

(2014) 05 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

Kalyan Singh Chauhan

APPELLANT

Vs

National Insurance Company Through Division Manager

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Citation : 2014 0 NCDRC 278 : 2014 3 CPJ 16

Hon'ble Judges : AJIT BHARIHOKE , SURESH CHANDRA J.

Advocate : PAWAN KUMAR BANSAL

Judgement

1. THIS revision is directed against the order of the Haryana Pradesh State Consumer Disputes Redressal Commission Shimla in FA No.87/2011 dated 29.02.2012 whereby the State Commission allowed the appeal preferred by the respondent opposite party against the order of the District Forum and dismissed the complaint of the petitioner.

2. BRIEFLY stated the facts relevant for the disposal of this revision petition are that the petitioner insured his newly purchased Swaraj Mazda LCV with the respondent insurance company for own damage and the third party risk on 02.06.2008. The vehicle was insured as ""Goods carrying commercial vehicle """. The policy was valid from 02.06.2008 to 01.07.2009. Unfortunately, the vehicle met with an accident on 15.07.2008. The insurance company was informed and the petitioner filed insurance claim for indemnification of the loss sustained by him on account of damage caused to the vehicle due to accident. The respondent insurance company repudiated the claim on the ground that petitioner was plying the vehicle at a public place in violation of the terms and conditions of the insurance policy without a valid registration as also a valid route permit. Claiming this to be deficiency in service, the petitioner filed a consumer complaint seeking indemnification of the loss sustained by him on account of damage caused to the vehicle. The District Forum on consideration of the pleadings of the parties as also the evidence accepted the plea of the respondent opposite party that at the time of accident, the vehicle was being plied without a valid registration and a valid route permit which amounted to breach of terms and conditions of the

insurance policy. The District Forum, however, concluded that the respondent was not justified in repudiating the entire claim because of the aforesaid breach and allowed the insurance claim of the petitioner on non -standard basis and directed the respondent insurance company to pay to the petitioner 75% of the loss suffered amounting to Rs.1,97,133/ - with interest @ 9%. In addition to that, the respondent was directed to pay Rs.2500/ - as litigation expenses.

3. BEING aggrieved of the aforesaid order, the respondent preferred an appeal. The State Commission on consideration of record did not find any justification in grant of the insurance claim to the petitioner on non -standard basis. The State Commission thus allowed the appeal against the order of the District Forum and dismissed the complaint.

4. LEARNED Shri Pawan Kumar Bansal, Advocate, for the petitioner has submitted that the impugned order of the State Commission is not sustainable as it is against law laid down by the Supreme Court in the matter of AmalenduSahoo Versus Oriental Insurance Company Ltd. (2010) 4 SCC 536. Ms. Sakshi Gupta, Advocate, learned counsel for the respondent has argued in support of the impugned order. She has contended that respondent has rightly repudiated the claim of the petitioner because the petitioner was driving the insured vehicle without registration and a valid route permit, which violation is a fundamental breach of terms and conditions of the insurance policy. Undisputedly, the vehicle in question was insured and it met with an accident resulting in damage during the currency of insurance policy. It is not disputed that at the time of accident, the subject vehicle was not having a valid registration nor it was having a valid route permit.

5. BEFORE advertng to the submissions made on behalf of the parties, it would be useful to have a look at the law on the subject. In the matter of National Insurance Company Ltd. Vs. Nitin Khandelwal IV (2008) CPJ 1 (SC), the insurance claim filed by the insured in relation to theft of his vehicle was repudiated on the ground that the vehicle was being plied in violation of the terms and conditions of the insurance policy as a taxi. In the said case, Hon "ble Supreme Court held thus : ""In the case in hand, the vehicle has been snatched or stolen. In the case of theft of vehicle breach of condition is not germane. The appellant insurance company is liable to indemnify the owner of the vehicle when the insurer has obtained comprehensive policy for the loss caused to the insurer. The respondent submitted that even assuming that there was a breach of condition of the insurance policy, the appellant insurance company ought to have settled the claim on non -standard basis. The insurance company cannot repudiate the claim in toto in case of loss of vehicle due to theft "".

Following the aforesaid judgment, in the case of AmalenduSahoo vs. Oriental Insurance Co. Ltd., the Supreme Court held thus: ""In the instant case the entire stand of the insurance company is that claimant has used the vehicle for hire and in the course of that there has been an accident. Following the aforesaid guidelines, this Court is of the opinion that the insurance company cannot

repudiate the claim in toto "".

