(1997) 10 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

AEROFLOT SOVIET AIRLINES APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 14-10-1997

Acts Referred:

Citation : 1998 1 CPJ 133

Hon'ble Judges : A.P.Chowdhri , Desh Bandhu J.

Final Decision : Complaint dismissed

Judgement

1. BRIEF facts of the case are that Aeroflot Soviet Airlines, complainant for short, was registered owner of L.G.V. Toyota Coaster Diesel Delux bearing Registration number DEP-1272, 1988, Model. The vehicle was in private use of the complainant and it was comprehensivehy insured with United India Insurance Company Limited, hereinafter refered to as the opposite party for the period 20.5.1990 to 19.5.1991 for a sum of Rs. 3,50,000/including accessories namely AC and Casset Stereo. On 25.9.1990 while taking the crew to Hotel Maurya Sheraton, the bus was gheraod by a mob at the crossing of Rangpura Chowk near Mahipalpur. The mob de-flated the tyres of the bus, forced the driver and crew to come down and cause extensive damages by the throwing stones and ultimately set fire to the same. A report was lodged on the same day with P.S. Mahipulpur under Section 436, IPC. Claim was lodged with the opposite party on the following day. The complainant in course of time submitted a regular claim alongwith an estimate of repairs. The opposite party appointed Mr. K.R. Arora, Surveyor. The Surveyor obtained consent of the complainant to settle the claim on total loss basis on a payment of Rs. 3,50,000/- less 6% on account of depreciation. On 30.10.1991, the opposite party informed the complainant that Certificate of Fitness of the bus had expired on 22.5.1990 and the complainant was requested to inform them whether the said certificate of fitness had been renewed thereafter. The claim having not been settled Legal Notice dated 30.1.1993 was served. The opposite party replied by its letter dated 11.2.1993 that since the complainant had not been able to furnish fitness certificate of the bus as on date of the loss, the opposite party was constrained to close the file.

Another Legal Notice dated 2.3.1993 was served on the opposite party in reply to which the Insurance Company denied its liability. The present complaint was filed on 13.9.1993 alleging deficiency in service on the part of the Insurance Company and claiming Rs. 3,50,000/- as compensation besides interest @ 18% per month from 25.9.1990, the date of loss in addition to further suitable compensation and costs of proceedings.

2. IN the written version filed by the opposite party, it was stated that the complaint was barred by limitation. The opposite party by its letter dated 9.12.1992 had called upon the complainant to furnish fitness certificate of the vehicle within 15 days where after the claim "shall be deemed to have been repudiated". The complainant failed to supply the said certificate and the claim stood repudiated in December, 1992. On merits it was stated that the INsurance Company was not liable to indemnify the complainant in view of the Clause 3(l)(a) of the General Exceptions r/w Limitations as to use provided in the terms and conditions of the policy and relevant provisions of the Motor Vehicles Act. In the rejoinder, the complainant traversed the averments of the opposite party and reiterated the averments made in the complaint.

The complainant filed affidavit of Mr. S.K. Miglani, Manager Sales and Research by way of evidence and the op posite party relied on the affidavit of Mr. V.S. Chopra, Dy. Manager (Legal) of the Insurance Company.

3. WE have heard Mr. H.C. Dhanda, Advocate for the complainant and Mr. S.C. Sharda, Advocate for the respondent and have carefully gone through the record including the written notes submitted by the parties. Article 44(b) of the Limitation Act, 1963 lays down as under : (b) On a Policy of Insurance when the sum insured is payable after proof of the loss has been given to or received by insurer Three years The date of occurrence causing the loss or where the claim on the policy is denied, either partly or wholly, the date of such denial The contention of learned Counsel for the respondent is that loss in the present case occurred on 25.9.1990 and the present complaint was filed on 13.9.1993. The period of limitation prescribed under Section 24A which was brought on the Statute Book by Amending Act of 1993 w.e.f. 18.6.1993 prescribed a period of two years and the complaint was barred by limitation, it was pointed out that as the complaint was instituted after the enactment of Section 24A the period of limitation prescribed under Section 24A would govern the present case. WE find no merit in this contention. Implied repudiation in this case took place in December, 1992 and the present complaint was filed in September, 1993 and in our view, the complaint is within limitation. The matter can be viewed from another angle. A copy of the proforma prescribed for ''Commercial Vehicles Insurance ''B'' Policy - passengers carrying vehicle has been placed on record. Clause 7 of the conditions therein lays down that claim shall be filed by the insured within 12 calender months from the date of disclaimer. In the facts of the present case, the Insurance Company denied its liability in December, 1992 and the present complaint was filed in September, 1993. WE, therefore, find that the

