

(2016) 09 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Case No : 622 of 2013

BAGHEL SINGH S/O SHRI TEJA SINGH

APPELLANT

Vs

NATIONAL INSURANCE CO. LTD. THROUGH ITS BRANCH
MANAGER

RESPONDENT

Date of Decision : 16-09-2016

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 56](#), [Section 56](#), [Section 56\(1\)](#), [Section 56\(1\)](#) - Certificate of fitness of transport vehicles - Certificate of fitness o

Citation : 2016 4 CPR 222

Hon'ble Judges : B.C. Gupta

Advocate : Avanish Kumar, Animesh Sinha

Final Decision : Petition Dismissed

Judgement

1. This revision petition has been filed by the complainant, Baghel Singh under Section 21(b) of the Consumer Protection Act, 1986, against the impugned order dated 22.3.2012, passed by the Haryana State Consumer Disputes Redressal Commission, Panchkula (hereinafter referred to as the "State Commission") in First Appeal No.1605/2007, National Insurance Company Ltd. vs. Baghel Singh, vide which, while allowing appeal, the order passed by the District Consumer Disputes Redressal Forum, Sirsa on 21.5.2007 in Consumer Complaint No.439/2005, allowing the said complaint, was set aside.

2. The facts of the case are that the complainant, Baghel Singh is the registered owner of truck No.HR-46A-7454, which was the old registration number given by the Authorities in Haryana and subsequently, on 26.12.2003, the truck was registered at Hanumangarh (Rajasthan) and the registration no. became RJ-31G 5542. The said truck, which was insured with the opposite party (OP), National Insurance Company Ltd. from 18.10.2003 to 17.10.2004, met with an accident at Burdwan (West Bengal) on 29.10.2003. The report of the accident was lodged with the police and an intimation was also given to the insurance company. It is

stated that some repair work for the truck was done on the spot and for the remaining repairs, it was brought to Sirsa, Haryana. The complainant lodged claim with the insurance company for payment of bills for repairs, but the claim was repudiated by the OP, vide letter dated 16.4.2004 on the ground that the fitness certificate of the truck had expired on 17.10.2003. The case of the complainant is that at the time of expiry of the fitness certificate on 17.10.2003, the truck was away from the registering authority and on returning back, the truck was produced before the District Transport Officer, Hanumangarh. The fitness certificate was issued on 5.11.2003. Alleging deficiency in service on the part of the insurance company in repudiating the claim, the complainant filed the consumer complaint in question, seeking directions to the OP insurance company to pay Rs.80,000/- for damages to the truck, Rs.25,000/- as compensation against mental harassment and Rs.2,500/- as litigation cost with interest @ 18% per annum from the date of accident till realization.

3. The complaint was resisted by the OP insurance company by filing a written reply before the District Forum in which they stated that under the Motor Vehicles Act, it was obligatory on the complainant to take the vehicle to the competent authority to obtain the fitness certificate. The insurance company was bound by the terms and conditions of the insurance policy and hence, they had rightly repudiated the claim. The OP also stated that as per the report of the surveyor, the loss was to the extent of Rs.19,906/- against the estimated loss of Rs.60,380/-. Moreover, the vehicle was a commercial vehicle, being used for a commercial purpose and hence, the present complaint was not maintainable under the provisions of the Consumer Protection Act, 1986 as complainant did not fall under the category of "consumer". The OP stated that the complainant himself had admitted that there was no fitness certificate for the truck between the period 17.10.2003 to 5.11.2003. According to the OP, the concerned Authority in every District of any State is competent to give the fitness certificate.

4. The District Forum, after taking into account the averments of the parties, concluded that there was gross deficiency in service on the part of the insurance company in repudiating the claim. They directed the OP to pay a sum of Rs.60,380/- to the complainant with interest @ 9% per annum from the date of repudiation i.e. 16.4.2004 till realization and in addition, pay sum of Rs.10,000/- as compensation and Rs.2,500/- as cost of litigation. Being aggrieved against the order of the District Forum, the OP insurance company challenged the same by way of appeal before the State Commission. The State Commission allowed the appeal and set aside the order of the District Forum, vide their order dated 22.3.2012, relying upon the order of this Commission in *United India Insurance Company Ltd. vs. B. Ugandar, III* (2010) CPJ 253 (NC), and stating that under Section 56 of the Motor Vehicles Act, the truck in question, shall not be deemed to be validly registered in the absence of the fitness certificate. Being aggrieved against the said order of the State Commission, the complainant is before this Commission by way of the present revision petition.

5. During arguments, the learned counsel for the petitioner stated that the order passed by the State Commission was an ex parte order and the complainant had no opportunity to present his case before the State Commission. The learned counsel argued that the burden of proof was on the insurance company to prove that there was any breach of conditions of the contract between the parties. The learned counsel stated that the order passed by the District Forum was in accordance with law and payment had also been made by the OP in accordance with that order. The learned counsel relied upon the order passed by the Hon''ble Supreme Court in Lakshmi Chand vs. Reliance General Insurance Company, (2016) SCALE 213 stating that there had been no fundamental breach of terms and conditions of the policy and hence, he was entitled to get the claim. The learned counsel argued that even if, it was held that there was breach of conditions of the insurance policy, the claim should be allowed on non-standard basis. The learned counsel has drawn attention to an order passed by this Commission as well, in G. Kothainachiar vs. United India Insurance Company Ltd. IV (2007) CPJ 347 (NC) in support of his arguments. Referring to the delay in filing the present petition, the learned counsel argued that he could not file the petition earlier, as he was not in the knowledge of the impugned order at hand.

