(2012) 10 NCDRC CK 0072

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE CO LTD — APPELLANT

Vs

KASHMIRI — RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Citation : 2012 4 CPJ 652 : 2012 4 CPR 354

Hon'ble Judges : V.B.GUPTA J.

Final Decision : Application disposed

Judgement

1. BY way of present revision petition, petitioner has challenged order dated 29.5.2012, passed by State consumer Disputes Redressal Commission, Dehradun (for short as, ''State Commission'')

2. FACTS in brief are that Sh. Meghraj Singh, husband of respondent no.1/ complainant, got his car insured with petitioner/o.p. and paid the insurance premium. It is alleged that the said car met with an accident where in husband of the respondent no. 1 died. The car was being driven by the driver. Respondents claimed the insured amount. However, due to non action on the part of petitioner, complaint was filed before the District Forum.

3. IN its written statement, petitioner took the plea that deceased was travelling in the car, but the same was being driven by other person at the time of accident. As per terms of the policy, petitioner is liable to pay compensation for the personal accident claim only in case of death of the owner when the vehicle is being driven by the owner himself. Hence, the complaint is liable to be dismissed. District Forum, vide its order dated 6.4.2010, allowed the complaint and directed the Petitioner to pay Rs.2,00,000/ - and compensation of Rs.5,000/ - to the respondents.

4. AGGRIEVED by the order of District Forum, petitioner filed appeal before the State Commission, which vide its order dated 29.5.2012 dismissed the same.

5. HENCE , the present revision petition.

6. IT is contended by learned counsel for the petitioner that main issue involved in this case is with regard to the limited cover provided under the policy. Since deceased insured was admittedly not driving the vehicle at the time of accident which resulted in his death, the insurance claim was not payable and was therefore, rightly repudiated.

7. PETITIONER has not placed on record complete copy of the insurance policy which was issued to the deceased in this case. However, it has placed on record photo copy of "Certificate -cum -Policy Schedule" (Page 30 of the paper book). As per this document, "Cover under section III for Owner -Driver is Rs.2.0 Lakhs". Further, it is a one page document without the schedule. Instead, petitioner has placed general "PRIVATE VEHICLES PACKAGE POLICY " (Page 52 of the Paper Book).

8. BE that as it may, it is to be seen as to whether under section III of this policy package, respondents are entitled to insurance cover of Rs.2 lacs, for which policy was issued in the name of deceased.

9. SECTION III of ''Private Vehicle Package Policy'' read as under; "SECTION III - PERSONAL ACCIDENT COVER FOR OWNER - DRIVER. The Company undertakes to pay compensation as per the following scale bodily injury/death sustained by the owner -driver of the vehicle in direct connection with the vehicle insured or whilst driving or mounting into/dismounting from the vehicle insured or whilst travelling in it as a co -driver cause by violent accident external and visible means which independent of any other cause shall within six calendar of such injury result in - Nature of injury Scale of compensation

(i) Death 100%

(ii) Loss of two limbs or sight of two Eyes or one limb and sight of one 100% eye.

(iii) Lost of one limb or sight of one eye 50%

(iii) Permanent total disablement from injuries other than named above 100%; Provided always that;

1. compensation shall be payable under only one of the items (i) to (iv) above in respect of the owner -driver arising our of any one occurrence and the total liability of the insurer shall not in the aggregate exceed the sum of Rs.2 lakh during any one period of insurance.

2. no compensation shall be payable in respect of death or bodily injury directly or indirectly wholly or in part arising or resulting from or traceable to (1) intentional self injury suicide or attempted suicide physical defect or infirmity or (2) an accident happening whilst such person is under the influence of intoxicating liquor or drugs.

3. Such compensation shall be payable directly to the insured or to his/her legal representatives whose receipt shall be the full discharge in respect of the injury to the insured.

4. this cover is subject to

(a) The owner -driver is the registered owner of the vehicle insured herein

(b) The owner -driver is the insured name in the policy.

(c) The owner -driver holds an effective driving licence, in accordance with the provisions or Rule 3 of the Central Motor Vehicles Rules, 1989, at the time of the accident".

10. IT is an admitted fact that deceased was travelling as co -driver and when accident was caused another person was driving the vehicle. It is not the case of petitioner, that driver who was driving the vehicle at the time of accident was not having a valid and effective driving licence.

11. UNDER these circumstances, as per terms and conditions of the policy, deceased was fully covered for a sum of Rs.2 lakhs. Hence, legal heirs of the deceased are fully entitled to receive the insurance claim.

12. THERE is no merit in this revision petition and same is without any legal basis. Consequently, it is hereby dismissed with cost of Rs.5,000/ -. (Rupees Five Thousand only).

13. COST be deposited by the petitioner by way of demand draft in the name of "Consumer Legal Aid Account", within four weeks from today.

14. IN case, petitioner fails to deposit the cost within the prescribed period, then it shall also be liable to pay interest @ 9% p.a., till realization.

15. PENDING application stand disposed of.

16. LIST on 07.12.2012 for compliance.

