(2005) 07 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

H M M Coaches Limited APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LIMITED RESPONDENT

Date of Decision : 01-07-2005

Acts Referred:

Citation : 2005 2 CPC 666 : 2005 4 CPJ 222 : 2006 1 CLT 105

Hon'ble Judges : K.K.SRIVASTAVA , S.P.Kapoor , DEVINDERJIT DHATT J.

Judgement

1. THE complaint filed by the appellant M/s. H.M.M. Coaches Limited has been dismissed in limine by the District Consumer Disputes Redressal Forum -II, U.T., Chandigarh (for short hereinafter to be referred as District Forum) vide order dated 15.4.2005 as not maintainable under the provisions of the Consumer Protection Act, 1986 (for short hereinafter to be referred as C.P. Act) enforced w.e.f. 15.3.2003. A finding has been recorded that the complainant who is appellant before us is not a consumer and the complaint is liable to be dismissed at admission stage and the complainant was relegated to a Civil Court.

2. THE learned Counsel for the appellant in the first place prayed for condoning the delay of 3 days in filing this appeal. The ground for seeking condonation of delay have been stated in Paragraph No. 2 of the application in Sub paragraph Nos. (i) to (v). Shri Jagdish Saini, General Secretary of the Panchkula Consumer Forum through whom the complaint was filed had lost his son and papers were made available by him to the Counsel on 22.5.2005. The appeal was prepared and filed on 26.5.2005. We are satisfied that the reasons as stated in the application and in the affidavit of Shri Bhupinder Goel, Managing Director of the appellant -M/s. H.M.M. Coaches Limited are sufficient to condone the delay in filing the appeal. The delay is accordingly condoned. The appeal is taken on board for hearing on merit. The learned Counsel for the appellant submitted that the appeal may be taken up today itself as the respondent is yet to be issued notice of the complaint case and no notice of appeal need to be sent to the respondent.

3. THE sole ground on which the complaint has been dismissed as being not

maintainable under the provisions of the C.P. Act is that the vehicle in question, which was insured under the policy of insurance under which the claim was filed, was for commercial purpose and in view of the C.P. Act being amended and enforced w.e.f. 15.3.2003, the commercial purpose is equally applicable to the services hired and availed. Prior to this amendment, the commercial purpose was applicable only to Section 2(1)(d)(i) of the C.P. Act relating to goods only.

4. RECENTLY the Honble National Consumer Disputes Redressal Commission, New Delhi (for short hereinafter to be referred as National Commission) in the case of M/s. Harsolia Motors v. M/s. National Insurance Company Ltd., I (2005) CPJ 27 (NC)=First Appeal No. Rs.159 of 2004 decided on 3.12.2004 has held that the main criteria to decide as to whether a particular activity is a commercial purpose or not is whether that activity is directly related to the generation of profit. As held by the Honble National Commission, if some raw material is purposed and services are hired and availed by the business concern for production and manufacture of any product, which is for commercial purpose, to generate profits, it would be a commercial purpose. It has categorically been held by the Honble National Commission that insurance policies are not for generating profits and as a matter of fact, the policy of insurance taken is with a purpose to reimburse any loss by the insured, which is covered under the terms and conditions of the policy of insurance. In this regard, the Honble National Commission held that ''In this view of the matter, a person who takes insurance policy to cover the envisaged risk does not take the policy for commercial purpose. Policy is only for indemnification and actual loss. It is not intended to general profit.'' The District Forum has not appropriately considered the law laid down by the Honble National Commission and has gone on a wrong premises to hold that since the appellant was a business concern and a policy in respect of a vehicle purposed and run as a commercial vehicle by the appellant, the claim filed under the policy of insurance relating from an accident would be hit by the ban imposed regarding action being in respect of a vehicle purposed for commercial purpose.

5. CONSEQUENTLY , the appeal is allowed. The impugned judgment and order passed by the District Forum are set aside. The complaint case is sent back to the District Forum -II, U.T., Chandigarh with the direction to adjudicate the same on merit as per the procedure laid down under the C.P. Act and within the timeframe as stipulated under Section 13(3A) of the C.P. Act. The appellant is directed to appear before the District Forum -II, U.T., Chandigarh on 11.7.2005. Copies of this order be sent to the parties free of charge. Appeal allowed.