**(2000) 06 NCDRC CK 0043**

**In the National Consumer Disputes Redressal Commission**

BHUPENDRA SINGH APPELLANT

Vs

UNITED INDIA INSURANCE COMPANY Limited RESPONDENT

**Date of Decision :** 20-06-2000

**Acts Referred:**

**Citation :** 2000 3 CPJ 229

**Hon'ble Judges :** K.C.Bhargava , D.D.Bahuguna J.

**Final Decision :** Petition partly allowed

## Judgement

1. THE complainant has filed this complaint for recovery of Rs. 2,60,000/- alongwith 18% per annum compound interest with monthly rent of Rs. 5,000/- amounting to Rs. 1,65,000/- from the date of accident till the date of payment on account of harassment, mental agony, physical torture etc. A sum of Rs. 5,000/- has also been demanded as cost of the proceedings.

2. THE facts of the case stated in brief are that the complainant owns truck No. USW 7491 which was got insured with the opposite party, United India Insurance Company Limited. THE policy was effective from 30.9.1988 to 29.9.1989 and was insured for a sum of Rs. 2,60,000/-. THE said truck met with an accident when it was carrying surgical scientific goods. According to the complainant this vehicle caught fire while on road, 8 kms. away from Nanpara, at a place known as Rupaedid Road. THE vehicle was completely destroyed alongwith the goods which it was carrying. A report to this effect was lodged with the Nanpara Police Station by the truck driver Ram Singh. THE information was sent to the opposite party and a spot inspection was got done. THEreafter a second survey was also got done. THE complainant put forward the claim but the same was repudiated on 20th February, 1990 on the ground that the driving licence of the driver was a fake one which amounts to breach of provisions of Motor Vehicles Act as well as conditions of the policy. It is alleged that the complainant''s driver Ram Singh was employed after verifying and checking his driving licence and believing it as a true and genuine as per the Motor Vehicles Act. On verification after the accident it was found that the licence is genuine. It is further alleged that the

truck was financed by Kashi Nath Seth Bank, Shahjahanpur. The complainant wrote to the opposite party, Insurance Company, letters on 15.3.1990 and 13.8.1990 but nothing came out of it. Hence the complaint was filed.

The opposite party in the written version has admitted the insurance. According to the opposite party the driver was not having a valid driving licence at the relevant time. Therefore, there was breach of provisions of Motor Vehicles Act as well as the conditions of the policy. There was no deficiency on the part of the opposite party in repudiating the claim on this ground.

3. THE parties filed evidence. We have heard the learned Counsel for the parties and perused the records.

4. IT is an admitted fact that the vehicle was insured by the complainant with the opposite party, United India Insurance Company Limited for a sum of Rs. 2,60,000/- which met with an accident on 7.3.1989. IT is also an admitted fact that the vehicle was totally gutted by fire. The report of fire fighting also proves that the truck was destroyed by fire. The only ground for repudiation of the claim is that the driver Ram Singh did not hold a valid licence to drive the vehicle at the time of the accident. United India Insurance Company has not filed any document from the Regional Transport Office to show that the licence issued to the driver was a fake one. On the other hand, the complainant has filed papers to show that the licence was a genuine one and was issued by the Regional Transport Officer. This paper is Annexure 12 to the evidence which is in four leafs. A perusal of this goes to show that the licence was issued in the name of the driver and that licence was valid. Even the police officer, in-charge of the police station, where the report was lodged by the driver, also enquired about the genuineness of the licence and came to know that this licence was issued by R.T.O. Bareilly in favour of Sri Ram Singh, s/o Sri Sheetal Singh, resident of Mohalla Mohanganj, Thana Sadar Bazar, District Shahjahanpur on 20.2.1986. Thus the entire evidence on record clearly goes to show that the driving licence which was issued in favour of Sri Ram Singh, who was driving the vehicle, was a valid one and was not a fake one as alleged by the Insurance Company. Moreover, the facts of the case reveal, that the truck was destroyed by fire and no accident took place on account of the fault of the driver Ram Singh. This incident cannot be said to be the result of any negligence on the part of the driver.

5. IN the case of B.V. Nagaraju v. Oriental INsurance Company Limited, II (1996) CPJ 18 (SC), the Hon''ble Supreme Court held that those 9 persons who were travelling in the truck did not contribute in any manner to the occurring of the accident and they have not increased any risk from the point of view of the INsurance Company on the occurrence of the incident. Thus it clearly goes to show that there was no nexus between the sitting of 9 passengers with the accident which took place. IN this case also even if the driving licence of the driver was fake, it did not contribute to the gutting of the truck by fire.