complaint is within limitation. The claim was repudiated on the ground that bus did not have certificate of fitness after 22nd May, 1990 and the loss occurred on25.9.1990. The admitted position is that on the date of loss, the complainant did not have certificate of fitness regarding the bus in question. Under the General Exceptions, it has been laiddown in the policy that the Company shall not be liable in respecc of any accident, loss, damage and/or liability caused or incurred whilst the vehicle is : (a) Being used otherwise than in accordance with the limitations as to use (vide Clause 1(3)(a) under the General Exceptions. In the opening part of the policy "limitations as to use" have been provided in the form of a Box which reads as under : - Limitations as to Use : Use only for carriage of passengers in accordance with the terms (contract carriage or stage carriage) issued within the meaning of the Motor Vehicle Act, 1988. Sections 66 of the Motor Vehicles Act lays down that the owner of the vehicle shall not use or permit the use of the vehicle as a transport vehicle in a public place, save in accordance with the conditions of the permit granted by the State Transport Authority and Section 84 enumerates General Conditions which shall be deemed to be attached to all the permites issued under Section 86. Under Clause (a) of Section 84, the vehicle to which the permit relates must carry a certificate of fitness issued under Section 56 of the Motor Vehicles Act, 1988. A reading of the above sections alongwith Sections 39, 53 and 56 of the Motor Vehicles Act it is abundantly clear that the vehicle can be used in a public place only if it carries amongsts other, a certificate of fitness issued by the State Transport Authority coupled with the permit. In the absence of such a certificate, the vehicle shall not be deemed to be registered and shall not be deemed to carry a valid permit and cannot, therefore, be used in a public place. The contention of the learned Counsel for the respondent, therefore, is that if the vehicle had not been brought on the road for want of certificate of fitness, the loss would not have occurred. In other words, the bringing of the vehicle on the road without a valid and subsisting certificate of fitness was directly related to the occurrence of the loss and the Insurance Company was justified in repudiating the claim.

4. THE contention of the learned Counsel for the complainant is that there is a well understood distinction between two categories of insurances which are comprised in the insurance policy namely, (i) own damage, (ii) damage or risk to third parties. It was because of this distinction that in Complete Insulation Pvt. Ltd. v. New India Insurance Company Ltd., I (1996) CPJ 1 (SC)=1996 ACJ 95 (SC) it was held that whereas there was a deemed transfer of the ownership of the vehicle in favour of the transferee by virtue of Section 157 of the Motor Vehicles Act insofar as third parties are concerned, there was no such automatic transfer insofar as "own damage" is concerned. Another decision relied on this distinction is National Insurance Company Ltd. v. Jugal Kishore,1988 ACJ 270. THE same distinction was referred to in New India Insurance Company Ltd. v. Smt. Shanti Bai and Others, AIR 1995 SC 1113. Further contention of Mr. Dhanda is that the provisions of the insurance policy will have to be read in a manner that the provisions regarding plying of the vehicle under a Route Permit

were relevant only for the purposes of Section 149 and had nothing to do with "own damage" cliam. It has further been contended that even if the vehicle is brought on road in violation of the aforesaid provisions of the Motor Vehicles Act, it did not cease to be a property in respect of which insurance had been taken and if the property was damaged the Insurance Company was liable to indemnify the loss. In the alternative, it has been submitted that there is no nexus between the violation to renew the Certificate of Fitness and the occurrence of the loss. In the present case, the stationary vehicle was burnt by mob carrying on anti-Mandal demonstration and the loss had nothing to do with the road worthiness of the vehicle and its permit. Reliance has been placed on S.V. Nagaraju v. Oriental Insurance Company Ltd., JT 1996 (6) SC 32 in which the exclusion relating to carriage of specific number of persons was read down by their Lordship of the Supreme Court so as to serve the main purpose of the policy i.e. to indemnify the damage caused to the vehicle. The contention of Mr. Sharda, learned Counsel for the respondent, on the other hand, is that in the absence of the Certificate of Fitness, the vehicle, according to the provisions of the Motor Vehicles Act was deemed to be unregistered and the same could not be brought in a public place. The effect of bringing the vehicle in a public place in contravention of the provisions of the Motor Vehicles Act in the facts and circumstances of the case absolved the Insurance Company of its liability according to the terms and conditions of the policy. We have given anxious consideration to the respective submissions and we find force in the contention of Mr. Sharda. This is not a case in which damage may have been caused to the vehicle while it was standing in private premises. The damage was caused on a public road when the bus was bringing the crewmembers to Maurya Sheraton Hotel. If the bus had not been brought on the public road on account of absence of certificate of fitness, the incident resulting in loss could be cleariy avoided. In these facts of the case, we find that the repudiation made by the Insurance Company was valid and justified. There is no deficiency in service and the present complaint must fail. The same is accordingly dismissed . In the peculiar facts and circumstances of the case, we make no order as to costs. Complaint dismissed.

