

(2008) 07 NCDRC CK 0054

In the National Consumer Disputes Redressal Commission

Dalip Singh Gosain

APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LIMITED

RESPONDENT

Date of Decision : 04-07-2008

Acts Referred:

Citation : 2008 4 CPJ 412

Hon'ble Judges : Irshad Hussain , C.C.Pant J.

Advocate : Ravindra Kumar Logani

Judgement

1. -BOTH these appeals under Section 15 of the Consumer Protection Act, 1986, arise out of the order dated 2.11.2007 passed by the District Forum, Dehradun, partly allowing Consumer Complaint No. 29 / 2006 and directing the Insurance Company to pay compensation of Rs. 1,80,000 together with interest @ 9% p.a. to the complainant, by way of indemnification of the loss sustained from accident of comprehensively insured vehicle No. UP07C / 4797 on 15.6.2002. Complainant felt aggrieved by non-awarding of cost of litigation and also interest at the much higher rate of 12% p.a. and, therefore, filed First Appeal No. 394 / 2007 for modification of the said order accordingly. Insurance Company challenged the legality and propriety of the above order on the grounds that since the insured had violated the terms and conditions of the policy of insurance and the provision of the Motor Vehicles Act, 1988 as regards its route permit, the Insurance Company was not liable to make payment of any compensation; that the consumer complaint was barred by time and that the District Forum, Dehradun has had no territorial jurisdiction to entertain and decide the complaint on merit. The impugned order was, thus, sought to be set aside and the consumer complaint to be dismissed with cost.

2. THE contentions raised in these appeals, give rise to the following points for determination of these appeals on merit: (i) Whether the District Forum, Dehradun has had no territorial jurisdiction to entertain and decide the consumer complaint? (ii) Whether the consumer complaint was barred by time and was liable to be dismissed as such? (iii) Whether the insured had violated the terms

and conditions of the policy of insurance and also the provision of the Motor Vehicles Act, 1988 as regards vehicle's route permit and the claim preferred by the insured, was rightly repudiated by the Insurance Company? (iv) Whether the compensation awarded was not sufficient? Point No. (i):

Learned Counsel for the Insurance Company submitted that the policy of insurance was issued by New Tehri Branch of the Insurance Company and the premium was also paid through Ghansali Branch of the State Bank of India and, as such, the District Forum at New Tehri has had jurisdiction to entertain and decide the consumer complaint. According to the learned Counsel, the District Forum, Dehradun wrongly entertained the consumer complaint and, therefore, the order passed by it, was without jurisdiction. Learned attorney for the complainant drew our attention to cover note (Paper No. 11 of the record of First Appeal No. 394/2007), which indicate that the same was issued by the Development Officer of the Insurance Company at Rishikesh, within the jurisdiction of the District Forum, Dehradun, in order to controvert the above argument of the Insurance Company. Considering the contract of insurance having been entered at Rishikesh by issue of the cover note by the Development Officer of the Insurance Company, we feel forced to reject the submission made on behalf of the Insurance Company in regard to the jurisdiction of the District Forum, Dehradun and accordingly hold that the District Forum, Dehradun has had jurisdiction to entertain and decide the consumer complaint. The point is answered accordingly. Point No. (ii):

The District Forum, Dehradun has, while deciding the consumer complaint, not considered the legal plea of the Insurance Company that the complaint has been filed beyond the period of limitation and, as such, the same was not legally maintainable and was liable to be dismissed. Even though the finding in that regard had not been recorded, the same being a legal and important plea, it had to be taken for decision on merit.

3. AS has been pleaded, the claim of the complainant was repudiated by letter dated 24.9.2003 (Paper No. 31 of the record of First Appeal No. 395 / 2007) and the same was sent to the complainant by registered post, as is evident by postal receipt (Paper No. 32) as well as extract of company's despatch register (Paper No. 33) of the said date itself. The complainant has not made any reference to the claim repudiation letter in his complaint and claimed in paragraph No. 1 (vii) that finally on 7.4.2004, the Branch Office of the Insurance Company at Tehri intimated him that his claim file has been closed. Consumer complaint was filed on 1.4.2006 and it was argued on behalf of the complainant that the same was within the period of limitation of two years, as provided by Section 24A of the Consumer Protection Act, 1986. On the other hand, learned Counsel for the Insurance Company persuasively argued that reference of the repudiation letter sent to the complainant, was not deliberately made in the consumer complaint and that the period of limitation was sought to be wrong taken from a fictitious date, i.e., 7.4.2004, with the allegation that the complainant was told by the

Tehri Branch Office of the company that the complainant's claim file had been closed. The submission of the learned Counsel for the Insurance Company carry conviction in view of the fact that there was no documentary evidence on record to indicate that any communication was made by company's office on 7.4.2004. This apart, the repudiation letter dated 24.9.2003 as stated above, was sent to the complainant by registered post with a duly entered despatch register entry and considering the fact that the letter was correctly addressed to the complainant, there was legal presumption of service of the registered letter on the complainant under the provisions of Section 114 of the Indian Evidence Act, 1872 as well as under Section 27 of the General Clauses Act, 1897. There can be no gain saying that there was nothing on record from the side of the complainant to rebut the legal presumption available in that regard and considering the totality of the circumstances of the case, we have no hesitation in coming to the conclusion that the complainant's claim having been duly repudiated and communicated to the complainant in the month of September, 2003, the cause of action to file the consumer complaint arose at that time and the complaint could have, by virtue of the provision of Section 24A of the Act, been filed within two years, i.e., upto the month of September, 2005. In other words, the consumer complaint having not been filed within two years from the date on which the cause of action has arisen to the complainant, the same was barred by limitation. The complainant has not sought to condone the delay by showing any reason thereof and, as such, the complaint could not have even been entertained beyond period of limitation as prescribed by Section 24A of the Act. In view of above, the consumer complaint was not maintainable, as being barred by time and was liable to be dismissed as such. The District Forum fell in error in not taking and deciding this important legal plea of the Insurance Company. The point is answered accordingly. Point No. (iii):

