

(2004) 02 NCDRC CK 0083

In the National Consumer Disputes Redressal Commission

National Insurance Company Ltd.

APPELLANT

Vs

NABIN CHANDRA NAIK

RESPONDENT

Date of Decision : 13-02-2004

Acts Referred:

Citation : 2006 2 CPC 158 : 2006 2 CPJ 249

Hon'ble Judges : M.B.Shah , B.K.Taimni J.

Final Decision : Revision Petition dismissed

Judgement

1. HEARD the learned Counsel for the parties. By judgment and order dated 18.7.2000, in C.D. Appeal No. 217 of 1994, the State Consumer Disputes Redressal Commission, Orissa, Cuttack dismissed the appeal with a direction to the Insurance Company to pay a sum of Rs. 97,423 with interest at the rate of 12% p.a. from the date of filing of the complaint i.e. 11.5.1994.

2. UNDISPUTEDLY, in the present case, truck of the complainant was insured. The truck met with an accident on 24.2.1993. Complainant lodged a claim for a sum of Rs 2,28,750. As against this, Surveyor assessed the loss at Rs. 97,423. The District Forum directed that 75% of Rs. 97,423 as non-standard claim be paid to the complainant and for the rest of amount the matter was directed to be referred to the Arbitrator. That order was modified by the State Commission, as stated above. Petitioner approached the State Commission for modification of the order on the ground that the learned Counsel for the Insurance Company could not remain present at the time of the hearing of the appeal. In that proceeding, the State Commission considered the contentions raised by the Insurance Company.

The State Commission considered and held that carrying of one or two passengers extra was not the proximate cause of the accident and in such a situation Insurance Company cannot deny the liability. The State Commission also observed that the Insurance Company has offered to pay Rs 73,068, by reducing certain percentage of the claim, despite the fact that the Surveyor has assessed the loss at Rs 97,423.

3. WE do not think that the reasoning adopted by the State Commission is in any way erroneous. Taking one or two extra passengers cannot be held to be a cause for accident so as to entitle the Insurance Company to repudiate the claim or reduce the compensation. This is in conformity with the decision rendered by the Apex Court in B.V. Nagaraju v. Oriental Insurance Co. Ltd., I (1997) ACC 123 (SC)=(1996) 4 SCC 647, wherein the Court has observed that in case where six persons were permissible and nine persons were carried in the vehicle, irrespective of their being employees or not, had not attributed in any manner to the occurring of the accident and, therefore, the Insurance Company was liable to indemnify the damage caused to the vehicle, Therefore, the impugned order does not call for any interference. In the result, the Revision Petition is dismissed. There shall be no order as to costs. Revision Petition dismissed.