(2014) 04 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

National Insurance Co. Ltd. through its Authorized Signatory Arun Tikku — APPELLANT

Vs

JAI BHAGWAN — RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Citation : 2014 0 NCDRC 475 : 2014 2 CPJ 640

Hon'ble Judges : J.

Final Decision : Petition dismissed

Judgement

1. THIS revision is directed against the order dated 4.8.2012 of the Haryana State Consumer Disputes Redressal Commission (for short, "The State Commission") Chandigarh whereby the State Commission dismissed the appeal of the petitioner insurance company against the order of the District Forum Jind.

2. BRIEFLY stated, facts relevant for the disposal of this revision petition are that Rajesh Jaglan S/o Gulab Singh was registered owner of Car No. HR32 C 8787. He got the car insured with the opposite party vide policy No. 250410310961 valid from 29.12.2009 to 28.12.2010. After obtaining the insurance policy, Rajesh Jaglan sold the car to the respondent/complainant and registration was transferred in his name on 11.8.2010. The car met with an accident on 24.8.2010 resulting in damage. Respondent/complainant filed the insurance claim. A surveyor was appointed who inspected the car and assessed the monetary value of the car to the tune of Rs. 1,85,007/ -. The insurance claim, however, was repudiated by the petitioner. This led to the filing of the consumer complaint. The petitioner/opposite parties resisted the complaint. In the written statement they accepted that car was insured in the name of earlier owner Rajesh Jaglan. It met with an accident resulting in damage and that as per the surveyor, net loss was to the tune of Rs. 1,85,007/ -. It was claimed that since the respondent/complainant did not get the insurance transferred in his name, the claim was rightly repudiated.

3. LEARNED District Forum on perusal of the pleadings and evidence led by the

parties concluded that the repudiation of claim by the petitioner amounted to deficiency in service. Thus, District Forum allowed the complaint and directed as under: Resultantly, the complaint is allowed and the opposite parties are directed to pay a sum of Rs. 1,85,007/ - as loss assessed by surveyor appointed by the insurance company within a period of 30 days from the date of this order, failing which simple interest @ 9% p.a. will be paid by the opposite parties to the complainant from the date of this complaint till its realization. No order as to costs. Copies of the order be supplied to the parties under the rule.

4. THE petitioner insurance company being aggrieved of the order of the District Forum preferred an appeal. The State Commission, however, confirmed the order of the District Forum and dismissed the appeal. Mr. Nanita Sharma, Advocate for the petitioner has contended that the impugned orders of the fora below are not sustainable as the orders have been passed in utter disregard of section 157 of the Motor Vehicles Act and the law laid down by the Supreme Court. Learned counsel further contended that the petitioner is a subsequent purchaser of the vehicle who did not get the insurance policy transferred in his name. As such there being no privity of contract between the parties, the petitioner insurance company was justified in repudiating the claim. In support of her contention, learned counsel for the petitioner has drawn our attention to section 157 of the Motor Vehicles Act, 1988 as also GR 17 of the Indian Motor Tariff Regulations. The petitioner has also relied upon the judgment of the Supreme Court in the matter of Complete Insulations (P) Ltd. Vs. New India Assurance Co. Ltd. : 1996(1) SCC 221.

5. LEARNED counsel for the respondent on the contrary has taken us through section 157(2) of the Motor Vehicles Act and submitted that the aforesaid provision gives 14 days time to the transferee of a vehicle to get the insurance transferred in his name. In the instant case, the accident took place on 13th day after the transfer of registration. Therefore, there was no justification for repudiation of claim by the petitioner opposite party.

6. IN order to appreciate the contention of the parties, it would be useful to have a look on Section 157 of the Motor Vehicles Act, 1988 which reads as under: - 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 its 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.

Similar issue came up before the Supreme Court in the case of Complete Insulation Pvt. Ltd. vs. New India Assurance Co. Ltd. : (1996) 1 SCC 221 wherein it was held: Thus, the requirements of that chapter are in relation to third party risks only and hence the fiction of Section 157 of the New Act must be limited thereto. The certificate of insurance to be issued in the prescribed form (See Form 51 prescribed under Rule 141 of the Central Motor Vehicles Rules, 1989) must, therefore, relate to third party risks. Since the provisions under the New Act and the Old Act in this behalf are substantially the same in relation to liability in regard to third parties, the National Consumer Disputes Redressal Commission was right in the view it took based on the decision in Kondaih''s case because the transferee -insured could not be said to be a third party qua the vehicle in question. It is only in respect of third party risks that Section 157 of the New Act provides that the certificate of insurance together with the policy of insurance described therein "shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred". If the policy of insurance covers other risks as well, e.g., damage caused to the vehicle of the insured himself, that would be a matter falling outside Chapter XI of the New Act and in the realm of contract for which there must be an agreement between the insurer and the transferee, the former undertaking to cover the risk or damage to the vehicle. In the present case since there was no such agreement and since the insurer had not transferred the policy of insurance in relation thereto to the transferee, the insurer was not liable to make good the damage to the vehicle. The view taken by the National Commission is therefore correct.

7. SIMILAR view was taken by the Supreme Court in the case of Rikhi Ram & Anr. Vs. Sukhrania & Ors. : (2003) 3 SCC 97 and it was observed: 6. On an analysis of Sections 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser. The purchaser is one of the third parties to the contract and other third party is for whose benefit the vehicle was insured. So far, the transferee who is the third party in the contract cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act. However, so far as third party injured or victim is concerned, he can enforce liability undertaken by the insurer.

