
(1994) 06 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

J. CHINNAPPA

APPELLANT

Vs

BRANCH MANAGER, ORIENTAL INSURANCE CO. LTD.

RESPONDENT

Date of Decision : 30-06-1994

Acts Referred:

Citation : 1994 3 CPJ 466

Hon'ble Judges : D.R.Vithal Rao , Susheela Cheluvaraju J.

Final Decision : Appeal allowed

Judgement

1. - THIS appeal by the complainant is directed against the order dated 10-3-1993 passed by the District Forum, Chitradurga in Complaint No. CTA/DF. No. 44/1992, dismissing the complaint.

2. THE facts, briefly stated, are as follows: THE complainant had insured his Tractor Trailor bearing Registration No. CNU 9176 & 9177 with the Opposite Party-Insurance Company. THE said trailor met with an accident on 18.12.1990 during the currency of the Insurance Policy. THE complainant claimed compensation regarding the accident which the vehicle had met on 7-4-1988 and also on 18-12-1990 when the Opposite Party-Insurance Company repudiated the claim by its letter as per Ex. P.3 on 5-6-1991. The Opposite Party filed its version and admitted the fact that the said vehicle met with accidents on 7-4-1988 and also on 18-12-1990. It averred that as far as the claim regarding the accident on 7-4-1988 was finally settled on 20-6-1989 as per Ex. P.10 and so the Complainant was not entitled for any claim for the accident dated 7-4-1988.

Regarding the accident on 18.12.1990 the vehicle had no fitness certificate as on that date and so his claim was untenable as the Complainant had contravened the provisions of the Motor Vehicles Act and Rules. The Opposite Party, on the basis of these averments sought the complaint to be dismissed.

3. DURING enquiry the Complainant examined himself as P. W. 1 and got Exs. P. 1 to P. 14 marked in evidence. The Opposite Party examined its Branch Manager as P.W. 1 and got Exts. D.1 to D.5 marked in evidence. The District Forum

appreciating this material placed on record, held that the Complainant has acted in violation of the terms and conditions of the Insurance Policy in not obtaining the fitness certificate on the date of the accident i.e., on 18-12-1990 and so he was not entitled for any claim regarding the accident on 18-12-1990. In respect of the accident dated 7-4-1988, it held that the said claim has already been finally settled as per Ex. P.10 and so the Complainant was not entitled for any claim even with regard to the said accident. In that view, it dismissed the complaint.

4. WE have called for the records and received. WE have also heard the Appellant-Complainant and the learned Counsel for the Opposite Party. As far as the claim regarding the accident dated 7-4-1988 is concerned, the Complainant, in our opinion, is not entitled for any claim as made by him. That claim has already been finally settled in 20th June, 1989 as per Ex. P.10. The Complainant has accepted the claim in a sum of Rs. 850/- from the Opposite Party full and final settlement of the claim. In view of this fact, the claim again made by the Complainant regarding the accident dated 7-4-1988 is untenable. As far as the claim regarding the accident dated 18-12-1990 is concerned, the District Forum has rejected the claim on the ground that the Complainant had violated the terms and conditions of the Insurance Policy and the provisions of the Motor Vehicles Act and so he would not be entitled for any compensation in respect of the said accident as well.

5. THIS reasoning adopted by the District Forum in rejecting the claim of the Complainant regarding the accident dated 18-12-1990 is, in our opinion, erroneous.

6. IT is not disputed that at the time of the accident on 18-12-1990 the tractor-trailor was stationary. The accident was only to the trailer and not to the tractor. D.W. 1 Shivaram, the Branch Manager of the Opposite Party has admitted that the accident occurred on account of fall of crane on the trailer when it was stationary. So it is clear that the accident was only to the trailer which caused damage to the trailer.

The fitness certificate under the Motor Vehicles Act is taken for the tractor. In the present case, damage caused due to the accident is to the stationary trailer. It is an admitted fact that as per the Insurance Policy Ex. P. 11 the trailer was also insured for a sum of Rs. 25,000/-. As per the averments made by the Opposite Party, it is clear that the Complainant had the fitness certificate for the tractor till 8-8-1990. As on 18-12-1990 it had no fitness certificate. The Complainant obtained the fitness certificate only on 17-1-1991.

7. THESE averments would go to show that the Complainant got the fitness certificate for the vehicle on 17-1-1991 even though the trailer was in a damaged condition which had met with an accident on 18-12-1990. THESE circumstances would go to show that the fitness certificate is required for the Tractor only. Therefore, the finding recorded by the District Forum that the vehicle had no

fitness certificate and so the Complainant had acted in violation of the provisions of the Motor Vehicles Act, is clearly erroneous and unsustainable and on that ground the rejection of the claim made by the Complainant by the District Forum is clearly erroneous and unsustainable . Therefore, that finding of the District Forum is set aside and we hold that the Complainant is entitled for the claim for the loss and damage that was caused to the trailer in the accident on 18-12-1990. The order of the District Forum shows that the District Forum has not assessed the damage caused to the trailer and so it would be just and proper to remit the case to the District Forum, directing it to assess the damage caused to the trailer in the said accident, i.e., on 18-12-1990 and award the same to the Complainant.

8. IN the result, therefore, this appeal is allowed and the order of the District Forum, Chitradurga dated 10-3-1993 made in Complaint No. CTA/DF. No. 44/1992 is set aside. The case is remitted to the District Forum, Chitradurga with a direction to register the complaint on its original number and to assess the damage caused to the trailer in the accident on 18-12-1990 by affording an opportunity to both the parties to lead evidence, if any, on this point and dispose of the same in accordance with law. The parties are directed to pay and bear their own costs. Appeal allowed.