(1999) 05 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

LAXAMAN DAS MISHRA — APPELLANT

Vs

National Insurance Company Limited — RESPONDENT

Date of Decision : 22-05-1999

Acts Referred:

Citation : 1999 3 CPJ 391

Hon'ble Judges : S.K.Dubey , N.K.Vaidya J.

Final Decision : Appeal dismissed

Judgement

1. THIS is a complainant''s appeal under Section 15 of the Consumer Protection Act, 1986 (for short the ''Act'') against the order dated 16.4.1996 passed in Case No. 178/93 by the District Consumer Disputes Redressal Forum, Rewa (for short the ''District Forum'').

2. IT is not in dispute that the complainant''s Ambassador Car No. MP-19/A-6661 was insured comprehensively vide Policy No. 3103585/92 for estimated sum of Rs. 1,78,000/- for the period commencing from 18.7.1992 to 17.2.1993. The said car met with an accident on 4.7.1997 in Mauranipur, District Jhansi. The complainant lodged the claim. Complainant claimed for loss/ damage of Rs. 13,627/-, but, the claim was repudiated by the opposite party as at the time of accident Awadesh Kushwaha was driving the car, who was not duly licensed and as a holder of learner''s licence was driving the car. The complainant filed the complaint alleging deficiency in service. The District Forum dismissed the complaint holding that it had no territorial jurisdiction as the accident occurred at Mauranipur in District Jhansi (U.P.) and the policy was issued by the Satna Office. However, the defence of the opposite party that no liability arises as the vehicle was being driven by the person not duly licensed was not accepted. The first question for our consideration is whether the complaint could be dismissed for want of territorial jurisdiction. It is not disputed that the opposite party had its branch office within the territorial jurisdiction of the District Forum at Rewa. Therefore in view of Section 11(2)(b) of the Act, the complaint could not be dismissed as the opposite party had its branch office for the purpose of carrying

of insurance business in Rewa within the territory of District Forum, irrespective of the fact that the insurance policy was issued by the Satna Office situated outside the limits of the District Forum. See, the decision of State Consumer Disputes Redressal Commission, Gujarat in Consumer Education and Research Society & Anr. v. Canara Bank & Ors., 1991 (1) CPR 405.

Mr. G.K. Shrivastava, learned Counsel for the respondent placing reliance on a decision of the Supreme Court in New India Assurance Company Limited v. Mandar Madhay Tambe & Ors., 1996 ACJ 253=I (1996) ACC 392 (SC), submitted that the driver of the car at the time of accident was not duly licensed, therefore, the claim was rightly repudiated. The finding of the District Forum recorded against the insurer is illegal.

3. MR. Rajiv Jain, learned Counsel for the appellant submitted that the finding so recorded has attained the finality as the opposite party has not filed any appeal or cross-objection under Order 41, Rule 22 of the Code of Civil Procedure, hence, no interference can be made. The submission of Mr. Rajiv Jain, learned Counsel has no substance. The District Forum, though recorded the finding on issue of validity of licence against the respondent, but dismissed the complaint for want of territorial jurisdiction. Therefore, there was no occasion to respondent to file an appeal. Besides, Order 41, Rule 22 of the Code of Civil Procedure gives ample powers to a respondent in an appeal filed against whom a finding on issue has been recorded against the respondent to attack the finding. It is well established that a respondent seeking to support the decree under the appeal need not to file cross- objection. He can support the decree by raising ground which was not considered in his favour by the Court below or even decided against him. On the other hand, he must file cross-objection, if he wants to attack the decree in order to get it further modified in his favour. See, the decision of the Supreme Court in Superintending Engineer & Ors. v. B. Subba Reddy, IV (1999) SLT 280, and decisions of Madhya Pradesh High Court in Smt. Manju Tiwari v. Harprasad Rasgai, 1997 (2) ACJ 230, and Balwant v. Mainabai, 1990 ACJ 51.

4. ADMITTEDLY, the driver at the relevant time was not possessed of a valid licence and was holder of a learner''s licence. Such a person under the terms of the policy cannot be said to be duly licensed. Driving licence is defined in Section 2(10) of the Motor Vehicles Act, 1988, which means the licence issued by a Competent Authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description. The policy contemplates that the Insurance Company would be liable only if the vehicle was being driven by a person holding a valid driving licence or a permanent driving licence other than a learner''s licence. Therefore, at the time of occurrence the vehicle was being driven by a learner who having learner''s licence cannot be said to be person duly licensed driving the car at the time of accident, hence, the Insurance Company in good faith on justifiable ground rightly repudiated the claim. In the result, the appeal fails and is dismissed with no order as to costs. A copy of this order be conveyed

to the parties and a copy be sent to the District Forum with the record of the case. Appeal dismissed. ________________

