
(2005) 05 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

Asha Khurana

APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LIMITED

RESPONDENT

Date of Decision : 26-05-2005

Acts Referred:

Citation : 2005 4 CPJ 304

Hon'ble Judges : K.K.SRIVASTAVA , MajGen , S.P.Kapoor , DEVINDERJIT DHATT J.

Judgement

1. THIS is complainants appeal filed against impugned judgment and order dated 16.9.2004 passed by District Consumer Disputes Redressal Forum -II, U.T. Chandigarh (for short hereinafter to be referred as District Forum) in Complaint Case No. 66 of 2002, Smt. Asha Khurana v. The New India Assurance Company Limited.

2. A claim was filed by the appellant before the respondent -The New India Assurance Company Limited (for short hereinafter to be referred as Assurance Company) regarding the truck bearing registration No. HR -03 -GA -0064, which had been insured vide Cover Note No. 265644 covering risk for the period from 10.10.1997 to 9.10.1998, which was involved in an accident that took place on 11.1.1998 in which the driver of the truck, namely, Shri Beant Kumar died at the spot. The information regarding the accident was given to the police at Police Station, Kharar in the State of Punjab. The respondent Assurance Company did not settle the claim due to non -supply of the particulars regarding the driving licence before the Surveyor appointed by the Assurance Company and was treated as closed for want of the same. Feeling aggrieved by the non -settlement of the claim and treating it as closed, the appellant filed the complaint, which was subsequently amended and corrected and amended complaint was filed on 11.9.2003 wherein the complainant prayed for issuance of a direction to the Assurance Company/OP to pay a sum of Rs. 1,52,360.37 plus interest @ 18% per annum from the date of accident i.e., 11.1.1998 till realisation. The aforesaid amount is the costs of repair of the damaged truck. The truck was insured comprehensively vide cover note aforesaid. In Para No. 4 of the amended

complaint, it was specifically mentioned that the truck driver was holding a valid driving licence for driving the said truck. This claim was dismissed by the District Forum on the ground that the Assurance Company did not commit any deficiency in service and reliance was placed on the case law reported as Jagdish Parsad Dagar v. Sr. Divisional Manager, LIC, II (1992) CPJ 493 (NC) and Zenith Computers Ltd. v. The New India Assurance Co. Ltd., I (1995) CPJ 144 (NC)=1995 (2) CON.LT 94 (NC). The complainant felt aggrieved by the dismissal of the complaint by the District Forum vide order dated 16.9.2004 and has now filed this appeal on 29.11.2004.

3. THERE was delay of 26 days in filing the appeal, which was, on the application of the appellant, condoned vide order dated 20.1.2005 subject to payment of Rs. 200 as costs. The appeal was taken on board for hearing on merit. Copies of memo of appeal as well as other related documents were handed over to Mr. Jatin Talwar, Advocate for the respondent - Assurance Company. The record of the complaint case was summoned from the District Forum.

4. WE have heard the learned Counsel for the appellant Mr. Sandeep Suri, Advocate and the learned Counsel for the respondent Mr. Jatin Talwar, Advocate. We have also perused the impugned judgment and order and the record of the complaint case. While filing this appeal, an affidavit of Mr. Neeraj Sharma, Advocate, District Courts, Chandigarh dated 16.11.2004 was filed wherein he deposed in Para No. 3 as under: "3. That the said complaint was dismissed by the learned District Consumer Disputes Redressal Forum, Chandigarh and the copy of the order was received by the deponent on 4.10.2004 but the deponent did not inform Smt. Asha Khurana about the dismissal of the complaint and also did not supply the copy of the orders of the learned District Consumer Forum, Chandigarh, which he had received on 4.10.2004 till 15.11.2004."

5. THIS affidavit was sworn in on 16.11.2004 and the contents of Para Nos. 1 to 3 of the affidavit were verified as true and correct to his knowledge. Not only the factum of non -communication of the judgment was deposed to in the affidavit of Mr. Neeraj Sharma, Advocate, he filed another affidavit of the same date i.e., 16.11.2004 wherein he deposed in Para Nos. 3 and 4 as under: "3. That Smt. Asha Khurana also handed over all the relevant documents to the deponent, which was necessary for the filing of the complaint which included original D.D.R. No. 25 dated 26.12.1997 registered with P.S. Sector - 31, which was lodged for the loss of R.C. receipt of truck No. HR03 -GA -0064 and driving licence of Shri Beant Kumar. 4. That the deponent due to oversight and inadvertently did not annex the said D.D.R. along with the complaint and also did not mention the fact of lodging of D.D.R. for the loss of R.C. receipt and driving licence in the complaint nor informed about the same to the learned Forum, Chandigarh on inquiry by the Forum."

