(2008) 04 NCDRC CK 0064

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE CO LTD — APPELLANT

Vs

SHRAWAN BHATI — RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:

Citation : 2008 2 CPJ 364

Hon'ble Judges : Rajyalakshmi Rao , P.D.Shenoy J.

Final Decision : Revision Petition dismissed

Judgement

1. HEARD the learned Counsel for the petitioner. It is a case where respondent/ complainant has insured his Toyota Qualis for a period starting from 19. 8. 2004 to 18. 8. 2005. The said vehicle was stolen on 19. 7. 2005.

2. LEARNED Counsel for the petitioner contended that the said vehicle was sold to Mr. Rajendra Prashad Gupta on 5. 6. 2005 for a consideration of Rs. 5,11,000. It is argued that at the time of theft of the vehicle respondent does not have insurable interest since the respondent has already sold the vehicle. Secondly, that in the FIR, which was recorded at the time of theft, Mr. Rajendra Prashad Gupta had stated that prior to the theft he had purchased the vehicle from the respondent/complainant for consideration of Rs. 5,10,000.

Thirdly, that the respondent himself has stated in the investigation report that he has sold the vehicle to Rajendra Gupta.

3. FOURTHLY, the State Commission has arrived at the conclusion based on the evidence on record that the said vehicle was purchased by Mr. Rajendra Gupta and it has been admitted not only by Mr. Rajendra Gupta but also by the respondent that the respondent must have received the sale amount, which has not been disclosed to the petitioner. Fifthly, respondent has not challenged the order of the State Commission which held that the said vehicle was sold to Mr. Rajendra Gupta by the respondent.

4. LASTLY, learned Counsel for the petitioner submitted that the respondent does not have insurable interest after having sold the vehicle and also Mr. Rajendra

Gupta has not insurable interest, as there is no privity of contract with the petitioner. As against this, learned Counsel for the respondent submitted that there was intent to sell the said vehicle to Mr. Rajendra Gupta and agreement to sale was there but there was no concluded sale deed for the same. He further submitted that there was no whisper of this argument by the petitioner in the lower Fora. Learned Counsel for the respondent submitted that the insurable interest still lies with them considering they neither transferred the vehicle in the name of Rajendra Gupta nor did they register the same under Indian Motor Tariff Regulation as per GR 34 which is reproduced below: gr. 34. Registration, use and Insurance "it is not permissible to insure any vehicle in the name of an insured not conforming to the name recorded as owner of the vehicle in the vehicle registration document, excepting- (i) in case of temporary substitution, (ii) in respect of Motor Trade Risk, or (iii) as provided in General Regulations 19, 20 and 21 it is not permissible to insure any vehicle for use for a purpose other than that permitted by the RTA concerned. "

5. IT is also submitted by the learned Counsel for the respondent that the Investigator questioned both Rajendra Gupta and the complainant wherein the investigator merely said that the vehicle has been sold but nowhere he has mentioned anything about the receipt of the payment. We find that there is no proof of receipt of payment. Further, the investigator did not verify from the respondent regarding the proof of the payment. The investigator only relied on the admitted version of Rajendra Gupta that he has paid the amount wrongly and assured without verifying from the respondent. It is further submitted by the learned Counsel for the respondent that although a statement had been made to the investigator that the respondent had intent to sell the vehicle for a sum of Rs. 5,11,000 and that he had given all the papers to Mr. Rajendra Gupta, it is urged that he did not receive any amount and hence it is an unconcluded contract. Hence, insurable interest still lies with the respondent.

6. AFTER hearing both the parties and perusing the record, we find that although the State Commission has referred the words "agreement to sell" but nowhere it has been recorded that sale proceed was received by the respondent. The petitioner, Insurance Company, is unable to produce any evidence even as on date that this amount has been exchanged. If that is the case, then the respondent is still the legal owner of the vehicle and the petitioners are liable to indemnify the respondent for the loss of vehicle. In absence of insurance policy, transfer of registration in the name of Rajendra Gupta; and lack of evidence about the sale proceed which we find was not received by the respondent, we find this revision petition does not require to be admitted. Petitioner''s stand not to pay the respondent the real registered owner who is the "only insured" and also their stand not to pay Mr. Rajendra Gupta holding that although money has been given to the respondent, insurance policy and vehicle registration have not been done, is nothing but negative approach. One could appreciate if they took stand to pay to one of them. Denying indemnification on mere assumption and presumption cannot be sustained in law. Petitioner litigating endlessly for wrong

reasons and causing delays is nothing but apathy and clearly deficiency in service. In our view, the directions given by the State Commission are just and proper. There is no reason for us to interfere with the well-reasoned order of the State Commission. Hence, revision petition is dismissed. R. P. dismissed.

