appeal was heard ex-parte, against him.

Ld. Advocate for the Respondent/OP no.1, on the other hand, had argued that violations of the terms and conditions of the Policy by the Respondent/Complainant, had resulted in the Policy Claim, being repudiated and therefore unfair trade practice cannot be levied upon the Respondent/OP no.2.

At the very outset, the complaint, filed before the Ld. DCDRF, Cooch Behar, reveals that the Respondent/Complainant had filed the claims for compensation from the Respondent/OP no.1 only, whereas no prayer was made against the Appellant/Bank. Therefore, when the impugned order was passed against the Appellant/Bank as well as the Respondent/OP no.1, the Ld. DCDRF, Cooch Behar, was duty bound to give reasons for passing the impugned in the manner it was done so, but from the impugned order there are no reasons emanating to point out the involvement of the Appellant/Bank in the commission of deficiency of service, causing mental pain and agony to the Respondent/Complainant. The facts also speak that the involvement of the Appellant/Bank was limited to the extent of providing finance, to the Respondent/Complainant, in purchasing the vehicle in question. Thereafter, the repudiation of the claims was solely between the Respondent/Complainant and the Respondent/OP no.1, leading to the dispute of the instant case, with no role of the Appellant/Bank, being attributed. Under the circumstance, the impugned order needs to be modified with regard to the directions passed on the Appellant/Bank and the entire impugned order should be read as directions upon the Respondent/OP no.1 only, without any compliance by the Appellant/Bank being called for. As a result, the instant appeal succeeds.

It is therefore

ORDERED

That the instant be and the same is allowed on contest, but without cost.

The impugned order stands modified to the extent stated above in the body of the judgement.

Copy of the judgement be sent to the parties free of cost.

Copy of the judgement be sent to the Ld. DCDRF, Cooch Behar for necessary information.

Statutory deposits be returned from whom received.

Jt. Registrar, Siliguri Circuit Bench of WBSCDRC, to do the needful.

**[HON'BLE MR. KUNDAN KUMAR KUMAI]
PRESIDING MEMBER**

**[HON'BLE MR. SWAPAN KUMAR DAS]
MEMBER**