(2014) 09 NCDRC CK 0108

In the National Consumer Disputes Redressal Commission

IFFCO TOKIO GENERAL INS. CO. LTD. APPELLANT

Vs

Sheetalben Nileshbhai Surti RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Citation : 2014 0 NCDRC 563 : 2014 4 CPJ 264

Hon'ble Judges : K.S.CHAUDHARI J.

Advocate : S.M.TRIPATHI

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 31.01.2012 passed by the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad (in short, ''the State Commission '') in Appeal No. 1340/2007 - Iffco Tokio Gen. Ins. Co. Ltd. Vs. Smt. Shitalben Nileshbhai Surti by which, while dismissing appeal, order of District Forum allowing complaint was upheld.

2. BRIEF facts of the case are that Motor Cycle No. GJ.15.KK.5000 was registered in the name of Premchandbhai Surti father of deceased Nileshbhai which was insured by OP/petitioner for a period of one year from 6.8.2005 to 5.8.2006. Nileshbhai son of registered owner was going on aforesaid vehicle on 31.12.2005 and met with an accident and died on the spot. Complainant/respondent lodged claim with OP. As claim was not settled, alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP resisted complaint and submitted that premium paid by registered owner Premchandbhai Surti was paid for owner/driver and deceased being not owner of said vehicle, complainant is not entitled to receive any compensation under this policy. It was further submitted that complainant has also filed claim before Motor Accident Claims Tribunal and cannot proceed at two places and prayed for dismissal of complaint. Learned District Forum after hearing both the parties, allowed complaint. Appeal filed by the OP was dismissed by learned State Commission by impugned order against which, this revision petition has been filed. None appeared for respondent even after service.

3. HEARD learned Counsel for the petitioner and perused record.

4. LEARNED Counsel for the petitioner submitted that as per terms and conditions of the policy, owner/driver was covered under the policy and deceased was not insured under the policy; even then, learned District Forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal; hence, revision petition be allowed and impugned order be set aside. It is not disputed that Premchandbhai Surti was registered owner and he obtained insurance policy in his own name. It is also not disputed that petitioner has charged Rs.50/ - as premium for owner/driver for liability of Rs.1,00,000/ -.

5. NOW , the next question to be decided in this case is as to whether deceased who was son of insured was covered under the policy or not. Perusal of insurance policy reveals that personal accident cover for owner/driver was provided to the extent of Rs.1,00,000/ -. Section 3(c) (1) of the policy runs as under: ''''This cover is subject to: (a) The owner -driver is the registered owner of the vehicle insured herein; (b) The owner -driver is the insured named in this policy; (c) The owner -driver holds an effective driving license, in accordance with the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989, at the time of the accident ''''.

This proviso makes it very clear that owner -driver means, he must be registered owner of the vehicle and his name must be shown as insured in the policy and further, owner -driver must hold effective driving licence at the time of accident. Admittedly, deceased has not been shown as owner in the insurance policy and in such circumstances, no claim under this policy was payable to him. Learned State Commission wrongly interpreted this clause and held that if owner of the vehicle is not driving the vehicle, but another person holding lawful driving licence and accident take place then also responsibility of Insurance Co. arises under the policy.

6. AS per written statement complainant has already filed claim before Motor Accident Claims Tribunal and he may be entitled to claim as per Section 2 (3) of the policy, but he cannot claim compensation simultaneously before two Fora below i.e. District Forum and Motor Accident Claims Tribunal and on this count also revision petition is to be allowed. Consequently, revision petition filed for the petitioner is allowed and impugned order dated 31.01.2012 passed by the Gujarat State Consumer Disputes Redressal Commission in Appeal No. 1340/2007 - Iffco Tokio Gen. Ins. Co. Ltd. Vs. Smt. Shitalben Nileshbhai Surti is set aside and complaint stands dismissed with no order as to costs.