6. BASED on this affidavit, the appellant Smt. Asha Khurana prayed for permission to lead additional evidence vide application dated 29.11.2004 and filed her own affidavit of the even date. The application seeking permission to

lead additional evidence was allowed in view of the contents of the affidavit of Mr. Neeraj Sharma, Advocate vide order dated 10.3.2005 subject to the condition that it will be open for the respective parties to show the genuineness and otherwise of this document i.e., D.D.R. No. 25 dated 26.12.1997 of P.S. Sector 31, Chandigarh, which records, inter alia, the fact of the missing of driving licence of the driver. In this background, additional evidence was permitted to be led and further the contents of the affidavit of Mr. Neeraj Sharma, Advocate clearly showed that though Smt. Asha Khurana had handed over all the relevant documents to Mr. Neeraj Sharma, the deponent, which were necessary for filing the complaint and which included the D.D.R. aforesaid, Mr. Neeraj Sharma, the deponent due to oversight and inadvertently did not annex the said D.D.R. along with the complaint and also did not mention the fact of lodging of D.D.R. for the loss of R.C. receipt and driving licence in the complaint nor informed the same to the District Forum, Chandigarh on inquiry by the District Forum. The averments having been made in the affidavit of Mr. Neeraj Sharma have not been controverted. It is thus evidently clear that Mr. Neeraj Sharma, Advocate engaged by the appellant was furnished with all the relevant documents and instructions, which were not placed on the file nor disclosed by the Counsel Mr. Neeraj Sharma, Advocate to the District Forum on inquiry with the result that the District Forum had no occasion of taking into consideration the evidence led in the shape of D.D.R. regarding the factum of the loss of registration certificate receipt and driving licence of the driver late Shri Beant Kumar. The District Forum held that the respondent - Assurance Company had taken all these material circumstances into consideration while closing the case of the complainant and the same in the light of the judgments, referred to above, would not amount to deficiency in service.

7. IN nutshell, the case of the appellant was disallowed on the ground that the appellant failed to produce any credible evidence regarding the deceased driver late Shri Beant Kumar holding a valid driving licence. However, now as it appears from the filing of the D.D.R. as well as Para No. 4 of the affidavit of Mr. Neeraj Sharma, Advocate engaged by the appellant to conduct her case before the District Forum, the evidence, which has been permitted to be led in appeal, was never taken into consideration by the District Forum. Since the factum of the deceased driver late Shri Beant Kumar having a valid driving licence at the time of the accident, is the main dispute to be decided and since the additional evidence led has not been considered, we deem it appropriate that the District Forum be asked to decide the complaint case afresh after taking into consideration the evidence regarding the driving licence of the deceased driver Shri Beant Kumar by taking into consideration the additional evidence placed on record in appeal.

8. RESULTANTLY , the appeal is allowed. The impugned judgment and order of the District Forum are set aside. The complaint case is remanded to the District Forum -II, U.T., Chandigarh to allow the complainant to prove the D.D.R. which has been admitted in appeal, according to law and permit any such evidence vide

which the factum of the driver late Shri Beant Kumar holding a valid driving licence at the time of accident, is attempted to be proved. At the same time, the District Forum shall allow a reasonable opportunity to the Assurance Company, respondent to rebut the claim of the complainant regarding the deceased driver late Shri Beant Kumar holding a valid driving licence at the time of accident. The complaint case shall be decided by the District Forum expeditiously and preferably within the statutory period of 90 days as prescribed in Section 13(3 - A) Consumer Protection Act, 1986 as amended up -to -date. The parties are directed to appear before the District Forum -II, U.T., Chandigarh on 15.7.2005. Let the record of complaint case be sent back to the District Forum -II, U.T., Chandigarh for the date fixed. Copies of this order be supplied to the parties free of charge. Appeal allowed.