(2013) 09 NCDRC CK 0075

In the National Consumer Disputes Redressal Commission

ANITA JAIN APPELLANT

Vs

ORIENTAL INSURANCE CO. LTD RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Citation : 2013 0 NCDRC 862 : 2013 4 CPR 199

Hon'ble Judges : J.M.MALIK , S.M.Kantikar J.

Advocate : SANJAY RELAN , NEERJA SACHDEVA

Judgement

1. THIS is a case of an accident of a Maruti Car, owned by Sh.Bijender Batra, son of R.K.Batra. He was travelling from Gwalior to Sonepat, on the night falling between 22 -23 April, 2004, along with Mr.Rakesh Jain, who was plying the car, which met with an accident and both of them succumbed to their injuries. The accident took place near Palwal. FIR was registered and intimation was given to the Oriental Insurance Co.Ltd, the insurer. The LRs of Rakesh Jain, namely, Smt.Anita Jain, his wife, Master Mayukh Jain, his son and Ms.Deepanjali Jain, his daughter, filed the claim, which was repudiated on the ground that their claim was not covered under the said policy.

2. A complaint was filed before the District Forum. The District Forum allowed the complaint. Oriental Insurance Company, the respondent/OP preferred First Appeal before the State Commission. Their main defence was that the instant case was covered under provisions of IMT -16. The State Commission allowed the appeal and dismissed the complaint.

3. THE petitioners/complainants filed the revision petition. We have heard the counsel for the parties. The entire argument swirls around the question, "Whether the complainants are not entitled to claim due to IMT -16?". The said provision of law, runs as follows: - "IMT -16. PERSONAL ACCIDENT TO UNNAMED PASSENGERS: The insurer undertakes to pay compensation for bodily injuries of any passenger, other than the insured and paid driver and cleaner whilst mounting into, dismounting from or travelling in, but not driving the insured motor car and caused by violent, accidental, external and visible means which

independently of any other cause shall within three calendar months of the occurrence of such injury result in death".

4. DURING the pendency of the revision petition, it was brought to our notice that IMT -16 has been amended, since long. Our attention was invited towards the said amendment, dated 04.10.2005. The same is reproduced, as under : - "Ref : IMT/09/05 Date : 04.10.2005 Re :Endorsement IMT -16PA cover to unnamed passengers other than insured and the paid driver and cleaner. (For vehicles rated as private cars and motorized two wheelers (not for hire or reward) with or without side car) Insurer''s attention is drawn to Endorsement IMT -16 of India Motor Tariff on page 196. It has been decided to delete the words "but not driving" from the first para (9th line) of the above endorsement.

The modified para shall read as under : - "In consideration of the payment of an additional premium, it is hereby understood and agreed that the insurer undertakes to pay compensation on the scale provided below for bodily injuries hereinafter defined sustained by any passenger, other than the insured/and/or the paid driver, attendant or cleaner and/or a person in the employ of the insured coming within the scope of the Workmen''s Compensation Act, 1923 and subsequent amendments of the said Act and engaged in and upon the service of the insured at the time such injury is sustained, whilst mounting into, dismounting from or travelling in the insured motor car and caused by violent, accidental external and visible means, which independently of any other cause shall, within three calendar months of the occurrence of such injury result in. Insurers are requested to inform their operating offices, suitably. Asstt.Gen.Manager".

There is another Circular, dated 15.09.2008, the relevant para of which, is reproduced below: - "Ref : IMT/01/2008 ??Date : 15.09.2008 Re :Endorsement IMT -16PA cover to unnamed passengers other than insured and the paid driver and cleaner. (For vehicles rated as private cars and motorized two wheelers (not for hire or reward) with or without side car) Insurer''s attention is drawn to Circular No.IMT/09/05 dated 4th October, 2005 wherein the words "but not driving" had been deleted from the first para (9th line) of Endorsement No.16 (page no. 196 of erstwhile India Motor Tariff). The modified para reads as under: In consideration of the payment of an additional premium it is hereby understood and agreed that the ifnsurer undertakes to pay compensation on the scale provided below for bodily injuries hereinafter defined sustained by any passenger other than the insured and/or the paid driver attendant or cleaner and/or a person in the employ of the insured coming within the scope of the Workmen''s Compensation Act, 1923 and subsequent amendments of the said Act and engaged in and upon the service of the insured at the time such injury is sustained whilst mounting into, dismounting from or travelling in the insured motor car and caused by violent, accidental external and visible means which independently of any other cause shall within three calendar months of the occurance of such injury result in. It has now been decided by the Competent

Authority that the Circular No.IMT/09/05, dated 04.10.2005, would be effective from 01.07.2002, i.e., the date of implementation of the revised India Motor Tariff. Insurers are requested to inform their operating offices, suitably. Deputy General Manager -in -Charge".

5. COUNSEL for the respondent, insurance company, did not pick up a conflict with these notifications. Under these circumstances, it is clear that the order passed by the State Commission is not legally sustainable.

6. THE next submission made by the counsel for the respondent/OP was that as per the rules, the petitioner has to deposit Rs.100/ - for his paid driver, only then, this provision will come into play. We have seen the repudiation letter. This is not one of the grounds mentioned therein. Again, it does not stand established that Rakesh Kumar was the paid driver of Mr.Bijender Batra. The counsel for the respondent has, in vain, tried to make bricks, without straw. The repudiation letter is dated 17.03.2005.

7. THE above said circular/notification came into force in the years 2005 -2008. It was the duty of the insurance company not to drag on this case unnecessarily. The State Commission decided this case on 06.07.2012. These Circulars were kept under the hat, before the State Commission by the insurer. It smacks of malafide intention on the part of the respondent. Consequently, we accept the revision petition, set aside the order of the State Commission and restore the order rendered by the District Forum, with costs, which are assessed at Rs.25,000/ -. The opposite party is directed to comply with the order of the District Forum, immediately. The costs of Rs.25,000/ - , be paid to the complainant, within 60 days from the receipt of the order, failing which, it will carry interest @ 9% p.a., till realization. Revision petition is disposed of in above terms.

