
(2001) 09 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

IQBAL HUSSAIN QUAZI

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD.

RESPONDENT

Date of Decision : 28-09-2001

Acts Referred:

Citation : 2002 0 CTJ 624 : 2002 2 CPC 303 : 2002 2 CPR 80 : 2002 3 CLT 147 : 2005 1 CPJ 95

Hon'ble Judges : D.P.Wadhwa , C.L.Chaudhry , J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Appeal dismissed

Judgement

1. APPELLANT Iqbal Hussain Quazi aggrieved by the order of the State Consumer Disputes Redressal Commission, Rajasthan, vide its order dated 18th July, 1994, dismissing his complaint, filed the present appeal to allow the appeal and award him claim of Rs. 3,75,000/- from the respondent, New India Assurance Co. Ltd.

2. THE facts leading to the controversy are that the appellant/complainant owned Tata truck bearing registration No. RJK 7767 for which he had taken comprehensive insurance with the respondent, M/s. New India Assurance Co. Ltd. under the insurance policy dated 13.3.1990 and this was in force upto 12.3.1991. Appellant states that on 3.4.1990 the said insured truck left Fatehnagar for Dudi and on the way at village Potala, Ambari goods of Fateh Lal Chand Mal and Sons loaded and the truck was parked in the village. Due to friction of electricity works fire broke out around 5.30 p.m. and the truck was burnt completely. It is further stated that though the Fire Brigade had been summoned the entire consignment was burnt to ashes and the driver of the truck was insured. This incident was reported to Police Station, Bangapur, by a worker in nearby water works office. The Fire Brigade, the Collector, the S.P. and other administrative officers of Bhilwara District arrived at the spot. Despite all efforts the truck was completely burnt and the relevant documents pertaining to the truck were also burnt. Respondent was intimated about the said accident on 4.4.1990 and their representative made a spot survey on that day itself. The

Insurance Company sent a Surveyor on 11.6.1990 and the survey report was submitted on 27.7.1990 and assessed the loss of the vehicle at Rs. 1,69,500/-. It was observed by the Surveyor in his report that the vehicle was being driven by Shri Bansilal at the time of the accident, who was holding a driving licence bearing No. 10920 issued by R.T.A., Udaipur. This licence held by driver Shri Bansilal is in respect of light/medium motor vehicles only and not valid for driving heavy motor vehicles.

The appellant claimed Rs. 2,00,000/- as compensation for loss of truck Rs. 1,00,000/- interest from 3.4.1990 to 3.5.1992 at the rate of 24% per annum and Rs. 75,000/- on account of economic loss, mental agony and distress. Altogether it amounts to Rs. 3,75,000/- and then a claim of further interest at the rate of 24% on this amount from 4.5.1992 till payment.

3. THE claim was repudiated by respondents on 22.10.1991 on the grounds that the insured truck at the time of accident was driven by driver Shri Bansilal and that he did not have driving licence permitting him to drive heavy motor vehicle but was only for light/medium motor vehicle according to the licence issued to him by R.T.A. The State Commission went into the facts of the case and returned the findings that the motor vehicle was being driven by Shri Bansilal and according to the terms of the Policy, the respondent is justified in repudiating the claim and dismissed the complaint accordingly. The appellant aggrieved by the order, appealed contesting on two grounds- (a) that the vehicle was being driven at the time of accident by the appellant himself and not the driver, Shri Bansilal. Since the appellant has effective driving licence for driving heavy motor vehicle, the respondent should be directed to pay the amount claimed. (b) That the vehicle was burnt due to accident arising out of misfortune of electric wire falling on it and that the cause of damage was not due to negligence of the driver driving the vehicle. Appellant submitted that loss to the vehicle insured with the respondents is well established and the respondents are liable to pay irrespective of who is driving the vehicle.

4. IN response to these above two contentions raised by the appellant and after hearing the arguments in response by the respondents supporting the judgment of the State Commission, we have given our thoughtful consideration to the entire matter. On the question of who was driving the vehicle, the State Commission recorded the finding after considering the relevant records and observed: "IN the first intimation of the claim dated 4th April, 1990 written by the appellant himself the appellant has stated that the vehicle was being driven by the driver at the time of the accident and the driver also suffered injuries as a result of the accident. Again in the claim form dated 25th April, 1990 the appellant has stated that the vehicle in question was being driven by Shri Bansilal, aged 32 years, resident of Village Kapasan, who was holding a driving licence bearing No. 10920 in respect of medium motor vehicles. Both these documents written by the appellant himself unequivocally show that the vehicle was being driven by Mr. Bansilal at the time of the accident and admittedly Shri

Bansi Lal was not holding a valid driving licence in respect of heavy motor vehicles."

Except to say that he was driving the vehicle at the time of accident, the appellant did not produce any new evidence, i.e., the appeal for further consideration on the issue and we find this plea is taken again only as an after-thought to suit to the terms and conditions of the policy. The policy clearly states: "Persons or classes of persons entitled to drive: The Insured Any other person who is driving on the insured's order or with his permission: Provided the person driving holds a valid licence to drive the vehicle or has held a permanent driving licence (other than a learner's licence) and is not disqualified from holding or obtaining such a licence."

We have no reason to disbelieve the findings returned by the State Commission regarding the validity of licence and as to who was driving the vehicle at that time.

5. THE second plea raised by the appellant that the truck being set off to fire due to electric wire falling on the stationed vehicle, it is being argued by the respondents that the truck was not stationed when the accident took place and that it was being driven by Shri Bansi Lal at the speed of 15 to 20 kms. per hour. It is obviously an act of inexperience of the driver Bansi Lal to park the vehicle fully loaded containing Ambri goods just below electricity distribution wires which is not safe. After having admitted in the claim form submitted by him to the respondents giving the details of the driver being Bansi Lal aged 32 years and a resident of Kapasana and that he was driving the vehicle, we find there is no merit in his submission that irrespective of any driver the respondent is bound to make good the loss suffered by him.

6. WE would like to comment on the appeal that mere payment of premium to the Insurance Company does not give a right to seek relief based on "pay be back anyhow irrespective of the conditions of the policy". Attitude by the insured is not correct specially when it is a clear violation of the conditions of the policy. Both parties are equally bound by the terms of the policy. The insured has come on appeal with false pleadings based on after thought causes without any evidence for us to find any error in the judgment of the State Commission to take different view. WE find that the findings recorded by the State Commission are correct and call for no interference. Appeal is dismissed. Appeal dismissed.