(2016) 12 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

Case No : 3094 of 2016

AJAY NAVANATH SONTAKKE S/O. NAVANAH SONTAKKE — APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. & ANR. — RESPONDENT

Date of Decision : 13-12-2016

Acts Referred:

Motor Vehicles Act, 1988, Section 3, Section 3, Section 15, Section 15, Section 5, Section 5 - Necessity for drivin

Citation : (2016) 12 NCDRC CK 0008

Hon'ble Judges : Rekha Gupta, Anup K Thakur

Advocate : Preetam Shah, Vatsalya Vigya

Judgement

1. The present revision petition no. 3094 of 2016 has been filed against the judgment dated 05.05.2016 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai (''the State Commission'') in First Appeal no. 86 of 2015.

2. The brief facts of the case as per the petitioner/ complainant are that he had a TATA Indica Vista no. MH 13 AC 8570 for the personal use of his family. He had taken an accident insurance policy no. 15130031110100000684 from the respondent/ opposite party/ insurance company for the period from 05.05.2011 to 04.05.2012. The vehicle met with an accident on 10.07.2011 and sustained considerable damage. He gave information of the same to the respondent and the respondent had done inspection of the accident vehicle. The petitioner got the said vehicle repaired from Sterling Motors at a cost of Rs.70,690/-. Thereafter the petitioner filled up the insurance claim form and made demand of the amount. On 13.09.2011 the respondent sent a notice to the petitioner saying that at the time of accident the driver had no valid driving licence and hence, they informed that the insurance was being denied.

3. The petitioner has made the following prayer:

a. The TATA Indica Vista no. MH 13 AC 8570 belonged to the petitioner which was covered under insurance with the respondent which was sent for repair after the accident for which Rs.70,690/- was spent and claimed against insurance; but though the petitioner was the licence holder, the said claim was denied and hence, order may please be passed that the amount of Rs.70,690/- may be given to the petitioner by the respondent along with interest @ 12% per annum.

b. A sum of Rs.10,000/- may be paid to the petitioner from the respondent lump sum towards the mental agony sustained by the petitioner

c. Order may please be passed that the respondent should pay a sum of Rs.10,000/- lump sum to the petitioner towards the cost of the application and advocate fee etc.

d. Any other order in the interest of justice may please be passed.

4. The respondents stated in their written statement that the policy given by them to the petitioner was subject to the terms and conditions of the insurance policy. At the time of accident the driver did not have a valid driving licence. Hence, there was violation of the terms and conditions of insurance policy and, therefore, the insurance of the petitioner was denied. In this regard on 13.09.2011 a letter was sent to the petitioner and this was informed to him.

5. The District Consumer Disputes Redressal Commission, Solapur (''the District Forum'') passed two orders. Vide order dated 12.09.2014 a three Member Bench had passed the following order:

i. "The complaint of the complainant is partly allowed;

i. The opponent should pay to the complainant a sum of Rs.53,077/- towards the amount of insurance of the TATA Indica Car no. MH 13 AC 8570 as mentioned hereinabove along with interest thereon @ 8% per annum since the date of filing of the complaint, i.e., from 16.04.2012;

ii. Compliance of this order is to be made within 45 days from the date of this order failing which on the said amount from the date of filing of complaint, i.e., from 16.04.2012 till receipt of full amount the opponent would be liable to pay interest @ 12% per annum;

i. The opponent should pay to the complainant a sum of Rs.2000/- is to be paid and cost of complaint Rs.1000/- within 30 days from the date of this order".

6. A Single Member Bench of the District Forum, Solapur on the same date has passed the following order:

"The complaint of the complainant is dismissed. Both parties should bear their respective costs".

7. Aggrieved by the majority order, the respondent/ opposite party/ insurance company filed an appeal before the State Commission. The State Commission while allowing the appeal has observed as under:

"We find that in none of these cases referred by the majority view of the learned District Forum there was any identical case in which, the motor driver was driving the insured vehicle without any valid motor driving licence. Although, in case of breach of condition of insurance policy, it is desirable that the insurer ought to have settled the claim on non-standard basis, it is not legally obligatory upon the insurance company particularly, in a situation wherein insured vehicle was driven without any valid motor driving licence under Section 3 of the Motor Vehicle Act, 1988. It is legally necessary for any person to hold valid motor driving licence while driving a motor vehicle in any public place. It is also clarified that any person, including the insured, having valid motor driving licence can drive a motor vehicle although, such person who was driving without licence is not disqualified from obtaining renewal of his licence, which expired in the past. Legal obligation on the part of the driver cannot be overlooked. No doubt, in the present case, subsequently the driver obtained motor driving license but, the contract of insurance, which the insured had with the insurer, ought to be restricted to its terms and conditions as appearing on the bare reading of it. Insurance policy itself clearly mentions about person or classes of persons entitled to drive with a clarification that any person including the insured provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence. Provided also that persons holding any effective learner''s license may also drive the vehicle and that such person satisfies the requirement of Rule 3 of the Central Motor Vehicles Rules 1988. However, in the present case, we find that admittedly on the date of incident, there was no valid driving licence with the driver and the evidence sought to be adduced that subsequent to the incident of accident, the driver had approached for renewal of effective driving licence. Material question that arises in this case is as to whether on the date of accident, the driver was holding an effective and valid driving licence to drive the insured vehicle? Answer to this question clearly appears in the negative as, there is an admission on the part of the respondent/ complainant himself that inadvertently license was not renewed but, thereafter it was subsequently renewed. Thus, when breach of terms and conditions of the insurance policy are prima-facie clear, there was justification to repudiate the liability under the insurance policy by the insurer in the facts and circumstances of the case. Therefore, the minority view of the learned District Forum, as recorded by learned Smt Babita M Mahant Gajare, Member appears to be just and correct. That being so, we uphold the minority view and reject the majority view of learned District Forum. In the result, therefore, impugned order by majority view is hereby set aside and consequently, the consumer complaint stands dismissed. Parties shall bear the own costs. With these directions, present appeal is hereby allowed accordingly".

