(1994) 09 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

DIVISIONAL MANAGER, UNITED IDIA INSURANCE CO. LTD. APPELLANT

Vs

GUNASEGARAN RESPONDENT

Date of Decision : 02-09-1994

Acts Referred:

Citation : 1995 2 CPJ 104 : 1995 2 CPR 580

Hon'ble Judges : David Annoussamy , A.Veerapandian , J.Anjani Dayanand J.

Final Decision : Appeal dismirssed

Judgement

1. -THE appeal is by the Opposite Party.

2. THE grounds of appeal are very limited, and so it is not necessary to traverse the whole gamut of facts which have been elaborately stated by the District Forum in its order. THE essential relevant facts for the disposal of this appeal are as follows. THE respondent is an insurance policy holder in respect of a lorry. THE opposite party is the insurer. THE lorry met with an accident. THE amount claimed is Rs. 36,000/-. Regarding the quantum of claim there is no dispute. Before the District Forum the Insurance Company-Appellant herein pointed out that the endorsement on the driving licence of the person who drove the Vehicle at the time of accident viz., Kannan was not a genuine one and that it was fabricated by the Complainant. Further, it was pleaded that even if the Complainant was not responsible for the bogus entry, since the licence was not a valid one, there was no liability for the Insurance Company. Both the contentions were repelled by the District Forum which ordered on 18.10.93 to pay a compensation of Rs. 36,000/-. Aggrieved by that order the Insurance Company has preferred this appeal.

The learned Counsel for the Appellant had given up the plea that the Complainant/ Insured was himself in one way or other instrumental for the alleged false endorsement in the driving licence of Kannan in respect of heavy goods vehicle. He confined his argument to the legal point that as per the clauses and conditions of the policy, if the driver does not have an effective driving licence, there is no liability for the Insurance Company. We have perused the clauses and conditions of the policy. It is stated under General Exceptions 3(b) that the Company shall not be liablein respect of any accident incurred whilst the motor vehicle is being driven by any person other than a driver as stated in the Driver''s Clause. It is stated that the Driver''s Clause referred to in the General Exceptions is the one which appears in the schedule under the title "persons or classes of persons entitled to drive". From that clause it is gathered that the person driving should hold an effective licence, with all the required endorsements thereon as per the Motor Vehicles Act and the rules made thereunder to drive the category of motor vehicle insured. It is pointed out by the learned Counsel for the appellant that even though in the Driving Licence of Kannan there was some endorsement, that he was authorized to drive a Heavy Goods Vehicle, that endorsement was a false one since the Licencing Authority Madras City (North) has upon enquiry by the Appellant unequivocally stated that the endorsement No. 556/91 found on the driving licence does not relate to Kannan but to some Raman. This statement of the Licencing Authority, Madras City (North) was not disputed by the parties, so the District Forum did not have an opportunity to investigate further into the matter. At any rate it is astonishing to note that the Licencing Authority which has come forward to state that an endorsement appearing under its seal was a false one has not chosen to take any action either under the Motor Vehicles Act or under the General Penal Law to prosecute the drive Kannan. The Appellant which is an institution interested in the welfare of the community has not also chosen to file a complaint. The owner of the vehicle who has acted on the endorsement appearing on the driving licence has also failed to file a complaint. Leaving the matter regarding taking action against the driver Kannan alone we have to consider for the purpose of disposal of this case that the entry found on the driving licence is not a genuine one, since no party has questioned the statement of die Licencing Authority, Madras City (North) to the effect that the entry on the driving licence was not a genuine one.

3. TURNING back to the question of liability of the Appellant we have to find out how the phrase "effective valid licence" found on the schedule of the insurance policy has to be construed in the relation between the insurer and the insured. A person owning a motor vehicle takes an insurance policy in order to cover risks which may be incurred in respect of the vehicle or of the driver or of third parties. As far as the liability for the third party is concerned, it is statutorily compulsory to insure the vehicle. So the normal expectation of the insured person is that once he has taken all necessary steps for having the vehicle insured, he will be appropriately compensated in case of accident provided he has complied with the conditions imposed by the Insurance Company. One of such conditions is that the insured person should verify whether the person engaged as driver holds an effective licence. The endorsement which is found on the driving licence of Kannan can make every person to believe that Kannan had an effective licence to drive Heavy Goods Vehicles. The owner of the vehicle could not do more than that. He is not expected to check up with the Licencing

Authority whether the endorsement found on the driving licence of the driver is a genuine one or not? In this case, even the Insurance Company came to know about the false entry only after about one year of the accident. The circumstance which made them think of a falsification was not disclosed. We therefore are of the opinion that the phrase "effective licence" should not mean a licence which has been held effective after the accident, after an elaborate enquiry, but one which could be considered as effective by any owner of the vehicle, on the face of it. It is with this acceptation of the term "effective policy" that we should determine the respective rights and of liabilities of the insured and the insurer. The learned Counsel for the Appellant has also referred to Section 3 of the Motor Vehicles Act as per which no person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle. The meaning of "effective licence" under this section is different, the licence should stand all tests. If the driving licence is not a proper one, penal action has to be taken as per the provisions of the Act, viz., under Section 177 of the Motor Vehicles Act and other relevant provisions of the Indian Penal Code, if need be. But those provisions and action which may be taken thereunder will have no effect as far as the contractual relationship between the insurer and the insured is concerned. The letter is covered only by the clauses and conditions of the policy and like any other contract the clauses and conditions of the policy should be construed keeping in mind what could be expected from a normal vigilant man. In this case, it is not shown that the insured has failed to do anything in respect of the driving licence, it would not be just and proper to disentitle him from getting the insurance benefit. We therefore do not accept the plea of the Appellant that the driver was not holding an effective driving licence within the meaning of the insurance policy.

4. IN the result, the appeal is dismissed. A copy of this order shall be sent to the Licencing Authority, Madras City (North) and also to the Transport Commissioner, Tamilnadu, for such action as is required from them under law in respect of the allegation of false entry in the driving licence of Thiru Kannan. Appeal dismissed.