In the matter of G.KothainachiarVs. United India Insurance Co. Ltd., the three members Bench of this Commission after analysing the law laid down by the Supreme Court in the matters of Oriental Insurance Co. Ltd. Vs. Sony Cheriyan II (1999) CPJ 13 (SC), New India Assurance Co. Ltd., Shimla Vs. Kamla & Ors. (2001) 4 SCC 342, Jitendra Kumar Vs. Oriental Insurance Co. Ltd. (2003) 6 SCC 420, National Insurance Co. Ltd. Vs. Swaran Singh (2004) 3 SCC 297, National Insurance Company Ltd., Chandigarh Vs. Nicolletta Rohtagi & Ors. (2002) 7 SCC 456, B.V. Nagaraju V. Oriental Insurance Co. Ltd., Divisional Officer, Hasan (1996) 4 SCC 647, held thus: ""From the settled law quoted above, it is apparent that the Insurance Company can repudiate the claim of the insured in case where there is a breach of the policy condition / conditions; and, the breach is fundamental or material so as to vitiate the insurance contract "".

6. IN the context of the above noted settled legal position, we now proceed to analyse the facts of the case. Section 66 (1) of the Motor Vehicles Act, 1988 deals with ""Necessity for permits "", which reads thus: ""Necessity for permits. (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used "".

From the above, it is clear that no transport vehicle can be used on any public place without a valid permit. In other words, a transport vehicle without a valid permit cannot be plied on the road. For the violation of the said provision, there is a penal liability provided under section 192 (A) of the Motor Vehicle Act, 1988.

7. ON perusal of the Insurance Certificate, we find that at the bottom left corner, the insurance also provides ""Limitations as to Use "", which reads thus: ""The Policy covers use only under a permit within the meaning of the Motor Vehicles Act, 1988 or such a carriage falling under sub -section (3) of Section 66 of the Motor Vehicles Act, 1988. The policy does not cover use for (a) organised racing, (b) Pace making, (c) Reliability trails, (d) Speed Testing. ""

8. ON bare reading of the above, it is clear that under the insurance contract between the parties, the insurance cover extended to the insured is subject to the use of the vehicle only under a permit within the meaning of Motor Vehicle Act, 1988. Undisputedly, at the time of accident, subject vehicle was being plied on a public road without a valid route permit. Therefore, it is clear that under the above noted condition of ""Limitations as to Use "" of the insurance policy which is reproduced above, the respondent complainant cannot claim indemnity in view of the violation of the expressed ""Limitations as to Use "" provided in the insurance contract. In our aforesaid view, we find support from the judgment of the Supreme Court in the matter of VikramGreentech India Ltd. & Anr. Vs. New

India Assurance Co. Ltd (2009) 5 SCC 599, while dealing with the question about the construction of an insurance contract has held thus : ""An insurance contract, is a species of commercial transactions and must be construed like any other contract to its own terms and by itself. In a contract of insurance, there is requirement of *uberimma fides* i.e. good faith on the part of the insured. Except that, in other respects, there is no difference between a contract of insurance and any other contract. The four essentials of a contract of insurance are, (i) the definition of the risk, (ii) the duration of the risk, (iii) the premium and (iv) the amount of insurance. Since upon issuance of insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the insurance policy, its terms have to be strictly construed to determine the extent of liability of the insurer. The endeavour of the court must always be to interpret the words in which the contract is expressed by the parties. The court while construing the terms of policy is not expected to venture into extra liberalism that may result in re-writing the contract or substituting the terms which were not intended by the parties. The insured cannot claim anything more than what is covered by the insurance policy. [General Assurance Society Ltd. Vs. Chandumull Jain and another, Oriental Insurance Co. Ltd. Vs. Sony Cheriyan and United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal]. Document like proposal form is a commercial document and being an integral part of policy, reference to proposal form may not only be appropriate but rather essential. However, the surveyors " report cannot be taken aid of nor can it furnish the basis for construction of a policy. Such outside aid for construction of insurance policy is impermissible. ""

Further, section 39 of the Motor Vehicles Act deals with necessity for registration of a motor vehicle and it prohibits driving of any motor vehicle at a public place unless the vehicle is registered. The section also casts an obligation on the owner of the motor vehicle not to permit the vehicle to be driven at a public place without registration. Admittedly, the vehicle in question was not having a valid registration at the relevant time. Thus, by permitting the vehicle to be driven without registration, the petitioner has committed violation of Section 39 of the Motor Vehicles Act, which also amounts to fundamental breach of insurance policy.

9. IN view of the discussion above, it is clear that this is a case of fundamental breach of terms and conditions of the insurance contract. Therefore, we do not find any jurisdictional error or material irregularity in the order of the State Commission which may call for interference by this Commission in exercise of revisional jurisdiction.

10. REVISION petition is accordingly dismissed with no order as to cost.