6. Per contra, the learned counsel for the respondent stated that there were no sufficient reasons to justify the delay in filing the petition before this Commission. He has drawn attention to a stamp affixed on the certified copy of the order of the State Commission, stating that a certified copy of the order was supplied free of cost to the parties on 11.4.2012. There was, therefore, no valid justification for filing the petition late. Moreover, the petitioner chose to file a review application before the State Commission, which was dismissed by the State Commission on 20.11.2012, stating that they had no authority under the act to review or recall that order. The petitioner could have straightaway filed the revision petition, instead of going for review application before the State Commission. The learned counsel further stated that the contention of the District Forum that there was no nexus between the accident and the expiry of the fitness certificate was not correct. However, the order passed by the State Commission was in accordance with law and should be upheld. The learned counsel has drawn attention to an order passed by the Hon''ble Supreme Court in Narinder Singh vs. New India Assurance Company Ltd. (2014) 9 SCC 324 in support of his arguments, saying that under Section 56 of the Motor Vehicles Act, the vehicle was presumed to be not validly registered in the absence of fitness certificate and hence, the repudiation of the claim was in order. The learned counsel has also referred to order passed by this Commission in United India insurance company vs. B. Ugandar (supra) as relied upon by the State Commission.

7. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me.

8. The first issue that requires consideration in the matter is whether the

petitioner/complainant was served as per law in proceedings before the State Commission. A perusal of the record of the State Commission reveals that on 8.9.2011, the State Commission observed that notice sent for the service of the complainant/respondent in the appeal had not been received back, although period of more than 30 days had already expired. The State Commission presumed that service had been validly effected and they decided to proceed ex - parte against the complainant. The learned counsel for the petitioner stated that the presumption made by the State Commission was rebuttable, and he had filed an affidavit to the effect that he never received the notice. This contention of the petitioner is however, not acceptable as it has been expressly laid down in proviso to Section 28(A)(3) of the Consumer Protection Act that when a notice properly addressed is sent by registered post and has not been received back within 30 days from the date of issue of the notice, a declaration could be made that the notice had been duly served on the party. It is clear, therefore, that the order passed by the State Commission was in accordance with law and the petitioner was rightly proceeded against ex parte by them.

9. The next point for consideration is, whether the delay in filing the present revision petition was justified or not. It has been brought out that a copy of the order was provided free of cost to the petitioner on 11.4.2012, as indicated by the endorsement on the certified copy of the said order. The petition was filed on 18.2.2013, meaning thereby that there was a delay of 223 days in filing the petition. It transpires, however, that the petitioner filed a civil miscellaneous application before the State Commission for recalling the order dated 22.3.2012. The said application was however dismissed by the State Commission on 20.11.2012 and a certified copy of the said order was issued on 27.11.2012. In case, the period of 90 days in filing the revision petition is considered from the date of the latest order of the State Commission, there is no delay in filing the revision petition. Although the learned counsel for OP insurance company has contended that the petitioner should have straightaway filed the revision petition before this Commission, rather than filing any application for review before the State Commission, it is felt that no illegality/irregularity has been committed by the petitioner in filing the application before the State Commission for recalling of the impugned order. Looking at the totality of the circumstances, therefore, it is held that there was no delay in filing the revision petition and hence, there is no ground to dismiss the petition on the issue of limitation.

10. The basic point that requires consideration in the present case is whether there has been any breach of conditions of the policy on account of the fact that the vehicle did not have a valid fitness certificate on the date of the accident. It has been admitted by the complainant that the said fitness certificate was valid upto 17.10.2003 and on the date of the accident i.e. 29.10.2003, there was no fitness certificate for the said vehicle. The petitioner has however, stated that at that time, the truck was plying in West Bengal and on its return to the native place, the certificate was got issued again on 6.11.2003. The State Commission, however, referred to Section 56(1) of the Motor Vehicles Act, which reads as

under: "56. Certificate of fitness of transport vehicles:

1. Subject to the provisions of Sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of Section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority? to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder."

11. A plain reading of the above Section shows that in the absence of a certificate of fitness, a transport vehicle shall not be deemed to be validly registered for the purpose of Section 39 of the Act, which deals with the registration of motor vehicles. The Hon'ble Apex Court in Narender Singh Vs. New India Assurance Company Ltd. (supra) observed that the absence of valid registration of a motor vehicle amounted to a fundamental breach of the terms and conditions of the insurance policy, for which the repudiation of the claim was justified.

12. This commission also observed in the case United Insurance Company Ltd. vs. B. Ugandar (supra) that a transport vehicle was required to have a fitness certificate for the safety of passengers or goods. There being violation of the statutory requirements laid down in the Motor Vehicles Act, the claim was not payable. The State Commission rightly observed that in the absence of the fitness certificate, the truck in question shall not be deemed to be validly registered as per the provisions of the Motor Vehicles Act.

13. Based on the discussion above, it is held that the order passed by the State Commission is in accordance with law as there is no illegality, irregularity or jurisdictional error in the same. The said order is therefore, upheld and the present revision petition is ordered to be dismissed with no order as to costs.