(2003) 07 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

MOHAMMAD LATEEF GUJREE APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 23-07-2003

Acts Referred:

Citation : 2004 4 CPJ 511 : 2005 1 CPR 337

Hon'ble Judges : M.Y.Kawoosa , Jameela Bashir J.

Advocate : B.A.Malti , N.H.Khuru

Judgement

1. FACTS barely needed for the disposal of this complaint are that complainant Mohammed Lateef Gujree insured his vehicle bus with the O.P. Premium was paid by the complainant. Admittedly policy was issued in the name of the complainant. During the insurance cover this bus met an accident on 28.4.2000 on way from Srinagar to Jammu and had a total loss. In the accident some passengers also died. FIR was lodged. Claim was raised for Rs. 14/- lakhs and odd. Breakup of which is given in the complaint. There is no dispute regarding the insurance policy, regarding accident, and the total loss. O.P. filed written version and deputed Mr. H.S. Mehta as a preliminary Surveyor. He confirmed the loss. Thereafter Alak Consultants Pvt. Ltd. were also deputed to assess the loss. They have filed the report. They have assessed the loss at Rs. 3.50 lakhs to 4.00 lakhs. Salvage was assessed at Rs. 1.00 lakh minus salvage net loss was assessed at Rs. 2.58 lakhs. O.P. contended that claim is not payable on two grounds. Firstly, the complainant has transferred the vehicle to the Union General Bus Stand Batamaloo so the complainant has no insurable interest. Secondly, driving licence of the driver was not valid at the time of the accident.

2. HEARD learned Counsel for the parties. Learned Counsel for O.P. Mr. N.H. Khuroo has vehemently projected the first point that claim is not payable because the complainant has no insurable interest. He has relied on II (1996) ACC 536 (SC)=1996 ACJ 65, Complete Insulation (P) Ltd. v. New India Insurance Co. Ltd. Learned Counsel has contended that the Apex Court in the above case has categorically held that no fiction of Section 157 is allowed to 3rd party risks

and that insurance policy was not transferred after the vehicle was transferred in the name of transferee. We have failed to persuade ourselves to agree with the contention of learned Counsel for O.P. that this authority is applicable in the given circumstances of the case. In the above case (supra) decided by the Apex Court the facts are quite different. In that case owner of the vehicle had sold the vehicle and the transferee had applied for the transfer of the insurance policy but it was not transferred when the accident took place. Transferee raised the claim which was finally rejected. Here in this case the vehicle was in the name of the complainant. He was admittedly the owner. Insurance policy was in his name. It is also admitted by the complainant that vehicle was transferred to their Union to which he happened to be President and the share holder. Union also vide Annexure .... kept the vehicle in the name of complainant who was shareholder. It is the owner Mohammed Lateef Gujree in whose name the insurance policy and the registration stands, he has raised this claim. For All the purposes we are convinced that it is not the Union which has raised the claim. It is the complainant in whose name insurance policy stands and he is the person who has raised the claim as complainant. For all purposes we see that the complainant is the owner even if at all he has given the proprietorship to the Union he still remains the one of the share-holders of the vehicle and is the beneficiary of that. D contention of Mr. N.H. Khuroo is that the Driver haD no valiD licence. Arto Leh who has confirmeD that the Driver haD licence for LMV, MMV anD HMV. The saiD Arto has also contenDeD that for plying a passenger service bus there must be enDorsement on the licence of HVM.

We have gone through the reply of the RTO. It is the fact that the RTO was summoned at the request of O.P. and O.P. took the summon but could not produce him. So we proceeded with the case. Learned Counsel Mr. Khuroo has invited our attention to the interim order dated in which the Commission has mentioned that the RTO shall be called again if the need arises during the arguments. We feel that there is no need to call him in the light of contents of the licence issued in this behalf of the driver which reads as under: "So long as this licence is valid and is renewed from time-to-time the holder is authorised to drive a public service vehicle."

3. THOUGH we feel that in this case the driver has been authorised to ply the passenger bus also. Matter does not end here. Our attention has been drawn to the Motor Vehicles Rules issued in SRO 436 a copy of which has been produced by the Counsel for complainant which is manifestly clear to show that HMV bus also. We have gone through the report of the Surveyor. Surveyor has categorically mentioned that he checked the licence of the driver which stands valid. Moreover Surveyor has in his report contended that the Company offered Rs. 2.48 lacs to the complainant but the complainant did not agree to that, company according to the Survey was ready to pay the net amount. Surveyor report under the heading of "Final Settlement" at page 7 reads as under: "final Settlement During our recent visit to Srinagar we had detailed meeting with the representative of insured who was explained the above mode of settlements but

they were insisting that they should be paid Rs. 4.00 lacs on total loss basis. We also discussed the claim with them on net of salvage basis and they reluctantly agreed for the said settlement of loss for an amount of Rs. 25,000/- subjected to the acceptance of liability by the insurers."

Besides this learned Counsel has submitted an authority of Punjab and Haryana High Court of I (2000) ACC 52 (DB)=2000(1) AJR 500 titled United India Insurance Company Ltd. v. Kamal, Kamal Devi and Others, in which it has been held as under: "Motor Accidents Claim-Insurer''s liability-Fatal accident caused by bus-liability disputed by Insurance Company on plea that driver had licence for, "Heavy Motor Vehicle" and thus was not entitled to drive a "Heavy Passenger Motor Vehicle"-No substantial qualitative difference between two categories of vehicle i.e., ''heavy goods vehicle'' and ''heavy passenger motor vehicle'' and no evidence to indicate that a person who had a licence to drive heavy motor vehicle was not competent to drive bus-No ground to interfere with Tribunal''s order holding appellant also liable for award."

This authority also fortifies our view that driver had a valid licence.

4. FROM this it is crystal clear that Company also feels that the complainant is entitled to the reimbursement. We, therefore, allow the claim and direct the O.P. to pay Rs. 3.50 lacs as assessed by the Surveyor as net amount but in case he retains the salvage he will be entitled to Rs. 2.48 lacs. In case he does not want to retain the salvage, the same will be returned to the O.Ps. along with registration certificate in the name of the O.P. He is directed to pay the same amount with 9% interest from two months after the date of survey report + Rs. 5,000/- as litigation fees. Complaint disposed of.

