(2015) 06 NCDRC CK 0064

In the National Consumer Disputes Redressal Commission

Case No : 4419 of 2014

MANJEET SINGH Vs NATIONAL INSURANCE COMPANY LTD. &?ANR

Date of Decision : 03-06-2015

Acts Referred:

Motor Vehicles Act, 1988, Section 2(14), Section 2(14), Section 66(3), Section 66(3), Section 149(2), <a href=15711-149>Section 149(2

Citation : (2015) 06 NCDRC CK 0064

Hon'ble Judges : V.K. Jain

Advocate : Sanjay Aggarwal, Yogesh Malhotra, Danvir Sharma

Judgement

1. The complainant/petitioner purchased a Tata Open Truck and got the same financed from respondent no. 2 Trans Asia Auto & General Finance. The vehicle was got insured with respondent no. 1 National Insurance Company Limited. During the currency of the policy, the driver of the vehicle gave lift to three persons at G.T. Karnal Road. One of them got the vehicle stopped on the pretext that he had to answer the call of the nature. When the vehicle was stopped, all of them assaulted the driver, tied his hands and legs with a rope and threw him in the nearby field and fled away with the vehicle. The claim which the petitioner/ complainant lodged with the Insurance Company was repudiated vide letter dated 11.11.2005 which, to the extent it is relevant, reads as under:

We had granted risk to the above vehicle on the basis of goods carrying vehicle. On 12 th December, 2004 your driver Sri Sanjay Kumar, on reaching at T point of Karnal had stopped the vehicle, allowed three unknown him in the fields and took away your vehicle in question. By allowing the persons to travel in the vehicle, your driver violated the condition of ''Limitation as to use'' and Motor Act defines goods carriage means a motor vehicle construed or adopted for use solely for the carriage of goods. Breach of condition is fundamental and has contributed to the loss. The three persons who were allowed were taken away your vehicle was against the permit and these persons traveled against mandate of the statute and Section 149(2) no liability could be passed on to the Insurance Company.

2. Being aggrieved from the rejection of the claim, the complainant approached the concerned District Forum by way of a complaint impleading both the Insurance Company as well as the financer as the Opposite Parties.

3. The complaint was resisted by the Insurance Company on the ground that carrying the passenger in a Tata truck which is a goods vehicle, was in breach of the conditions of the policy and having committed breach of the terms of the policy, complainant was not entitled to any reimbursement from the Insurance Company. It was also alleged that the theft had taken place on ground of negligence of the driver of the complainant.

4. Vide its order dated 20.02.2010, the District Forum rejected the claim on the ground that in view of the arbitration award passed by the arbitrator in a dispute between the complainant and his financer, the complaint could not be entertained.

5. Being aggrieved from the order passed by the District Forum, the complainant approached the concerned State Commission by way of an appeal. The said appeal having been dismissed vide impugned order dated 04.09.2014, the complainant is before this Commission by way of this Revision Petition.

6. The insurance policy issued to the complainant, to the extent it is relevant reads as under: (ii) Use for carrying passengers in the vehicle except employees (other than the driver) not exceeding six (6) in number coming under the purview of Workmen''s Compensation Act, 1923.

Limitation as to use:

The policy covers use only under a permit within the meaning of the Motor Vehicle Act, 1988 or such a carriage falling under Sub-Section 3 of Section 66 of the Motor Vehicles Act, 1988.

7. It is pointed out by the learned counsel for the Insurance Company that as per the definition of the ''goods carriage'' given in Section 2(14) of the Motor Vehicles Act, 1988, goods carriage means any motor vehicle construed or adopted for use solely for the carriage of goods and

includes a vehicle which though not so construed or adopted when used solely for the carriage of goods. He also relies upon the decision of the Hon''ble Supreme Court in Oriental Insurance Co. Ltd. Vs. Devireddy Konda Reddy, (2003) 2 SCC 339 where the apex court noticing the difference in the language of ''goods carriage'' in the old Act and the new Motor Vehicles Act observed that the legislative intent was to prohibit the goods vehicle from carrying any passenger. It would thus be seen that carrying three passengers even by way of giving lift to them amounted to a breach of the terms and conditions of the insurance policy. The learned counsel for the petitioner submits that as per the cover note issued to the complainant, upto six persons were allowed to be carried in the vehicle. However, even the said cover note is of no help to the complainant as it only allows carrying the employees not exceeding six in number coming under the purview of Workmen''s Compensation Act, 1923 whereas the persons to whom left was given by the driver of the complainant were not the employees of the complainant. Therefore, there is no escape from the conclusion that there was a breach of the terms and conditions of the insurance policy when the driver of the truck allowed three passengers to board the said vehicle even if I presume that no fare was charged from them and they were allowed to board the vehicle as gratuitous passengers. In view of the terms of the policy, the Insurance Company is not liable to reimburse the complainant for the loss occurred to him on account of a breach of the terms of the policy issued to him.

8. The learned counsel for the complainant relies upon the decision of the Hon''ble Supreme Court in National Insurance Company Ltd. Vs. Nitin Khandelwal IV (2008) CPJ 1 (SC) in support of his contention that even if there is a breach of policy, in case of theft, the insured is entitled to be indemnified on a non-standard basis. A perusal of the above referred decision would show that in the case before the Hon''ble Supreme Court, some unknown persons stopped the vehicle while it was sent to bring the children of the complainant from Jaipur, tied the driver, dumped him on the way and snatched away his vehicle. The claim having been rejected by the Insurance Company, the matter was taken to a Consumer Forum. The District Forum having rejected the complaint, he preferred an appeal before the concerned State Commission which directed to Insurance Company to settle the claim on non-standard basis. The order passed by the State Commission was challenged by the Insurance Company before this Commission by way of this Revision Petition. Said petition having been dismissed by this Commission, the petitioner approached the Hon''ble Supreme Court by way of an appeal. Rejecting the appeal filed by the Insurance Company, it was held by the Hon''ble Supreme Court that the claim was required to be settled by the Insurance Company on non-standard basis. It was observed during the course of the judgment that in the case of theft of vehicle, breach of the terms is not germane. However, the facts of the present case are quite different. In the case before this Commission, the vehicle was stolen by those very persons whom the truck driver had given lift. Had he not given lift to them, vehicle would not have been stolen. Thus, not only was there a breach of the terms of the policy, the theft of the vehicle is attributable solely to the aforesaid breach of the terms of the policy by the insured. Had the vehicle not been stolen by those very persons who were given lift by the truck driver, the Insurance Company would have been obliged to settle the claim on a non-standard basis but in case where the breach of the terms of the policy itself results in the theft of the vehicle, the decision of the Hon''ble Supreme Court in Nitin Khandelwal (Supra) would not be applicable.

9. For the reasons stated above, I am of the view that since the theft of the vehicle in question occurred solely due to the truck driver having committed the breach of the terms of the policy by allowing three passengers to travel in a goods vehicle, the Insurance Company was justified in repudiating the claim.

Consequently, no ground for interfering with the orders passed by the

District Forum and the State Commission is made out even though the orders passed by the District Forum and the State Commission have proceeded on the basis of arbitration award in a dispute between the complainant and his financer. The Revision Petition is accordingly dismissed with no order as to cost.