8. Hence, the present revision petition.

9. The revision petition has been filed with a delay of 24 days. We have gone through the reasons given in the application for condonation of delay and the delay is condoned.

10. We have heard the learned counsel for the petitioner. He contended that the State Commission''s order should be set aside because they dismissed the complaint merely because, there was a gap in the renewal of licence of the driver and on the date of accident, the petitioner was not having the driving licence, but the same was in the process of renewal. He however, admitted at the bar that the original driving licence had expired on 24.06.2010 and the driving licence was renewed with effect from 17.08.2011 so on the date of accident, i.e., 10.07.2011 the driver did not have a valid driving licence. He also admitted that the petitioner/ complainant had not applied for renewal of licence within 30 days but after the expiry of 30 days of driving licence.

11. We have carefully gone through the record. Section 3 of the Motor Vehicles Act, 1988 reads as under:

"3. Necessity for driving licence - (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than [a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of the section 75] unless his driving licence specifically entitles him so to do.

(2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government".

Section 5 - Responsibility of owners of motor vehicles for contravention of sections 3 and 4 - No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle.

Section 15 of the Motor Vehicles Act, 1988 reads as under:

"15. Renewal of driving licence - (1) Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry;

Provided that in any case where the application for the renewal of a licence is made more than thirty date after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal".

12. Having noted the relevant statutory provisions we now advert to the facts at hand. In the instant case, it is noted that on the date of accident the driver did not hold a valid driving licence as it has expired on 24.06.2010. The driver had applied for the renewal of the driving licence after 30 days and it was renewed with effect from 17.08.2011 and as such on the date of accident, i.e., 10.07.2011 the driver did not have the valid driving licence and hence, he violated the terms and conditions of the insurance policy. The respondent/ opposite party was justified in repudiating the claim.

13. The Hon''ble Supreme Court in the case of New India Assurance Co. Ltd., vs Suresh Chandra Aggarwal decided on 10 th July 2009 has held as under:

"16. In the instant case, as noted above, as per the certificate issued by the licensing authority, the driving licence of the deceased driver had expired on 25th October, 1991 i.e. four months prior to the date of accident on 29th February, 1992 and it was renewed with effect from 23rd March, 1992. It is not the case of the claimant that the driver had applied for renewal of the licence within 30 days of the date of its expiry. On the contrary, it is the specific case of the appellant that the 9driving licence was renewed only with effect from 23rd March, 1992. From a plain reading of Section 15 of the Act, it is clear that if an application for renewal of licence is made within 30 days of the date of its expiry, the licence continues to be effective and valid without a break as the renewal dates back to the date of its expiry. Whereas, when an application for renewal is filed after more than 30 days after the date of its expiry, proviso to sub-section (1) of Section 15 of the Act, gets attracted and the licence is renewed only with effect from the date of its renewal, meaning thereby that in the interregnum between the date of expiry of the licence and the date of its renewal, there is no effective licence in existence. The provision is clear and admits of no ambiguity. However, the stand of the claimant before the District and State Fora as also before us was that since the deceased driver was holding a valid licence and had not been disqualified from holding an effective licence, the stipulation in the afore-extracted condition was not infringed. In our view, the argument is stated to be rejected. Admittedly, having failed to apply for renewal of the driving licence within 30 days from the date of its expiry in terms of Section 15 of the Act, the licence could not be renewed with effect from the date of its expiry and therefore, between the period from 26th October, 1991 to 22nd March, 1992, the deceased driver had no valid and effective 1 0driving licence as contemplated under Section 3 of the Act. We are convinced that during this period, he did not hold at all an effective driving licence, as required in the terms and conditions governing the policy on the date of accident i.e. 29th February, 1992.

17. As a matter of fact, in view of the clear mandate of Section 3 of the Act, the deceased driver was not even permitted to drive the insured vehicle in a public place. Furthermore, the claimant not only committed breach of the terms of the policy, he also violated the provisions of Section 5 of the Act by entrusting the vehicle to a person who did not hold a valid licence on the date of the accident. Although it was not pleaded by learned counsel for the appellant, but we fail to understand as to how the licence was and could be renewed w.e.f. 23rd March, 1992 after the death of the licence-holder on 29th February, 1992. In our opinion, therefore, the appellant was not liable to indemnify the claimant for the loss suffered by him in the accident of the insured vehicle.

18. We are fortified in our view by the decision of this Court in the case of Jarnail Singh (supra). In that case also, the driving licence of the driver, who drove the vehicle which got involved in the accident, had expired on 16th May, 1994. The

accident took place more than five months thereafter i.e. on 20th October, 1994 and the driving licence 1 1 was renewed only with effect from 28th October, 1996. On these facts, it was held that proviso to sub-section (1) of Section 15 applied; the driver had no licence to drive the vehicle on the date of accident; the condition in the policy identical to the one in the present case was violated and therefore, the Insurance Company was not liable to pay any amount to the insured.

21. For the aforesaid reasons, in our opinion, the decision of the National Commission cannot be sustained. Accordingly, the appeal is allowed 1 3 and the impugned order is set aside. There will, however, be no order as to costs".

The facts apply to this case .

14. Thus, we find that no jurisdictional or legal error has been shown to us in the impugned order to call for our interference under Section 21 (b) of Act. The order of the State Commission does not call for any interference nor does it suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity. Thus, the present revision petition is dismissed and we uphold the order of the State Commission.