

(2009) 03 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

National Insurance Co. Ltd. And Anr.

APPELLANT

Vs

Jashodaben And Anr.

RESPONDENT

Date of Decision : 13-03-2009

Acts Referred:

Citation : 2009 2 CPJ 209

Hon'ble Judges : R.K.BATTA , S.K.NAIK J.

Advocate : Maibama N.Singh , JOY BASU

Judgement

1. THE jeep belonging to Respondent No. 2, who was opponent No. 1 before the District Forum, met with an accident on 8.5.2004 on account of which, husband of the complainant/respondent No. 1 died. The said jeep was insured with the present petitioner/opposite party No. 2 for the period from 27.3.2004 to 26.3.2005. The accident took place during currency of the said insurance period. The complainant had sent claim form duly filled to the petitioner on 13.7.2004, but the claim was not settled after which, legal notice was sent. Thereafter, the complainant approached the District Forum seeking compensation of Rs. 1,00,000 with interest thereon.

2. DISTRICT Forum elaborately discussed the material on record and allowed the complaint by directing the Insurance Co. to pay a sum of Rs. 1,00,000 with 9% interest from the date of application. Besides this, the Insurance Company was also directed to pay Rs. 300 for the mental agony and Rs. 300 for the expenses. This order was challenged by the Insurance Co. before the State Commission and the State Commission confirmed the order of the District Forum. The State Commission referred to the disputed questions involved in the matter as to whether it was as a private vehicle and was used to carry passengers on hire and came to the conclusion that there was no error in the order passed by the District Forum.

3. LEARNED Counsel for the petitioner argued that the vehicle in question was registered for private use with capacity of 10 persons, but at the time of accident, it was being used as commercial vehicle and was carrying 15

passengers including the husband of the complainant who died in the accident. He, therefore, contends that in view of the breach of condition of insurance policy, the petitioner is not liable to pay any compensation to the complainant and it is the owner of the vehicle who would be liable to pay the same. The owner of the vehicle and the complainant were duly served but none of them appeared before us. However, the complainant had filed written submissions in this Commission on 30.4.2007. In the written submissions, complainant/respondent No 1 submitted that the averments made in the petition are contrary to evidence on record, that no case has been made out in exercise of revisional jurisdiction, that the Insurance Co. had failed to prove any breach of condition; that the District Forum has discarded the report of the Investigator of the Insurance Company as no affidavits of the passengers, whose statements are sought to be relied have been filed and on the contrary, the police statements show that neither the jeep was carrying persons in excess of its capacity, nor that any hire charges were paid by them; that the Insurance Company had failed to produce IMT -5 of the Insurance Company and that the revision is liable to be dismissed.

4. WE have gone through the record. The District Forum has discussed each and every relevant aspect and material on record in support of the reasoning given in the order. The District Forum had exhaustively dealt with the question as to whether the vehicle in question was used for commercial purpose by taking passengers on hire and whether there was any violation of the conditions of the Insurance Policy. District Forum replied the same in negative. During investigation, statements of some witnesses were recorded but no affidavits of the said witnesses were filed. The persons who had recorded the said statements were also not examined, nor affidavits were filed by them. The District Forum placed reliance on the statements recorded by the police where there was no whisper either of excess passengers in the jeep in relation to its capacity, nor that fare had been charged from the persons travelling in the jeep. District Forum relied upon the statement of the complainant that jeep belongs to their relative/opposite party No. 1, who was owner of the vehicle and that no fare was paid. The District Forum held that in order to escape the liability, the Insurance Company, had manipulated the report of the Investigator and that the Insurance Company had failed to prove that the jeep was carrying persons in excess of its capacity or that it was being used for commercial purpose by taking hire charges from the occupants of the jeep. These findings have been arrived at on the basis of material produced before it and the said findings do not call for any interference whatsoever, as the same are well founded.

5. IN view of the above, we are of the opinion that the petitioner has failed to make out any case for any interference in exercise of revisional jurisdiction under Clause (b) of Section 21 of the Consumer Protection Act, 1986, as we do not find any material irregularity, illegality or jurisdictional error in the order of the District Forum. The revision is accordingly dismissed with no order as to costs. R.P. dismissed.