(2003) 06 NCDRC CK 0064

In the National Consumer Disputes Redressal Commission

MEHBOOB DADAPIR NARANGI — APPELLANT

Vs

UNITED INDIA ASSURANCE CO. LTD. — RESPONDENT

Date of Decision : 24-06-2003

Acts Referred:

Citation : 2004 1 CPJ 539 : 2004 2 CLT 343

Hon'ble Judges : B.S.Sreenivasa Rao , J.N.Prabhudessai , Sandra Vaz E.Correia J.

Final Decision : Complaint partly allowed

Judgement

1. THIS complaint is filed by the complainant against the Insurance Company for the recovery of Rs. 4,85,000/-, the assured amount of the insurance, Rs. 3,00,000/- towards compensation for the business loss. Rs. 1,75,000/- towards penal interest, Rs. 15,000/- towards mental agony and torture, and Rs. 10,000/- towards miscellancous expenses in all Rs. 9,85,000/- for the fire accident of the truck.

2. BRIEFLY stated the facts of the case are the complainant was the owner of truck which was purchased availing loan of Rs. 5 lakhs hypothecating the same to Ashok Leyland Finance Ltd. The said truck was having National permit. The Complainant is consumer having hired the services of the Respondent, United India Assurance Co. Ltd., for granting insurance cover for the truck and other accessories insured for Rs. 6,50,000/- under a policy of the Respondent. On 7.2.2001 the truck was booked for transporting coke from Mormugao. Harbour Goa to Ginigera, Karnataka District. On 8.2.2001 the consignment was loaded and proceeded for its destination and at about 12 noon on reaching at Nandran, Mollem on its way to Ginigera, the truck got itself burnt while in motion. The driver could not rescue himself and was killed in the mishap. The incident was reported to Police Station at Collem. A claim was raised by the complainant for the losses caused. Respondent the opposite party consented to sell the salvaged material of the truck for the sum of Rs. 1,15,000/- and the claim was for balance amount of Rs. 4,85,000/-. By letter dated 24.1.2002 the opposite party informed

the claim could not be settled as the driver was not holding valid and effective driving licence and repudiated the claim. It is also alleged that the Complainant was earning about Rs. 25,000/- per month on the truck. Due to non-settlement of the claim for a year he is entitled for compensation towards mental agony and torture and claimed total amount of Rs. 9,85,000/- as detailed above. The claim has been resisted by the opposite party the Insurance Company on the ground that the driver of the vehicle at the time of accident did not possess valid and effective driving licence thus there is breach of insurance policy issued by opposite party in favour of the Complainant. The opposite party issued insurance policy from 17.3.2000 to 16.3.2001 in favour of Mr. Mehboob D. Narangi, covering the commercial vehicle, the truck. The liability of the opposite party is governed by its terms and conditions and the relevant provisions and exceptions of the M.V. Act.

It is contended that Javed Ahmed Jalali, driver was not holding valid and effective driving licence at the time of the accident. The duplicate zerox copy of the licence was found to be a fake one. It is also contended that during the process of the claim the opposite party found that the driver Javed employed as a cleaner also had no valid and effective driving licence to drive the vehicle and the claim of the complainant is beyond the scope of the policy issued and hence the opposite party repudiated the claim.

3. THE opposite party has filed the documents, insurance policy, motor claim survey report, xerox copy of the report of the police, letter dated 3.7.2001 of the Investigator, xerox copy certificate letter dated 8.1.2002, and the reply dated 26.3.2002 to the Advocate of the complainant. In support of the claim the complainant has filed Affidavit in Evidence stating that his truck was insured with the opposite party for Rs. 6.50 lakhs. He had engaged two drivers having effective driving licence. They were Mr. Dilawar Shabudin Tamboli and Mr. Javed Ahmed Jilali. On 8.2.2001 the two drivers started the journey. On reaching Nandrem, Mollem, while the truck was in motion it got totally burnt. At that time driver Javed was at the steering wheel and the other driver was in the cabin. In the fire accident Javed Jilali could not rescue himself and was killed. All the original documents viz. R.C. Book, tax, driving licence, were burnt in the said fire incident. Earlier he had taken xerox copy of the permit.

4. THE Manager of the opposite party has filed Affidavit to the effect that the vehicle was driven by the cleaner/ driver Javed at the time of the accident did not have valid and effective licence and valid driving licence is the condition precedent to claim the damages. Heard the Counsel for the Complainant and the Counsel for the opposite party. The main contention of the Counsel for the opposite party the Insurance Company is that at the time of the accident when the truck was burnt the driver who was driving the vehicle had no valid driving licence. It is also contended that the document produced is fake document and the claim of the complainant cannot be entertained. Examined the documents produced by the complainant and also on behalf of the opposite party. The

Counsel for the opposite party has relied on the following rulings in support of his contention.

