

(2008) 10 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

JOGINDER SINGH , ORIENTAL INSURANCE COMPANY LTD	APPELLANT
Vs	
JOGINDER SINGH , Oriental Insurance Company Ltd	RESPONDENT

Date of Decision : 23-10-2008

Acts Referred:

Citation : 2008 0 NCDRC 72

Hon'ble Judges : S.N.Kapoor , B.K.Taimni , Anupam Dasgupta J.

Final Decision : Revision petitions are disposed of

Judgement

1. IN Revision Petition No. 681 of 2006, the Petitioner (Original Complainant) seeks to challenge the Order dated 21.11.2005 of the Punjab State Consumer Disputes Redressal Commission Chandigarh (hereafter, the State Commission) in First Appeal No. 1246 of 2005. By this order, the State Commission disposed of First Appeal No. 1259 of 2005 filed by the Respondents No. 1 & 2 in this Revision Petition as well as First Appeal No. 1246 of 2005 filed by the Complainant and affirmed the order dated 25.08.2005 passed by the District Consumer Disputes Redressal Commission, Moga (hereafter, the District Forum). By that order, the District Forum allowed the complaint of the Complainants and directed the Respondents No. 1 & 2 (hereafter, the insurance company) to pay to the complainant a sum of Rs. 3,37,500/- along with interest @ 9% per annum from the date of repudiation of the complainants claim by the insurance company till actual payment and also costs of Rs. 1,000/-.

2. IN the Appeal filed by the complainant before the State Commission, the complainant sought enhancement of the amount awarded by the District Forum to the assured value of the complainants vehicle, which was stolen during the period of validity of the insurance cover. On the other hand, in its Appeal the insurance company prayed for setting aside of the aforesaid order of the District Forum. Before this Commission also, both the parties have come up in revision, the Complainant praying for award of Rs. 5,00,000/- as compensation for the theft of the vehicle and interest at the rate of 18% per annum from the said amount. The insurance company, in turn, has prayed that the order of the State

Commission be set aside.

We have heard the learned counsel Mr. Charanjit Jawa for the complainant and Mr. Kishore Rawat for the insurance company and gone through the record placed before us. Both the learned counsel have cited some authorities in support of their respective contentions.

3. THE brief facts are that the complainant purchased a jeep in February 2003 and insured the vehicle for Rs. 5 lakh with the insurance company. THE insurance policy was valid from 27.01.2003 to 26.01.2004. On 25.06.2003, Baldev Singh, son of the complainant took the vehicle to Ludhiana and parked it at some place in that city. THE vehicle was reportedly stolen from its place of parking on the same day. An FIR to this effect was lodged by Baldev Singh in the Kotwali Police Station on 26.06.2003 and his version was recorded by the Police Sub-Inspector concerned. THE vehicle could not be traced by the police, which filed a report to that effect on 29.12.2003. THE claim of the complainant lodged with the insurance company was, however, repudiated by the latter under its letter dated 28.01.2004 on the ground that the vehicle was used as a taxi for hire and reward on the date of the peril. THE stand of the insurance company before the District Forum was that though the vehicle in question was insured as a private vehicle, investigations revealed that it had been used as a taxi for hire and reward on 26.06.03, i.e., the date of its theft and at least once earlier, as per the admission of the said Baldev Singh in the FIR lodged by him. After discussion of the evidence on record, the District Forum passed an order in favour of the complainant, as already noted. It may be added that in arriving at the sum of Rs. 3,37,500/- as the claim payable to the complainant, the District Forum allowed a deduction of 10% from the sum assured and also a further 25% on account of non-standard settlement of insurance claims. In the impugned order, the State Commission dealt with the contention of the insurance company regarding repudiation of the claim by holding that the alleged plying of the vehicle as a taxi for hire was not the fundamental cause of or reason for the actual peril, viz., theft of the vehicle and there was no nexus between the theft and the user of the vehicle as a taxi and accordingly upheld the order of the District Forum. For the reasons discussed in the impugned order the State Commission also dismissed the Appeal of the complainant.

4. BEFORE us, Mr. Bawa sought to rely heavily on the judgment and order of the Apex Court in the case of Hindustan Aeronautics Ltd versus Registering Authority and Ors [(1999) 8 SCC 169] to contend that the ratio of that judgment regarding interpretation of the phrase plying for hire, in the context of the provisions of section 3 and Entries No. 4 and 6 of the Schedule of the Orissa Motor Vehicles Taxation Act, 1975 would apply to this case also. His contentions were also that the vehicle had been purchased just four and a half months before the theft; the complainant (petitioner in R. P. No. 681/2006) was the actual owner of the vehicle and also the insured person; the FIR lodged by the complainants son could not be relied upon as conclusive evidence the vehicle having been used as

