

(2003) 12 NCDRC CK 0066

In the National Consumer Disputes Redressal Commission

LALIT MOHAN RAI

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD.

RESPONDENT

Date of Decision : 24-12-2003

Acts Referred:

Citation : 2004 2 CLT 587 : 2004 2 CPJ 191 : 2004 2 CPR 540

Hon'ble Judges : K.D.Shahi , Surendra Kumar , Luxmi Singh J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal against the judgment and order dated 25.6.2003 passed by the District Forum. Champavat whereby the complaint of the complainant, Sh. Lalit Mohan Rai was dismissed.

2. THE brief facts of the case are that Sh. Lalit Mohan Rai has purchased a Marshall jeep after taking loan of Rs. 3,00,000/- (Rupees three lakhs only) from the bank. It was registered and it was insured for Rs. 4,10,000/- (Rupees four lakhs ten thousand only) for a period from 31.7.2001 to 31.7.2002. THE jeep was used on a taxi permit to carry passengers. On 12.7.2002 the jeep was going from Lohaghat to Tanakpur with nine passengers. Near Swala Mandir it rolled down in a Khud in which seven passengers including the driver died. Two passengers were also injured. It is said that at the time of accident three persons namely Rajendra Kamal and Mohd. Kamar were standing on the road while waiting for a bus and they came in contact of the jeep and were injured in the trap of the jeep. It is specific in Para 3 of the complaint that these three persons were not passengers. Their details have been given in Para 4 of the complaint along with their complete address. It is alleged that the jeep was totally damaged and it was not fit to be repaired. The company was approached to indemnify the insured amount. The accident took place on 12.7.2002. The Insurance Company inspected it on 17.7.2002 and final survey was made on 20.8.2002 and they assured to make payment but nothing was paid. It is said that the complainant had signed certain papers on the date of survey on 20.8.2002 and given these papers to the surveyor on the assurance that he shall

be paid the claim amount. In spite of several requests the complainant had not been paid the claim amount and, therefore, he filed the complaint in the Forum on 14.1.2003.

The Insurance Company filed the written statement and denied the complaint allegations, however, admitted the insurance. In Para 10 of the written statement, it is alleged that there were twelve passengers in the jeep out of which eight died and four were injured. It is incorrect to say that three persons were standing on the road and got injured, actually they were in the jeep itself. The jeep was insured for sitting of ten persons including the driver. The sitting of two additional passengers is thus driving of the vehicle against the terms of policy. In Para 19 of the written statement it is alleged that Rajendra Kumar has given his statement in the claim petition filed by the deceased in which he has stated that he was on the jeep as passenger along with Kamal Singh. It is said that inquiry was made from Ratan Mani, Pujari of the Mandir who also stated that there were twelve passengers in the jeep. In the Motor Accident claim several have given statements on oath.

3. IT is nowhere in the written statement that the claim of the complainant has been repudiated but it is said to have been repudiated. On the evidence of the parties, the learned Forum found that the permit was for sitting of ten persons and in the jeep twelve persons were sitting and, therefore, it is against the terms of the policy, therefore, it rejected the claim petition. Against which order the present appeal has been filed.

4. WE have heard the learned Counsels for the parties and gone through the records. The Insurance Company filed here the copy of the tourist permit and also the consent letter of the complainant that he was ready to receive Rs. 2,90,000/- (Rupees two lakhs ninety thousand only) and he was also interested in retaining the salvage of the damaged vehicle for Rs. 1,30,000/- (Rupees one lakh thirty thousand only). The Insurance Company also filed the copy of the survey report. It is said that in the Motor claim petitions certain persons including Rajendra Kumar, Kamal Singh and Mohd. Kamar have given statement that these three passengers were sitting in the jeep, they were not waiting for conveyance on the road but copy of their statement has not been made available to us in this record. From the judgment of the learned Forum it also appears that the copy of the statement of the witnesses was not filed before the District Forum as well. The District Forum has detailed the papers at page two of its judgment and has mentioned that the complainant filed his affidavit and eight papers in which there was cover note, copies of the affidavits of Kamal Singh, Rajendra Kumar and Mohd. Kamar and copies of the letters of correspondence between the parties. The Forum further held that from the side of the opposite party copy of survey report, Vahan Permit, investigation report, affidavit of Sonu/ Vikas Aggarwal, Statement of Ratan Mani, Pujari of Swala Mandir and also copies of some affidavits filed in Motor Claim Petition Nos. 42, 43, 49, 50 and 51/2002 have been filed. It is not mentioned that any statement of any witness recorded

in the Motor Claim Petition was filed in this complaint. There is no case that thirteen passengers were sitting in the jeep. According to opposite party twelve persons were sitting, two were extra passengers but the learned Forum has written that twelve or thirteen persons were sitting and came to the conclusion that twelve or thirteen persons were sitting. There is no case of thirteen persons from where it found that is not clear. In smaller Districts of Uttaranchal the sitting District Judges are also the President of the District Forum, so is the present case. It appears that the attention of the President was drawn towards the judgments given by him in the above Motor Claim Petitions and he was prejudiced by the records of those claim petitions, otherwise he should not have been addressed in the judgment that "my attention was drawn" and "I am of the opinion" whereas the judgment is pronounced by the Bench of the District Forum constituting of the President and the Member. The judgment is of both the persons constituting the Bench and is not the individual judgment of the President.

