(2015) 08 NCDRC CK 0082

In the National Consumer Disputes Redressal Commission

Case No : 4244 of 2014

NATIONAL INSURANCE CO. LTD — APPELLANT

Vs

JAGDISH PRASAD SHARMA — RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21, Section 19, Section 15, Section 17 - Jurisdiction of the National Commission - Appeals - Appeal - Jurisdiction

Citation : (2015) 08 NCDRC CK 0082

Hon'ble Judges : J.M. Malik, S.M. Kantikar

Advocate : Kishore Rawat, B. S. Sharma

Judgement

1. One Mahindra Balero vehicle met with an accident on 24.12.2011, during the subsistence of the insurance policy. The claim was filed with the National Insurance Co. Ltd., the OP, on 25.12.2011. A sum of Rs.2,23,727/- was incurred for repairs of the vehicle. However, there was dispute over the licence produced by Sh. Mahaveer Prasad, the driver of the vehicle, which was valid for LMV only. He was not authorised to drive HMV. Though his licence revealed both kinds of vehicles, i.e., LMV and HMV, the Investigator, Mr.Pradeep Lakhotia, submitted his report dated 08.05.2012, wherein it was reported that the driver was not authorised to drive HMV. Mr.Pradeep Lakhotia made inquiry with the District Transport Officer, Bhilwara, On the basis of the application moved by Mr. Lakhotia, on 08.05.2012, before the District Transport Officer, Bhilwara, the DTO, made endorsement, which endorsement translated into English, appears as under : " Endorsement by DTO, Bhilwara :

Stated in the original letter that the driving licence No.RJ-06/DLC/08/59443 of Shri Mahveer Prasad Vaishnav, S/o. Sh. Madan Das Vaishnav, R/o. Anandipura, Tehsil Hurda, Dist. Bhilwara, was issued on 07.02.2008 which was valid for driving motor cycle with gear and light motor vehicle and which is valid up to 06.02.2028. There is no endorsement of HTV.

Thus, the above information is given to you, after verification.

Sd/-

District Transport Officer

Bhilwara (Raj.)".

2. Both the fora below have placed reliance on the celebrated authorities reported in National Insurance Co. Ltd. Vs. Nitin Khandelwal, (2008) 11 SCC 256 and Amalendu Sahoo vs. Oriental Insurance Company Ltd., (2010) 4 SCC 536, wherein the Hon''ble Supreme Court granted 75% of the claim on ''non-standard'' basis.

3. It is also interesting to note that the Surveyor had assessed the loss at Rs.1,16,000/-, but the Fora below granted 75% of the claim amount made by the complainant in the sum of Rs.2,24,000/-, i.e. Rs.1,68,000/-. They gave no reason for rejection of the report of the Surveyor, though, the State Commission has referred to the case of New India Assurance Co. Ltd. Vs. Pradeep Kumar, NCJ 2010 SC 1.

4. We have heard the counsel for the parties. Counsel for the complainant/ respondent contended that he places reliance on the authorities reported in Nitin Khandelwal and Amalendu Sahoo (both supra).

5. It is clear that the licence produced by the driver is a forged one. The word "HTV" finds no place in the original record.

6. Counsel for the petitioner/OP has invited our attention towards the policy which clearly, specifically and unequivocally mentions, "Certificate of Insurance of Passengers Carrying Commercial Vehicle". It is, thus, clear that the vehicle in question was a ''commercial vehicle''.

7. This Commission, in the case of New India Assurance Co. Ltd. Vs. Krishan Singh Rathore, Revision Petition No. 98/2007, decided on 14.01.2011 , was pleased to hold, as under :-

" The Supreme Court after taking into consideration the entire case law in the case of National Insurance Co. Ltd. vs. Laxmi Narain Dhut - (2007) 3 SCC 700 held:

"The inevitable conclusion therefore is that the decision in Swaran Singh case has no application to own damage cases. The effect of fake licence has to be considered in the light of what has been stated by this Court in New India Assurance Co. v. Kamla. Ince the licence is a fake one the renewal cannot take away the effect of fake licence".

8. The above said judgment dated 14.01.2011 was upheld by the Hon''ble Supreme Court in Civil Appeal No.8811 of 2012, vide its order dated 07.11.2014.

9. Similar view was taken by this Bench in the case of New India Assurance Co.

Ltd. Vs. Pratap Singh & Ors., Revision Petition No.2765 of 2013, decided on 14.07.2014, which order was up held by the Hon''ble Apex Court in Special Leave to Appeal (Civil) No.27651 of 2014, vide its order dated 27.10.2014.

10. Again, in National Insurance Co. Ltd. Vs. Prithipati Sattiyya & Ors., Revision Petition No. 2717 of 2007, decided on 13.12.2011, it was held, as under :- " The driver of the vehicle in question was holding a license to drive LMV only and there was no endorsement on the licence authorizing him to drive the taxi which was a transport vehicle to carry passengers. Hon''ble Supreme Court in the judgment in the case of New India Assurance Co. Ltd. Vs. Prabhu Lal - 1 (2008) CPJ 1 (SC) has held that if the driver of the vehicle did not have a valid licence to drive the transport vehicle, the insurance company is not liable to reimburse for the loss caused to the vehicle in the accident".

11. The Hon''ble Supreme Court in Special Leave to Appeal (Civil) Nos. 12832-33 of 2012, upheld the above-said order of this Commission, dated 13.12.2011, vide its order dated 03.12.2012 .

12. The counsel for the petitioner has cited a number of authorities, which also go to support this point. Consequently, we allow the revision petition, set aside the orders passed by the fora below and dismiss the complaint.