(1995) 09 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

K.M. LAKSHMAN APPELLANT

Vs

SENIOR DIVISIONAL MANAGER, NEW INDIA ASSURANCE CO RESPONDENT

Date of Decision : 27-09-1995

Acts Referred:

Citation : 1995 2 CPC 482 : 1995 3 CPJ 89 : 1995 3 CPR 198 : 1996 1 CLT 169

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

Final Decision : Dismissed

Judgement

1. - THIS is a complaint under Section 17 read with Section 12 of the Consumer Protection Act, 1986

2. THE complainant is the owner of a heavy goods vehicle bearing Registration No. CAA-2006. THE said vehicle was insured with Opposite Party-the New India Assurance Company Ltd. for the period from 26.12.91 to 25.12.92. THE amount assured was Rs.1,20,000/-. At about 6.30 a.m. on 13.7.92 the said vehicle met with an accident and a claim was preferred by the complainant with the Opposite Party. THE Opposite Party repudiated the claim on the ground that the driver of the vehicle who drove the vehicle at the time of the accident was not having a valid licence to drive the heavy goods vehicle. THE complainant claimed a sum of Rs.1,09,200/- from the Opposite Party towards compensation. The Opposite Party filed its counter and pointed out that the vehicle of the complainant was a heavy goods vehicle and the driver who drove the vehicle at the time of the accident was not having a proper licence to drive the heavy goods vehicle. The specific averments of the Opposite Party in this regard at paras 3 and 4 of its version read as under: "3. It is true that the complainant was the owner of the Heavy Goods Vehicle bearing No. CAA-2006. The said vehicle having met with an accident on 13.7.92 had sustained damages. The complainant informed this respondent to assess and pay the damage and loss caused to the complainant in terms of the policy. This respondent on receipt of intimation arranged the survey without prejudice to its rights to admit or reject the claim under the policy.

4. From the particulars furnished in the Claim Form by the complainant and on

verification of the Driving licence of the driver who was driving the vehicle it was noticed that the driver who was driving the vehicle at the time of the accident was licensed to drive medium passenger vehicle and heavy passenger vehicle only. The driver was not authorised or licensed to drive heavy goods vehicle."

The Opposite Party on the basis of these averments sought the complaint to be dismissed.

During enquiry the complainant filed the affidavit of the complainant and produced the copy of the Insurance Policy and also the bills for having spent for the repair of the vehicle. The complainant also produced the repudiation letter dated 21.1.93.

3. WE heard the learned Counsel for the Opposite Party. The complainant and the learned Counsel for the complainant remained absent. Having regard to the pleadings of the parties, the points that arise for our consideration are: 1. Whether the driver who drove the vehicle at the time of the accident was holding a valid driving licence to drive the vehicle in question ? 2. Whether the complainant is entitled for compensation and if so to what amount of compensation he is entitled to? Regarding Points 1 and 2 :

4. THE Insurance Police relating to the vehicle in question i.e., C.A.A. 2006 shows the gross vehicle weight as 15,225 K.G. It was a truck. THErefore, it is clear that the vehicle in question was a heavy goods vehicle. This fact is not disputed by the complainant. The driver who drove the vehicle at the time of the accident was holding a driving licence to drive a medium passenger and heavy passenger vehicle. This fact also is not disputed by the complainant. The complainant in his affidavit at para 9 in this regard has averred thus: "9.1 submit that only objection putforth by the Company to repudiate my claim was that the driver who drove the vehicle was possessed a driving licence authorising him to drive the heavy passenger vehicle and not the heavy goods vehicle. Even it may be correct in view of the definition of heavy passenger vehicle and heavy goods vehicle, the driving of heavy goods vehicle by a driver who possessed a licence of heavy passenger vehicle is not amounts to breach of any terms under the licence. Since a similar definition was provided in respect of both the vehicles, and in such circumstances the stand taken by the Insurance Company is only a mere denial based with no rational ideas."

Therefore, it is clear that the driver who was holding a driving licence to drive a medium passenger and heavy passenger vehicle drove the heavy goods vehicle in question at the time of the accident. It is an admitted fact that the said driver had no driving licence to drive a heavy goods vehicle.

5. OUR High Court in M.F.A. 2193 of 1984 (Kumari Soubhagyavva v. Chandrakant Shivaprasad Savadatti & Others) derided on 6.12.90 at Para 2 of its judgment held as under: "2. The appellant has also challenged the award of the Tribunal in making R-2 Insurance Company not liable to pay the amount of award. But the finding of the Tribunal is that the driver was holding licence to drive only the

passenger vehicle and not heavy goods truck. The evidence of PW 1 the Motor Vehicles Inspector clearly establishes that the driver had no licence to drive heavy goods vehicle. In view of this finding of the Tribunal, R-2 the Insurance Company cannot be made liable to pay the compensation awarded to the appellant on account of rash and negligent driving of the driver in driving the heavy goods vehicle which was involved in the accident."

6. IT is clear from this finding of the High Court that the driver holding a driving licence to drive a heavy passenger vehicle cannot drive a heavy goods vehicle and in such a case the Insurance Company was not liable to pay the compensation. Having regard to the facts and in the circumstances of the case, as referred above, it is clear that the driver who drove the vehicle in question at the time of the accident was not having a valid driving licence to drive the heavy goods vehicle in question and so in driving this vehicle he acted in breach of the terms and conditions of the policy issued to the complainant.

Having regard to these facts and in the circumstances of the case, we are constrained to hold that the -New India Assurance Co. Ltd., was justified in repudiating the claim of the complainant and there was no deficiency in service on part of the in repudiating the claim of the complainant. Points 1 and 2 are answered accordingly.

7. IN the result, therefore, this complaint fails and it is dismissed. The parties are directed to pay and bear their own costs. Complaint dismissed.