5. AT any rate we have to decide the case whether these three persons namely Rajendra Kumar, Kamal Singh and Mohd. Kamar were the passengers on the jeep or they were standing on the road and they came in the trap of the jeep and had got minor injuries. In fact it is alleged that the jeep rolled down 150 metre below Khud. As many as eight persons died, only two remain survived, their injury reports have not been produced before us but 150 metres is equivalent to more than 450 feet and if these persons were sitting in the jeep and rolled about 500 feet below in the Khud and they could not have got only minor injuries, etc. at least some fracture and other injuries should have come to them, at least they should not have given false statement to any person that they were standing outside on the road but instead they should have been the first person to cry that they were in the jeep and they were not on the road. They could have also got handsome compensation from the company or the complainant, may not be for severe injury but for mental pain and severe shock due to the accident. Such a person will never tell lie to help the complainant. All these three persons are of the different villages, they are not of the family of the complainant, they are residents of different villages, at least Mohd. Kamar is the resident of Tehsil Baheri, District Bareilly. He has got no reason to give false statement, he has got no interest in the case, neither any interest has been shown by the Insurance Company for which these three persons could have given a false statement.

6. THE question is of evidence before us to decide that these three persons were in the jeep. THE Insurance Company says it and it is their duty to prove it because it is their case in the positive. THE case of the claimant is only that of denial. As said above the copies of alleged statement of these witnesses given in the Motor Accident Claim have not been produced in this case, they have not been examined in this case as witnesses, to the contrary they have filed their affidavits before the District Forum. THEy could have been summoned to give their statement on oath if their affidavit was to be disbelieved. In summary proceedings like this evidence is taken on affidavit. In their affidavits, Rajendra

Kumar, Kamal Singh and Mohd. Kamar all have deposed on oath that they were not sitting in the jeep, they were standing outside waiting for a conveyance. THE copies of their affidavits are also here on the record. THE final report was submitted in the case against the driver, the I.O. has recorded the statement of Rajendra Kumar and Kamal Singh and they have stated that they were not sitting on the jeep, they were waiting on the road for a conveyance. No evidence has been produced by the Insurance Company before the learned Forum except survey report, Vahan permit, investigation report, affidavit of Sonu and Ratan Mani. Affidavits of Sonu and Ratan Mani have not been made available to us to show that what they have stated but at least Kamal Singh and Rajendra Kumar are the best witnesses and they have supported the case of the complainant.

The Insurance Company makes its own inquiry and investigation and they appoint their surveyors to make spot survey and make investigations. The Insurance Company has produced the report of the surveyor in this case and at least the Insurance Company cannot say that the report of his surveyor is not believable. He is an independent witness and reliable by both the parties and in his survey report, he has reported that third party loss of three persons involved in this accident as per the list of the injured persons submitted by the insured. Regarding the actual number of passengers carried at the time of accident, the surveyor has reported that the actual number of passengers travelling at the time of accident would be known after investigation. Who conducted this investigation and what was his report has not been produced before us. His information, therefore, is on the basis of the list submitted by the insured and there is no independent evidence of the Insurance Company that these three persons were on the jeep.

7. THE case was investigated by the Police as well because as many as eight persons are said to have died on the spot and the case was also registered under different sections of I.P.C. THE investigation of the Police reveals that there were only ten persons at the vehicle, the case of the complainant is also that there were ten persons including the driver, the police investigation belies the case of the Insurance Company. The evidence, which is on record, clearly establishes that these three persons were not sitting on the jeep, they were only waiting for a conveyance on the road.

