
(2008) 05 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE COMPANY LTD	APPELLANT
Vs	
CHETAN CHHOPAL	RESPONDENT

Date of Decision : 15-05-2008

Acts Referred:

Citation : 2008 4 CPJ 590

Hon'ble Judges : Arun Kumar Goel J.

Advocate : Pawan Kaprate , Varinder Tajta

Judgement

1. THIS appeal is directed against the order dated 26. 6. 2006, passed by the District Forum, Shimla, in Complaint No. 85/2004. While allowing the said complaint, appellant has been directed to indemnify the respondent in the sum of Rs. 3,96,000 along with interest @ 9% per annum from the date of filing of the complaint i. e. 16. 2. 2004 till the actual payment was made along with costs of litigation of Rs. 2,500. This order was to be complied with by the appellant within 45 days from the date of receipt of copy, failing which the appellant has been held liable to pay Rs. 5,000 as punitive damages.

2. MR. Tajta, learned Counsel for the appellant in support of this appeal argued that the driver of the vehicle at the time of accident was having licence to drive a LMV vehicle in question was also light motor vehicle and limitation as to its use was private as per cover note. Photostat copy whereof is at page 59 of the file. Premium was also charged by treating it as a private vehicle. As such submission of Mr. Tajta that the driver was not holding a valid licence has no merit in this case. Another reason to take this view is that its gross vehicle weight was 2750 kgs. and thus it was covered by Section 2 (21) of the Motor Vehicles Act, 1988. Next submission urged by Mr. Tajta is that vehicle was not registered, therefore, keeping in view the capacity mentioned in the cover note, his client is not liable until the vehicle was registered. For that, fact cannot be lost sight of that the accident in this case is of 4. 4. 2001 near Katak Nullah, Chandigarh, Huling Kinnaur, within the jurisdiction of Police Station Kaza, District Lahaul Spiti. For not getting the vehicle registered reason given is heavy snowfall in the area. Due

to this reason vehicle could not be got registered because after purchase, the vehicle was taken to his native village by the respondent. The defence is well founded in the face of the mountainous-terrain and area being snow-bound during winters. Beside this vehicle remained parked at the native place of the respondent in Tehsil Kaza, District Lahaul Spiti. That being the position, plea based on the vehicle not being registered does not in any manner advance the case of the appellant in the present appeal.

Lastly it was urged by Mr. Tajta that at one stage the appellant had given consent letter for accepting 1. 50 lacs on net salvage basis. As such his client cannot be held liable for payment of any further amount and on this ground also appeal deserves to be allowed per Mr. Tajta by modifying the impugned order and he prayed for accordingly.

3. WHEN a defence is based on consent letter, as set-up by the insurer like appellant in the present appeal, in my opinion it pre-supposes that it was obtained only after being satisfied by either the insurer like appellant or the Surveyor appointed by it, regarding all other formalities having been completed and it was only thereafter that the insured consented to receive a particular amount. Appellant cannot blow hot and cold in the same breath by raising firstly the plea of the vehicle being not registered and then saying that consent given by the respondent to accept Rs. 1. 50 lacs on net salvage basis be now accepted. These pleas are self-contradictory and mutually destructive. Above all consent does not have to be used as a trap against an insured like respondent in the present case. Why the amount was not paid immediately when consent was obtained, Mr. Tajta has no answer. Complaint was filed on 16. 2. 2004 when after accident of 4. 4. 2001 the claim was not settled. It is more than 7 years, and respondent is shuttling from one Court to another for settlement of his claim. In this view of the matter the impugned order does not suffer from any infirmity. In view of these circumstances, plea based on consent to receive Rs. 1. 50 lacs on net salvage value basis raised by Mr. Tajta is hereby rejected.

4. FACED with this situation Mr. Tajta urged that the impugned order still calls for interference, because salvage of the vehicle is valued at Rs. 1,40,000, this position was not disputed on behalf of the respondent. Learned Counsel for the parties were one on the fact that this is a case of total loss of the vehicle. District Forum below while ordering the indemnification of the respondent by the appellant should have either ordered the return of salvage or to have deducted its costs, i. e. Rs. 1. 40 lacs. Mr. Kaprate, learned Counsel for the respondent submitted that he has no objection if this amount is deducted out of the awarded amount. Further according to Mr. Tajta a sum of Rs. 1,000 also needs to be deducted towards the excess clause. Thus in all a sum of Rs. 2. 55 lacs is now payable by the appellant to the respondent along with interest at the rate and from the date as awarded by the District Forum below, together with costs as well as punitive costs because the order of the District Forum below was not complied with, within time allowed and the appeal was filed on 8. 11. 2006

despite receipt of copy of order on dated 14. 8. 2006. Before parting with this case application being M. A. No. 1088/2007 also needs to be dealt with. This application has been filed by the appellant for permitting it to lead additional evidence by placing on record for being read in evidence on its behalf the reports of Mr. Kuljeet Singh Baweja (Spot Surveyor), dated 1. 5. 2001 Sh. Suresh Kumar Rathee, Mechanical Engineer and approved Valuer, Surveyor and Loss Assessor dated 25. 10. 2001 and of Sh. Gopal Krishan, Surveyor dated 14. 5. 2002, along with their affidavits. Why these were not filed during the course of proceedings before the District Forum below, no satisfactory explanation could be furnished on behalf of the appellant. Omission of the lawyer is set out as a ground for not placing these on record. If this is factually correct, how to deal with the situation is by now well settled by National Commission and what are the remedies open to the appellant, hardly need to be told to it. I may observe in this behalf that it is also not the case of the appellant that it was either not aware regarding existence of these documents after exercise of due diligence or that District Forum did not allow those to be produced. So far I am concerned, I do not need these documents, as there is enough material for proper disposal of this appeal on the file. It is by now well settled that additional evidence is not to be allowed at the askance of a litigant, like appellant in this appeal or to fill in the gaps left in the evidence. Accordingly M. A. No. 1088/2007 for additional evidence filed by the appellant-Insurance Company is hereby rejected. No other point is urged. In view of the aforesaid discussion this appeal is partly allowed and, consequently, it is ordered that appellant is entitled to pay and respondent is entitled to receive Rs. 2. 55 lacs in all and also to retain the salvage since its value has been deducted out of the total loss as per Surveyor's report. In addition to this, order of the District Forum below allowing interest at the rate and from the date is upheld. Cost of litigation as well as punitive damages, both as ordered by the District Forum below in its order dated 26. 6. 2006 are also upheld. Subject to this modification the appeal is disposed of. All interim orders passed from time-to-time in this appeal shall stand vacated forthwith. Learned Counsel for the parties have undertaken to collect the copy of this order from the Reader free of cost. Appeal partly allowed.