a taxi on the date of the theft; and the insured person, the complainant was not guilty of breach of any term of the insurance policy. 7(A). On the other hand, Mr. Rawat contended that the documented facts of the case, particularly the admissions of Baldev Singh, the son of the complainant (also the driver of the vehicle in question on the date of occurrence of its theft) in the FIR lodged by him at the Police Station concerned, clearly showed that the vehicle was actually used by him for hire and reward on that date (and, at least once immediately earlier) and this was against the terms of the insurance policy, the vehicle admittedly being one for personal use. He further contended that there was a clear nexus between the theft of the vehicle and the vehicle having carried one person (reportedly, named Vicky) for reward because, again according to the statement of Baldev Singh in the said FIR, it was Vicky who administered some drug in the cold drink that was offered by Vicky to him and drunk by him as a result of which he became unconscious and thus the theft of the vehicle was facilitated. Mr. Rawat also sought to rely on the judgment of this Commission in the case of Jagdeesh Singh versus United India Insurance Company Ltd [III (2000) CPJ (NC)]. In our view, the ratio of the Apex Court judgment cited by Mr. Bawa (supra) would not apply to this case because the facts of that case are not similar to those in this case. The HAL case before the Apex Court was by way of a civil appeal against the order of the Orissa High Court involving the question of chargeability of motor vehicle tax at a set of rates specified for different types of user on a set of vehicles owned by the Hindustan Aeronautics Ltd (HAL) and the vehicles in that case were used, apart from official purpose (transport of the employees of HAL to work), for occasional private use by the employees on payment of charges specified charges for such private use, as a welfare measure. Moreover, the dispute was about the liability for motor vehicle tax on these vehicles under the relevant State statute mentioned above (paragraph 7(a)). It was in the context of that case that referring to the consideration of the expression, plies for hire in the case *Sales v. Lake* [1922 All ER 689], the Apex Court clarified the meaning of that term and, applying that meaning to the facts of the case, held that the Registering Authority was not entitled to levy the tax rate that it charged on the vehicles of the HAL because they were not being plied for hire but for occasional private use by the employees of HAL on payment of specified rates. This case is neither regarding the tax rate applicable to a motor vehicle nor governed by the specific statute prescribing the tax rates for different types of user of a vehicle but one of insurance claim for theft of a vehicle under an insurance contract. The insurance policy expressly provided that the cover would not apply to the insured vehicle if it was used for hire or reward. The expressions plies for hire in the above-mentioned Orissa State statute and policy covers the use of the vehicle for any purpose other than hire and reward (the latter used in the insurance policy) are clearly distinct in meaning and scope. Moreover, the terms of an insurance policy need to be construed strictly. It is true that an FIR lodged with the Police cannot be treated as evidence in a criminal case where the tenets of the Evidence Act are to be applied strictly. In a consumer complaint, these strict requirements of proof are to be modulated

appropriately and the procedures are of those of a summary trial, subject to the principles of natural justice. Hence, in this case, the statements of the driver of the vehicle, who was also the son of the owner of the vehicle and had unfettered access to the use of the vehicle, in the FIR lodged by him after the theft of the vehicle need to be considered if they amount to clear admissions relating to circumstances leading to the theft. In this respect, the findings of the District Forum were as under: "Thus to prove or disprove if the vehicle in question was used as a taxi for hire and reward, we are left with the copy of the FIR as lone document. It has been recorded at the instance of Baldev Singh, son of the complainant, who was allegedly in the control of the vehicle, is binding upon the complainant. Its perusal in totality proves that Baldev Singh earlier brought the vehicle at Taxi Stand, Zira and took one unknown person Vicky to Ludhiana, where he was paid Rs. 1200/- as fare of the vehicle. Similarly, on the telephonic call of said Vicky, he again took the vehicle at Taxi Stand at Zira on 25.6.2003 and brought him to Ludhiana. Thus it substantially proves that Baldev Singh brought Vicky to Ludhiana on 23.6.2003 and 25.6.2003 for hire and reward."

In fact, the FIR clearly reflects the admission of Baldev Singh that the said Vicky was a stranger to the former; Vicky met Baldev Singh on 22.06.2003 at the latter's house and requested to be transported to Ludhiana; Baldev Singh picked up Vicky in his vehicle from the bus stand at Zira on 23.06.2003 and dropped him at Ludhiana the same day and was paid Rs. 1200/- for this trip. Vicky allegedly contacted Baldev Singh again on 24.06.2003, on the latter's cell phone, with a similar request, which took Baldev Singh from Zira to Ludhiana on 25.06.2003 to drop Vicky there, leading ultimately to the theft of his vehicle. Vicky, allegedly a stranger to Baldev Singh, first met the latter at his house and later called Baldev Singh on his cell phone for the same purpose; this would tend to show that strangers also knew that Baldev Singh was available with his vehicle for transporting persons from one place to another for hire or reward. It is also an admitted fact that Baldev Singh had full access to and control of the vehicle, though it was owned by his father, the complainant. Finally, given his own admissions in the FIR, there is little doubt that the theft of the vehicle had a close nexus with Baldev Singh indulging, at least at the relevant point of time, in use of the vehicle to transport an unknown person from Zira to Ludhiana for reward, if not as a regular taxi. Denial of these admissions in the FIR in any subsequent affidavit of the said Baldev Singh has to be seen as an afterthought. Award of the claim to the complainant on non-standard basis is also not in keeping with the terms of the policy it is a matter of discretion of the insurer and can at best be done with the concurrence of the insurer.

5. IN view of these discussions, the impugned order of the State Commission and that of the District Forum cannot be sustained and the revision petition of the insurance company needs to be allowed and that of the complainant has to be rejected. However, considering the totality of the circumstances, particularly with reference to the complainant, we would leave it to the insurance company to see if it can use its discretion under the terms of the policy and pay a reasonable

amount, say, fifty per cent of the assured sum, to the complainant, as an ex gratia payment, without this being treated as a precedent. The two revision petitions are disposed of in the above terms.