7. ....

8. For the aforesaid reasons, the appeal, is allowed. We set aside the order and judgment under challenge. It is hereby directed that the insurer shall pay compensation to the victims within eight weeks along with the interest @ 11% p.a. from the date of incident and it will be open to the insurer to recover the said amount either from the insured or from the transferee of the vehicle. However, there shall be no order as to the costs.

8. FROM the above decision of the Supreme Court, it is clear that the insurance company is not under obligation to indemnify the subsequent purchaser for the damage caused to the vehicle unless the subsequent purchaser has got the insurance policy transferred in his name. In the instant case as the insurance policy was not transferred in the name of the respondent complainant, the petitioner was justified in repudiating the claim. Learned counsel for the respondent has contended that the above noted judgments of the Supreme Court are not applicable to the facts of this case. It is submitted that the foras below were right in holding the petitioner deficient in service because there was no justification on the part of the petitioner to repudiate the claim on the ground that the respondent complainant had not got the insurance policy transferred in his name particularly when 14 days time given under section 157(2) of the Motor Vehicles Act, 1988 for applying for transfer of insurance had not expired on the date on which the accident took place.

9. THE arguments of the respondent complainant appears to be attractive in the first blush. The argument, however, is without any merit. GR 17 of the Indian Motor Tariff Regulations deals with the transfer of insurance policy in case of sale of the vehicle by the original insured owner. GR 17 reads as under: GR. 17. Transfers

On transfer of ownership, the Liability Only cover, either under a Liability Only policy or under a Package policy, is deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of transfer.

The transferee shall apply within fourteen days from the date of transfer in writing under recorded delivery to the insurer who has insured the vehicle, with the details of the registration of the vehicle, the date of transfer of the vehicle, the previous owner of the vehicle and the number and date of the insurance policy so that the insurer may make the necessary changes in his record and issue fresh Certificate of Insurance.

In case of Package Policies, transfer of the "Own Damage" section of the policy in favour of the transferee, shall be made by the insurer only on receipt of a specific request from the transferee along with consent of the transferor. If the transferee is not entitled to the benefit of the No Claim Bonus (NCB) shown on the policy, or is entitled to a lesser percentage of NCB than that existing in the policy, recovery of the difference between the transferee''s entitlement, if any, and that shown on the policy shall be made before effecting the transfer.

A fresh Proposal Form duly completed is to be obtained from the transferee in respect of both Liability Only and Package Policies. Transfer of Package Policy in the name of the transferee can be done only on getting acceptable evidence of sale and a fresh proposal form duly filled and signed. The old Certificate of Insurance for the vehicle, is required to be surrendered and a fee of Rs. 50/ - is to be collected for issue of fresh Certificate in the name of the transferee. If for any reason, the old Certificate of Insurance cannot be surrendered, a proper declaration to that effect is to be taken from the transferee before a new Certificate of Insurance is issued.

10. ON conjoint reading of section 157(2) of the Motor Vehicles Act and GR 17 of the Motor Tariff Regulations, it is clear that in the case of package insurance policy, the transfer of "Own Damage" section of the policy in favour of transferee shall be done by the insurance company in case specific request in writing is made by the transferee of vehicle within 14 days from the date of transfer of ownership. Undisputedly, in the instant case, accident took place before the expiry of period of 14 days for applying for transfer of insurance as provided under section 157(2) of the Motor Vehicles Act and GR 17 of the Motor Tariff Regulations. Therefore, the question which needs answer is whether in such a situation dehors transfer of policy in his name, the respondent complainant is entitled to the benefit under the insurance contract between the petitioner insurance company and the previous owner? The answer to the above question is in -built in GR 17 of the Indian Motor Tariff Regulations. The said rule provides that the transfer of "Own Damage" section of the insurance policy shall be made in favour of the transferee only on specific request from the transferee alongwith consent of the transferor. Thus, it is evident that the transfer of the insurable interest under the "Own Damage" package section of the policy, can be done only with the consent of the transferor. It is pertinent to note that original owner was not made party to the complaint. The case of the complainant as set up in para 2 of the complaint is that after the transfer of registration in his name, he went to the office of the petitioner OP No. 1 for transfer of insurance policy in his name but officials of OP No. 1 did not do the needful. There is no evidence to support this contention. As per rule GR 17, the transferee of the vehicle is required to apply for transfer of insurance policy in writing and that too alongwith consent of the previous owner of the vehicle. The complainant has neither produced any evidence to prove that he applied for insurance in writing nor he has produced any evidence to show that the previous owner gave his consent for transfer of insurance policy in his name. In absence of any evidence to this effect, the finding of State Commission that the complainant had moved an application for transfer of insurance policy in his name but the complainant company had failed to transfer the policy, is not sustainable. Even if the accident took place before the expiry of 14 days period from the date of transfer of ownership, the respondent complainant could easily have applied for transfer of ownership with requisite consent of transferor within the requisite period despite of the accident because the insurance cover under the policy still existed. There is nothing on record to suggest that the consent of the previous owner was submitted alongwith the claim form. Therefore, the petitioner insurance company was well within its right to repudiate the claim on the ground that there was no privity of contract between the insurance company and the complainant. Both the foras below have allowed the complaint in utter disregard of above noted facts and section 157(2) of Motor Vehicles Act, 1988, GR 17 of Indian Motor Tariff

Regulations as also the law down by the Supreme Court. Therefore, the impugned orders are not sustainable.

11. WE accordingly accept the revision petition, set aside the impugned orders and dismiss the complaint.