(2015) 03 NCDRC CK 0070

In the National Consumer Disputes Redressal Commission

Case No : NO 4622 of 2013

IFFCO TOKIO GENERAL INSURANCE COMPANY LTD. APPELLANT

Vs

PRATAP BHAGWAN PATIL RESPONDENT

Date of Decision : 23-03-2015

Acts Referred:

Motor Vehicles Act, 1939, Section 41, Section 43, Section 192 - Power to make rules - Power to State Government to control road transport

Citation : 2015 2 CPJ 739

Hon'ble Judges : J.M. Malik, S.M. Kantikar

Advocate : Ravish Chandra Pathak, Kunwar A.K. Singh

Judgement

1. There is a delay of 70 days in filing the present Revision Petition. For the reasons mentioned in the application for condonation of delay, the delay is hereby condoned.

2. Mr. Pratap Bhagwan Patil, the complainant purchased a car. Insurance Policy was obtained from M/s IFFCO TOKIO General Insurance Co. Ltd., for the period from 19.10.2007 to 18.10.2008. The complainant was not allotted the VIP Registration number immediately, though he was allotted temporary Registration number for a period of 30 days. He waited for the same and kept the vehicle standing and parked the vehicle without using the same.

3. The car was stolen on 30.06.2008 from the place where it was parked. The complainant lodged a complaint with the police on 02.07.2008, intimated the RTO and lodged the claim with the Insurance Company. The Insurance Company repudiated the claim on the ground that the vehicle was not registered with the RTO and appears to have been used on road.

4. The complaint was filed before the District Forum. The District Forum directed the Insurance Company to pay to the complainant an amount of Rs.17,86,950/- towards settlement of his claim and besides this, an amount of Rs.7,000/- towards compensation and costs in the sum of Rs.3,000/-.

5. Aggrieved by that order, appeal was preferred before the State Commission. The State Commission dismissed the appeal.

6. We have heard the counsel for the respondent/complainant. He has supported the view taken by both the Fora below. Both the Fora contended that the insured vehicle was not used and was only maintained in private premises. They came to the conclusion that due to non-use of vehicle, it would not result into violation of law. Again, there was no illegal use of the insured vehicle as the non-registration cannot be said to be a breach of conditions of insurance policy. Both the Fora held that since the vehicle was parked idle and that it cannot be a ground for refusal of claim of damages. Counsel for the complainant/respondent has invited our attention towards Section 41 Clause 11, Section 43 and Section 192 of the Motor Vehicle Act. He has also invited our attention to the judgments of this Commission reported in "Oriental Insurance Co. Ltd. Versus Pearls Buildwell Infrastructure Ltd. & Ors." II (2012) CPJ 102 (NC) and in the case of " IFFCO TOKIO General Ins. Co. Ltd. & Anr. Versus Pratima Jha" II (2012) CPJ 512 (NC).

7. All these arguments have left no impression upon us because in a latest authority by the Hon''ble Supreme Court reported in "Narinder Singh Versus New India Assurance Company Ltd & Ors." Civil Appeal No. 8463 of 2014 decided on 04.09.2014 , it took a wee bit different view. Para Nos. 12, 13 & 14 of the said judgment are reproduced here as under:- 12. A bare perusal of Section 39 shows that no person shall drive the motor vehicle in any public place without any valid registration granted by the registering authority in accordance with the provisions of the Act. 13. However, according to Section 43, the owner of the vehicle may apply to the registering authority for temporary registration and a temporary registration mark. If such temporary registration is granted by the authority, the same shall be valid only for a period not exceeding one month. The proviso to Section 43 clarified that the period of one month may be extended for such a further period by the registering authority only in a case where a temporary registration is granted in respect of chassis to which body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted with a body or unforeseen circumstances beyond the control of the owner. 14. Indisputably, a temporary registration was granted in respect of the vehicle in question, which had expired on 11.1.2006 and the alleged accident took place on 2.2.2006 when the vehicle was without any registration. Nothing has been brought on record by the appellant to show that before or after 11.1.2006, when the period of temporary registration expired, the appellant, owner of the vehicle either applied for permanent registration as contemplated under Section 39 of the Act or made any application for extension of period as temporary registration on the ground of some special reasons . In our view, therefore, using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract".

8. Now, we turn to the facts of the present case. It must be borne in mind that

the Insurance Policy was obtained from 19.10.2007 onwards for one year. The theft was committed on 30.06.2008 i.e. after the lapse of 7/8 months. Counsel for the complainant/respondent argued that both the Fora have found that the vehicle was never used, it was lying idle and, therefore, there is no violation of law and it does not stand proved that the vehicle was plied on road. The facts of the "Narinder Singh Versus New India Assurance Co. Ltd. & Ors. (supra) are different. In that case, the vehicle was being plied and the accident took place when the vehicle was in motion.

9. However, the facts of this case are peculiar and unparalleled. It appears that the story advanced by the counsel for the complainant is made out of the whole cloth. The fact that the complainant was waiting for the VIP number and kept the car idle for 8 months, is a story which does not stack up. No body waits for a V.I.P. number in abeyance. At any rate it was a special reason only in the knowledge of the complainant and it was his bounden duty to inform the RTO and seek the extension of temporary Registration. It must be proved on record that the vehicle was not driven for eight months. It is the complainant and nobody else, who was to carry the ball in proving that he did not drive the car for a period of 8 months. He has produced no cogent or unflappable evidence to prove his case to this extent. Such like stories can be created at any time. The car stands stolen hence it is easy to make such like stories. The complainant should have produced the Job cards in respect of this new car or should have produced the evidence that the car was never sent for service, or the Job Cards are lying with the complainant un-used. It is strange as to how a person can keep on waiting for a VIP registration number for a period of 8 months and it was not sure when he would get the number. A veil of suspicion envelops the entire case of the complainant.

10. Consequently, we accept the Revision Petition, in view of the above said Supreme Court''s authority and set aside the order passed by the State Commission and dismiss the complaint.