 

6. LEARNED Counsel for the opposite party has placed reliance on certain cases in which the facts are entirely different from the case in hand Raj Kumar v. New India Assurance Company & Ors., I (1996) CPJ 241 (NC); Udham Singh v. United India Insurance Company Ltd. & Anr., III (1995) CPJ 385; K.M. Lakshman v. The Senior Divisional Manager, New India Assurance Company, III (1995) CPJ 89, etc. In these cases there was an accident in which there was fault of the driver. In the present case there was no fault of the driver as the truck had caught fire due to some reason which fact is also supported by the survey report, a copy of which is on record. Therefore, those cases will have no application in this case. Besides this, reliance has also been placed on the case of Mahabir Parshad Goyal v. The New India Assurance Company Limited & Anr., II (1995) CPJ 411. This case has been relied upon by the opposite party on the ground that the full-dress enquiry is required to be held in a case where the driving licence is valid or not. The Delhi State Commission in the abovementioned case has held in para 4 that the question as to whether a driver had a valid driving licence is a question of fact which is not possible for the Commission to determine in summary proceedings under the Consumer Protection Act. For determining of such a question, full dress trial in a Civil Court is required. There the parties get ample opportunity to lead evidence, proof, document and examine and cross examine the witnesses. We are not inclined to follow this case in view of the facts that no full, dress enquiry is required to be held in a case where the dispute is whether the driving licence at the relevant time of accident was fake or not. In such cases the only evidence required is a driving licence and a certificate from the Issuing Authority, i.e. Regional Transport Officer whether the said licence was issued by the Regional Transport Authority or not. No other evidence can possibly be led by the parties in order to prove the genuineness of the licence. The entire thing depends on the certificate issued by the Regional Transport Officer. In the present case the evidence which has been filed by the complainant has not been rebutted by the Insurance Company by filing any paper from the Regional Transport Officer to show that the licence which was held by Ram Singh driver on the date of accident was a fake one. Therefore, in the present case no enquiry was to be held. Moreover, as no evidence or full-fledged enquiry is required to be held in such cases, this Commission holds that the case is triable under the Consumer Protection Act and the party cannot be driven to file a plaint before a Civil Court. Thus it is clear that this contention of the opposite party stands rejected.

Now we come to the assessment of the damages which has been caused to the truck. The Surveyor who was appointed in this case has filed a report dated 13.7.1989. It has assessed the damages on repairing basis as well as total damage basis. On the basis of repairs, a sum of Rs. 1,70,414/- is arrived at. The Surveyor has also mentioned that the loss will be increased if the dealer''s applicable taxes at the rate of 18% and freight on chassis and cowl are considered. On the total loss basis the assessment has been done at Rs. 1,87,000/- while about the salvage, the Surveyor has mentioned that the insured''s representative has verbally quoted a maximum amount of Rs. 25,000/- as salvage value, but in the opinion of the Surveyor the salvage/R.C. book value should be Rs. 35,000/-. Even if the salvage value is taken at Rs. 25,000/- then the claimant is entitled to a sum of Rs. 1,87,000/- minus Rs. 25,000/- = Rs. 1,62,000/- which is much below the loss which has been assessed on repair basis. Thus we take the loss occurred to the complainant on repair basis which comes to Rs. 1,70,414/-. The Surveyor has also mentioned that 18% taxes will be applicable and the freight on chassis and cowl is also to be taken into consideration. The Surveyor has not given any indication as to what amount will be spent on the freight on chassis and cowl and what will be the import of 18% taxes. However, in the opinion of the Commission a sum of Rs. 10,000/- will meet this expenditure. Thus on the basis of repairing, the loss comes to Rs. 1,8,414/- and round off to Rs. 1,80,500/-.

7. THE Insurance Company is entitled to pay interest on this amount also from three months after the submission of the claim because the Insurance Company has repudiated the claim of the complainant without any basis. This interest shall be payable till the date of payment. THE claim petition was preferred by the complainant with the Insurance Company on 10.3.1989, copy of which is Annexure 3 to the evidence filed by the complainant. THErefore, the complainant will be entitled to get interest from 1.7.1989 till the date of payment of the amount. The complainant has claimed damages to his business etc. amounting to Rs. 1,65,000/- at the rate of Rs. 5,000/- per month. According to the learned Counsel as the insured amount was not paid by the Insurance Company immediately after the accident, therefore, he suffered loss to the extent of Rs. 5,000/- per month on account of loss to the business, mental agony, mental torture etc. No details have been furnished by the complainant as to how he has reached this figure of Rs. 5,000/- per month. Therefore, we are not inclined to award any amount under this head. The result is that the claim is liable to be allowed in part for a sum of Rs. 1,80,500/- alongwith 12% per annum interest from 1.7.1989 till the date of payment by the Insurance Company. Order

8. THE claim petition is partly allowed to the extent that the opposite party United India Insurance Company shall pay a sum of Rs. 1,80,500/- alongwith 12% per annum interest with effect from 1.7.1989, till the date of payment. A cost of Rs. 5,000/- shall also be payable by the Insurance Company to the complainant. Let compliance of this order be made within a period of two months from the date of this order. Copy as per rules be made available to the parties. Petition partly allowed.

 