

(2006) 09 NCDRC CK 0040

In the National Consumer Disputes Redressal Commission

National Insurance Co. Ltd.

APPELLANT

Vs

RIYAZ AHAMED NABISAB DASTIKOPP

RESPONDENT

Date of Decision : 04-09-2006

Acts Referred:

Citation : 2006 4 CPJ 264 : 2007 1 CLT 145

Hon'ble Judges : Chandrashekhar , Rama Ananth , M.Shama Bhats J.

Final Decision : Appeal dismissed

Judgement

1. FOR the sake of convenience, the parties in this order are referred to as they were arrayed in the complaint before the District FORum.

2. THIS Appeal is by the opposite party (for short, "OP") challenging the Order of District Forum, Belgaum, allowing the complaint of the complainant in part. The brief facts of the case are that the complainant is the owner of the vehicle bearing No. KA-17/3171 having purchased the same from the original owner with effect from 3.6.2003 as per the entries made in the R.C. Book of the vehicle. The said vehicle met with an accident on 6.7.2003. In the said accident, the vehicle suffered certain damage. The Policy obtained by the original owner/transferor of the vehicle is from 22.1.2003 to 21.1.2004. The said Policy was transferred from the name of the owner/transferor to the name of the complainant/transferee on 17.7.2003. The fact of the accident was intimated by the complainant to the OP. The OP after coming to know of the accident appointed a Surveyor to assess the loss. The Surveyor after inspecting the vehicle assessed the loss and submitted a report. In the meanwhile, the OP repudiated the claim of the complainant on the ground that the policy was not transferred from the name of the original owner/transferor to the name of the complainant/transferee as on the date of the accident. Aggrieved by this repudiation, the complainant filed Complaint No. 95/2004 before the District Forum.

The District Forum after considering the case of both the parties has allowed the complaint by directing the OP to pay Rs. 27,800 to the complainant along with interest at 9% per annum from 27.2.2004 till realization and also cost of Rs.

500. This Order of the District Forum is under challenge by the OP in this Appeal.

3. MR. O. Mahesh, learned Counsel for the OP, submitted that the Policy obtained by the original owner/transferor was not transferred to the name of the complainant/transferee as on the date of the accident and, therefore, the OP is not liable to indemnify the loss. In order to appreciate this contention, it is useful to refer to Section 157 of the Motor Vehicles Act, 1988. Section 157 reads thus: "157. Transfer of certificate of insurance-(1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of the transfer. (Explanation-For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said Certificate of insurance and policy of insurance.) (2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance." (Underlining by us)

From a reading of Sub-section (1) of Section 157 it is clear that the deemed transfer of the policy is with effect from the date of transfer of the vehicle. In the instant case, admittedly, the transfer of the vehicle from the original owner/transferor to the complainant/transferee was on 3.6.2003. But under Sub-section (2) of Section 157, the transferee is required to make an application within 14 days from the date of transfer of the vehicle in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance of the policy described in the certificate.

4. IN the instant case, it is not the case of the OP that the complainant/transferee has not made the application within 14 days seeking for transfer of the policy to his name. It is not in dispute that the policy was transferred from the name of the original owner/transferor to the name of the complainant/transferee on 17.7.2003. When once the policy is transferred on the request made by the transferee, the transfer of the policy dates back to the date of transfer of the vehicle, since the "deemed transfer" as stated in Sub-section (1) of Section 157 is from the date of transfer of the vehicle. Therefore, we are of the considered view that even though the insured has transferred the policy to the name of the complainant/transferee on 17.7.2003, the transfer of the policy takes effect from the date of transfer of the vehicle, i.e., 3.6.2003. The accident took place on 6.7.2003. Therefore, the OP cannot avoid its liability to pay compensation to the complainant. Hence, the Appeal is liable to be dismissed. Accordingly, we pass the following order: (1) The Appeal is dismissed. (2) Parties

to bear their own costs. Appeal dismissed