8. THE claim of the complainant could not have been rejected on this ground. Even if two persons were extra on the jeep, there is nothing on the record that their sitting has in any way contributed to the accident. Sitting of the extra persons has got no nexus with the accident, therefore, in view of the rulings of the National Commission and also of the Supreme Court in Nagaraju's case in which it has been held that the claim could have been settled on non-standard basis, it could not have been totally repudiated. However this finding is only for academic interest otherwise it is proved on record that there were only ten persons on the jeep and the finding of the learned Forum on the strength of his personal feelings in Motor Accident Claim cases cannot form basis of a judgment

in the Forum. Each case is to be decided on its own merits. The personal knowledge of the Judge cannot be a ground for decision in the case. The overwhelming evidence was in favour of the complainant before the learned Forum. At least the best witnesses have supported the case of the complainant and, therefore, the complainant was entitled to the compensation of the insured amount without any reference to the principle of non-standard basis. Coming to the compensation, which should be granted to the claimant, we find that the surveyor has reported that on the total loss basis the complainant is entitled to Rs. 4,10,000/- (Rupees four lakhs ten thousand only). He has given some provisions for deductions but merely because the jeep was operating on hill area, its value should not be reduced to Rs. 2,90,000/- (Rupees two lakhs ninety thousand only) within one year of the purchase and maximum 5-10% deduction could have been made. Then the report was on repair basis, which was Rs. 2,24,672/- (Rupees two lakhs twenty-four thousand six hundred seventy-two only). The complainant has given the consent letter that he was ready to receive Rs. 2,90,000/- (Rupees two lakhs ninety thousand only) in full and final settlement and also he was interested to retain the salvage. The insurance department has relied upon this consent letter and filed the copy of the said consent letter before us. The company again says that the complainant cannot go against the consent letter but they are free to go. If the consent letter is to be relied upon, it is to be relied upon by both the parties and it is to be respected by both the parties. When the claimant wanted that he should be paid Rs. 4,10,000/- (Rupees four lakhs ten thousand only) on total loss basis and the salvage should be given to the Insurance Company, the Insurance Company immediately produced the consent letter. According to the Surveyor himself as given in the estimated loss the value of the salvage can avail Rs. 1,10,000/- (Rupees one lakh ten thousand only).

9. IT was argued by the learned Counsel for the respondent that the vehicle was used for an year, so is also the report of the survey that it was used as a taxi, therefore, 5-10% depreciation should be given and proportionately the insured amount may be deducted. Taking this view the salvage is to remain with the complainant. Salvage is afterall salvage and within one year it must have rusted and must have become scrap and fit to be sold to Kabari. If the complainant is not being given depreciation of this, there is no question of grant of any other depreciation to the other party.

10. THE consent letter is to be respected by both the parties and in our view the compensation of Rs. 2,90,000/- (Rupees two lakhs ninety thousand only) should have been the optimum compensation which could have been awarded to the complainant besides this he was also entitled to retain the salvage. THE accident took place on 12.7.2002. He gave his consent letter on 27.8.2002. Final survey has also been made on 20.8.2002. In these circumstances there was no handicap with the insurance company to settle the claim within three months but it is not known till now that on what date the claim has been repudiated and on what reasons? In the ruling reported in III (1996) CPJ 8 (SC). United India

Insurance Co. Ltd. v. M.K.J. Corporation, a fundamental principle has been laid down that from which date interest should be paid. According to the Hon''ble Supreme Court where five months time was taken to reject the claim, it was deprecated and the Hon''ble Supreme Court held that a reasonable time of two months would be justified to take the decision. Even if two months are allowed after 20.8.2002 then the claimant is entitled to interest from 13.10.2002. THE Hon''ble Supreme Court has also held in this ruling that 12% interest shall be the optimum interest. The complainant has claimed a sum of Rs. 4,10,000/- (Rupees four lacs ten thousand only) as insured amount along with interest @ 14% but we find that the claimant is entitled to a sum of Rs. 2,90,000/- (Rupees two lacs ninety thousand only) along with interest @ 12% payable from 13.10.2002. The complainant has further claimed a sum of Rs. 50,000/- (Rupees fifty thousand only) as loss for mental and physical pain as compensation. He has already been allowed interest and it is settled principle of law that he cannot be given interest as well as compensation as held in the ruling reported in II (2000) CPJ 1 (SC), Ghaziabad Development Authority v. Union of India and the ruling, reported in III (2002) CPJ 124 (NC)=2003 (II) CPC 1 (NC), Satelec Power Electronics v. N.R.D.C. There is no question of payment of any compensation of Rs. 50,000/- (Rupees fifty thousand only). The claimant has also claimed cost of litigation but we find that this is a fit case where the parties should bear their own cost throughout.

The net result of the above discussion is that the judgment and order passed by the learned Forum is to be set aside and the complaint is to be allowed for recovery of Rs. 2,90,000/- (Rupees two lacs ninety thousand only) with 12% interest payable from 12.7.2002. ORDER The appeal is allowed. The judgment and order dated 25.6.2003 is quashed. The complaint is allowed for recovery of Rs. 2,90,000/- (Rupees two lacs ninety thousand only) along with interest @ 12% payable from 12.7.2002 till the actual date of payment. Cost throughout shall be easy. Appeal allowed.