
(2012) 12 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

DHARAM PAL

APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD

RESPONDENT

Date of Decision : 03-12-2012

Acts Referred:

Citation : 2012 0 NCDRC 908 : 2013 1 CPJ 150

Hon'ble Judges : J.M.MALIK , VINAY KUMAR J.

Final Decision : Revision Petition dismissed

Judgement

1. DHARAM Pal, the complainant/petitioner purchased vehicle Max Pick-up Truck in the year 2003 and insurance cover was obtained from United India Insurance Co. Ltd., the respondent, for the period 19.12.2003 to 18.12.2004. On 5.3.2004, the vehicle met with an accident in the area P.S. Loharu, District Bhiwani. FIR was lodged and vehicle was damaged in the accident causing loss of about 1.50 lakh. The FIR was lodged by one Dariya Singh. In the FIR, the name of the driver was mentioned as Kuldeep, while according to the petitioner, it was driven by Anil. On inquiry, Anil submitted his driving licence.

2. ON 27.9.2004, the claim of the petitioner was repudiated on the grounds that everybody sitting in the vehicle, including the driver were under intoxication, which was in violation of the policy. Secondly, it was stipulated in the policy that three persons, including the driver could sit, whereas FIR shows that five persons were sitting there. The complaint was filed with the District Forum. The District Forum came to the conclusion that OP1 failed to produce on record the Medico-Legal Certificate of the driver to prove that at the time of the accident, the driver was under the intoxication. Secondly, it placed reliance on the authority, reported in B.V. Nagaraju v. Oriental Insurance Co. Ltd., II (1996) CPJ 18 (SC)=I (1997) ACC 123 (SC), wherein it was held that the claim cannot be repudiated on the ground that the goods vehicle was carrying more persons than permitted.

3. THE State Commission, however, accepted the appeal mainly on the ground that as per the FIR, the vehicle was being driven by Kuldeep Singh, who could not produce his licence.

4. WE have heard the Counsel for the petitioner. The learned Counsel for the petitioner submitted that the claim was not repudiated on the ground that the driver could not produce the licence. It was argued that Kuldeep Singh was not driving the vehicle and Dariya Singh, who lodged the FIR could not recognise him. The respondent Company vide its letter dated 18.6.2004 asked for the copy of the driving licence of the person driving the vehicle at the time of the accident and also sought clarification as to who was driving the vehicle at the relevant time; for in the FIR, it was mentioned that one Kuldeep Singh was driving the vehicle. Petitioner submitted that Anil was driving the vehicle, at the relevant point of time. The second submission made by the Counsel for the petitioner was that Anil was convicted and sentenced by a Criminal Court. The Criminal Court has already held that he was driving the vehicle. Thirdly, it was also argued that in view of the above Supreme Court authority, the claim of the petitioner cannot be repudiated on the ground that the goods vehicle was carrying more persons than permitted. -7. The Counsel for the petitioner has also produced the statements of witnesses which were recorded by the police under Section 161 of Cr.P.C. In their statements, excepting Dariya Singh, every other witness stated that Anil was driving the vehicle. 8. All these arguments are devoid of force. The petitioner has himself placed reliance on the statement of witnesses recorded under Section 161, Cr.P.C. First of all, statement of Vikas, S/o Kewal Singh is to be scrutinized. He stated that this witness, along with Kuldeep, Mahipal, Mahender Singh and Anil, had consumed liquor; the vehicle was being driven by Anil; Anil lost control over the vehicle and it over-turned. Two persons, namely, Subhash and Rajender were trapped under the vehicle and they died on the spot due to the accident. He stated that they had advised Anil several times to drive the vehicle in slow speed but Anil did not pay any heed. 9. In his statement, Mahender Singh stated that he along with Kuldeep, Mahipal, Vikas, had gone to Obera in the vehicle of Anil and they all had consumed liquor. There were five persons in the vehicle. They asked Anil to drive the vehicle in slow speed because they were under the influence of the liquor and they could meet with an accident. He contended that the accident took place due to the negligent, rash and high speed driving by Anil. 10. In his statement, Mahipal stated that they had all got into the vehicle of Anil. He stated that all the five persons had taken liquor. 11. Now, we turn to the statement of Kuldeep Singh. He also stated that all of them, i.e. Mahender Singh, Mahipal, Vikas, Anil and the witness himself, had taken liquor. 12. Consequently, there is admission on the part of these persons that they had taken liquor. The policy puts a restriction that the driver at the time of driving the vehicle, should not be under intoxication. This was done in violation of the terms and conditions of the policy. The policy has to be construed strictly, as was held in Suraj Mal Ram Niwas Oil Mills (P) Ltd. v. United India Insurance Co. Ltd. and Anr., IV (2010) CPJ 38 (SC)=VIII (2010) SLT 375=IV (2010) ACC 653 (SC)=2011 CTJ 11 SC (CP). 13. Secondly, the contradiction between the licence held either by Kuldeep or by Anil, throws a cloud of doubt over the bona fides of the petitioner. It is difficult to fathom as to why there is a contradiction between the FIR and the Statement made by the persons, under

Section 161 of Cr.P.C. This fact has pushed the case of the petitioner to the edge of a cliff. The revision petition has no force, therefore, the same is dismissed. Revision Petition dismissed.