(1995) 01 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

K.RAJAGOPAL APPELLANT

Vs

NATIONAL INSURANCE CO. LTD. RESPONDENT

Date of Decision : 19-01-1995

Acts Referred:

Citation : 1995 0 NCDRC 104 : 1995 1 CPJ 239 : 1995 2 CLT 146 : 1995 2 CPR 502

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , S.S.CHADHA , R.THAMARAJAKSHI J.

Advocate : SUNIL KAPUR

Judgement

1. THIS appeal has arisen from the order dated 21st October, 1992 of the State Commission, Tamil Nadu at Madras.

2. THE facts lie in a narrow compass and may be stated. The complainant admittedly owned a vehicle bearing registration No. TDG 6666 on 9th October, 1988 when he obtained a comprehensive policy of insurance, including risk of theft, from National Insurance Company for a sum of Rs. 1,13,000/-for a period upto8th October, 1989. On 15th June, 1989, the complainant entered into an agreement for sale of vehicle TDG 6666 with the second opposite party for a sum of Rs. 1,03,000/-. The complainant received a sum of Rs. 80,000/- on 15th June, 1989 and delivered possession of the said vehicle to the second Opposite Party. The, balance amount has not been received by the complainant. While the said vehicle was in the possession of second Opposite Party, it was lost by theft on 2nd August, 1989 and not traced. The complainant claiming to be the registered owner of the said vehicle filed the claim for compensation with the National Insurance Company who repudiated the claim on the ground that the complainant had sold and delivered the vehicle and as there were variations in the insurable interest, the complainant is not entitiled to make any claim. The complaint filed before the State Commission has been dismissed. The State Commission came to the conclusion that under the agreement of Sale, Exhibit A-3, the major portion of consideration of Rs. 80,000/- had been received and

the vehicle had also been delivered to second Opposite Party, but there was still a balance of Rs. 23,000/- on payment of which alone the registration could be transferred and thus there was no completed transaction of sale and ownership had not passed to the second Opposite Party. This is erroneous in our view. The sale of the said vehicle to second Opposite Party was finalised on 15th June, 1989 when the complainant received a sum of Rs. 80,000/- and transferred the possession of the vehicle. In a contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made. The goods (vehicle) sold was specific. It was in a deliverable state and possession of the goods was transferred to second Opposite Party on 15th June, 1989. It is immaterial that the time for payment of the balance of Rs. 23,000/-was postponed.

3. THE State Commission is not wholly right in its interpretation of Clause 4 of the Exemption Clause of the Policy of insurance as follows: "Any accident loss, damage and/or liability caused sustained or incurred after any variation or in termination of the insured''s interest in the motor vehicle".

It was not variation but complete termination of the insured''s interest in the motor vehicle. There was no insurable interest left in the complainant when the theft of the vehicle occurred. The appeal fails and is dismissed with no order as to costs.