4. IT was not in dispute that the vehicle in question had permit capacity of carrying 20 persons in all, but at the time of the accident, it was carrying 32 persons in all, including 30 passengers, 1 driver and 1 conductor. IT was also not in dispute that the vehicle was authorised as per its route permit conditions, to be plied only between New Tehri Chamba Ghansali route, whereas the accident took place in Vishnuprayag on Joshimath Badrinath route. The Insurance Company, therefore, had taken the plea that the insured having violated the terms and conditions of the policy as well as the provision of Motor Vehicles Act, 1988 as regards vehicle's route permit, no compensation was payable to the complainant. The District Forum rejected the pleas by observing that on account of overloading, compensation was legally payable on non-standard basis and further that the vehicle having valid permit from the transport department, the insured could only have been prosecuted for violating the terms of the permit and getting his vehicle plied on the route, not mentioned in the permit of the vehicle. In the view of the District Forum, the insured could not have been denied compensation in view of the violation of the route permit condition of the vehicle. Having considered the arguments of the parties, we see merit in the

argument of the learned Counsel for the Insurance Company that the finding of the District Forum, suffer from legal infirmity and the Insurance Company could not have been held liable to pay compensation on the ground of deficiency in service. The reason for the aforesaid conclusion being that the policy of insurance of the vehicle (Paper No. 26) clearly incorporate the limitation as to its use, as under: "The policy covers use only under a permit within the meaning of Motor Vehicles Act, 1988 or such a carriage falling under Sub-section 3 of Section 66 of the Motor Vehicles Act, 1988." As stated above, the place of accident was Vishnuprayag on Joshimath Badrinath route, for which the vehicle in question, has had no permit from the transport authority. The copy of registration certificate of the vehicle (Paper No. 30) need to be referred in this regard. Permit has been defined under Section 2 (31) of the Motor Vehicles Act, 1988. Sub-section (1) of Section 66 of the Motor Vehicles Act, 1988 further provide that no owner of a motor vehicle, shall use or permit the use of the vehicle as transport vehicle in any public place, whether or not such vehicle is carrying any passenger or goods, save in accordance with the conditions of a permit granted by the transport authority. In view of the admitted fact, the vehicle in question was being plied at the time of the accident at a public place, use of which, was not permitted by the transport authority under the specific term and condition of the permit granted and, therefore, the same was clear violation of the provision of the Motor Vehicles Act, 1988 and in turn, the violation of the condition of the policy of insurance, as referred to above, with regard to the provision contained therein, as to the limitation as to the use of the vehicle.

5. FURTHER, at the time of the accident, 32 persons as against the seating capacity of 20, were being carried in the vehicle and, as such, the breach of the terms of the policy as regards to its use, was also established. It was, thus, evident that there was gross violation of the terms of the policy and the provision of law and the insurer was fully justified in repudiating the claim of the insured. It was not such a case, in which claim was required to be considered on non-standard basis and in that regard, reference need to be made to a reported decision of the Hon"ble National Commission in the matter of National Insurance Company Limited and Another v. Suresh Babu and Another, I (2007) CPJ 23 (NC). In such matters, we have followed the view taken by the Hon"ble National Commission in the said reported case and have found the repudiation of the claim by the insurance companies, justified on account of overloading. The reference may be made to our decision in First Appeal No. 144 / 2005 in the matter of United India Insurance Company v. Pankaj Singh, decided on 21.5.2007; 2007 UAD 772 and our decision in First Appeal No. 28/2006 in the matter of National Insurance Company Limited v. Sh. Meharbaan Singh, decided on 18.4.2007; 2008 UAD 34.

6. IN view of above, we are of the firm view that the District Forum fell in error in partly allowing the consumer complaint and in awarding the compensation to the complainant, in spite of gross violation of the terms and conditions of the insurance policy as well as the provision of the Motor Vehicles Act, 1988 as

regards route permit condition of vehicle. IN other words, the INSurance Company made no deficiency in service in repudiating the claim and the complaint was liable to be dismissed. The point is answered accordingly. Point No. (iv) In view of above findings, no answer is required to be given with regard to this point raised by the learned attorney for the complainant. The point is answered accordingly.

In view of above, First Appeal No. 394/2007 is dismissed and First Appeal No. 395/2007 is allowed. Order dated 2.11.2007 of the District Forum is set aside and the consumer complaint No. 29/2006 is dismissed. No order as to cost.

7. LET the copy of the judgment be kept on the record of First Appeal No. 395 / 2007 and a copy of the order be sent to the District Forum, Dehradun. Ordered accordingly.