5. NEW India Assurance Co. Ltd. v. Phool Chand, False informantion given by complainant to get the claim-Breach of terms and conditions of policy - Forum not justified in decreeing the claim in National Insurance Co. Ltd. v. Sanjay Kumar Sihotia, I (2002) CPJ 522. Rajasthan State Consumer Disputes Redressal Commission, Jaipur - Claim repudiated as driver not having valid driving licence on the date of accident - Claim decreed by Forum : Repudiation of claim cannot be faulted, Prahalad Kumar Verma v. NEW India Assurance Co. Ltd., II (2002) CPJ 334 UPSCDRC. Respondents - Driving Licence : Repudiation of claim - Driver not having vaild driving licence : Complaint dismissed by Forum Order upheld in appeal-Uttaranchal State Consumer Disputes Redressal Commission, CCII (2003) CPJ 565, Forged, duplicate licence filed by complainant to get the claim. No amount payable on non-standard basis in case of total fraud - Forum not entitled to go into detail and evidence of forgery : Complaint dismissed by Forum relegated to Civil Court. The proceedings before the Forum are summary proceedings. Forum is not entitled to go into the detailed evidence of forgery, etc. There is no dispute with respect to the principles enunciated in the above decisions. The facts and circumstances of the case in the above decision are distinguishable from those present case on hand.

6. IN the present case on hand the fire accident is admitted and the policy says on the fire accident for the losses to satisfy the claim of the owner of the vehicle. The contention of the opposite party repudiating the claim of the complainant in the circumstances of the present case cannot be upheld for the simple reason that the policy covers fire accident and also the amount. When such being the case when the accident itself is not disputed the question of whether the driver of the truck was having valid driving licence does not arise at all. IN that view of the matter, in our considered opinion all the contentions raised by the opposite party in the defence cannot be entertained on the facts and circumstances of the present case and also in view of the documents produced by the opposite party and also the complainant. The Counsel for the complainant has relied on the following Rulings. C2002 (1) Mh.LJ 179 - Respondent''s plea of Insurance Company that driver of the offending tractor did not have valid driving licence - Insurance Company was required to prove by bringing substantial evidence in that respect - Mere submission of application calling upon driver to produce driving licence not sufficient to discharge the burden - Insurance Company could not legitimately claim exoneration : Insurance Company held liable to satisfy the award as made. In AIR 1885 SC 1281 (sic) it has been held that the burden to prove that there was breach of contract of insurance was squarely placed on the shoulders of the Insurance Company and that the burden could not be said to have been discharged by merely questioning in the cross-examination in New India Assurance Co. Ltd. v. Vanapalli Suribabu, 2002 ACJ 1250. Respondent it has been held that no evidence that the owner who had appointed a duly licensed driver to drive the offending vehicle had wilfully entrusted the vehicle to

the cleaner and thus committed breach of terms and conditions of the policy. Whether the Insurance Company is exempted from liability - Held No. High Court of Madhya Pradesh, Indore Bench in Sham Kunwar v. Kamal Singh, 2001 ACJ 981, held Insurance Company did not examine any witness nor produced any document which could prove the driver had no valid licence - It cannot be inferred on the basis of non-production that driver had no valid licence; burden to prove that driver had no valid licence lies on the Insurance Company and it failed to discharge that burden; Insurance Company is liable in Forest Trading & Development and Co-operative Federation v. National Insurance Co. Ltd., III (2000) CPJ 7 (NC)=2000 NCJ 474 (NCDC) - It appears that for them the report of the Investigator was God sent and treating this as final proof in itself, made it convenient to repudiate the claim - Misconstrual of evidentiary proof and failure to treat the claim on merits, as per the terms of the policy - Clear case of deficiency of service.

As already observed by me in the above, the Counsel for the opposite party has strenuously urged that the driving licence produced does not show whether the driver was having valid licence at the time of accident and various discrepancies have been pointed out regarding the person who was driving the vehicle and whether he had valid driving licence for the vehicle driven. As already pointed out above, as seen the main defence of the opposite party that the driver had no valid driving licence at time of incidence and hence the terms and conditions of the policy have not been satisfied and this is the reason for repudiating the claim of the complainant. As already observed in the above the policy clearly shows that in case of accident by fire the insurer had the right to claim and it is seen soon after the purchase of the vehicle after some time the truck met with fire accident and was burnt and also the correspondence shows the claim has been laid by the claimant-complainant for the amount of Rs. 4,85,000/- deducting the sale of the consented salvaged materials to a sum of Rs. 1,56,000/- in our view of the matter the complainant is entitled for the amount claimed namely Rs. 4,85,000. The complainant has claimed Rs. 3,00,000 for loss of business which in our opinion has not been established and by allowing interest at 15 per cent in our opinion the claim of the complainant is to be allowed. So far as the other expenses are concerned the complainant will be entitled to a sum of Rs. 2000/-. Accordingly we proceed to pass the following order : "The complaint is allowed in part for a sum of Rs. 4,85,000/- with interest at 15 per cent from the date of the fire accident namely 8.2.2001 till the date of payment and a sum of Rs. 2,000/- towards costs. The above amount should be paid within two months from the date of receipt of the communication of the order." Complaint partly allowed.

