(2016) 11 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

Case No : 3179 of 2006

NEW INDIA ASSURANCE CO. LTD. — APPELLANT

Vs

ANAND SINGH BAGADWAL S/O. SHIR KISHAN SINGH — RESPONDENT

Date of Decision : 09-11-2016

Acts Referred:

Indian Penal Code, 1860, Section 279, Section 304A, Section 338, Section 337 - Rash driving or riding on a public way - Causing death by negligence -

Citation : 2016 4 CPR 372

Hon'ble Judges : B.C. Gupta

Advocate : Kapil Chawla, Ravinder S. Garia

Judgement

1. This revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986, against the impugned order dated 12.09.2006, passed by the Uttarakhand State Consumer Disputes Redressal Commission, Dehradun (hereinafter referred to as "the State Commission") in First Appeal No. 71/2006, The New India Assurance Co. Ltd. vs. Anand Singh Bagadwal, vide which, while partly allowing the appeal, the order passed by the District Consumer Disputes Redressal Forum, Nainital, dated 18.01.2006, allowing Consumer Complaint No. 48/2005, filed by the present respondent, was modified.

2. The facts of the case are that the complainant/respondent Anand Singh Bagadwal was the owner of a passenger bus, bearing registration no. UP22 7387, which he got insured with the petitioner Insurance Company for an Insured Estimated Value (IEV) of Rs. 3 lakhs, valid from 27.09.1999 to 26.09.2000. The said vehicle met with an accident on 12.10.1999, while carrying the passengers from Bageshwar to Haldwani. The bus was driven by the driver Bhuvan Singh at that time. It is stated that at about 1.30 pm, when the bus reached Devsthal, Hawalbagh, District Almora, the driver could not control the vehicle, as there were pits on the road dug by the Department of Tele-communications. The bus fell down into a ditch, as a result of which, it suffered extensive damage. It is

also stated that eight persons lost their lives in the incident and many more got injured. The insured filed a claim for damage to the bus, which was valued at Rs. 6 lakhs. It is stated in the consumer complaint that despite several requests, the Own-Damage claim was not paid to the complainant by the Insurance Company. The complainant filed a petition with Motor Accident Claims Tribunal (MACT), bearing petition no. 200/2002, which was decided on 04.12.2004, awarding a compensation of Rs. 3 lakhs to the complainant, alongwith interest @ 5% per annum. The OP Insurance Company challenged the said award by way of an appeal before the Hon''ble High Court of Uttarakhand, which was allowed and the complainant was directed to avail appropriate remedy in an appropriate forum for which, the delay, if any, was allowed to be condoned. The complainant then filed the consumer complaint in question, seeking directions to the OP Insurance Company to pay a sum of Rs. 6 lakhs to them as damages for his vehicle, alongwith interest @ 12% per annum from the date of accident till payment, and also to allow the litigation cost.

3. The complaint was resisted by the OP Insurance Company by filing a written statement before the District Forum, in which they stated that at the time of accident, the driver Bhuvan Singh was under the influence of liquor for which, he was charged by the competent authority under Section 279/337/338/304A of the Indian Penal Code. A magisterial inquiry had also been ordered into the incident by the District Magistrate, Almora. The OP further stated that the value of the vehicle with accessories was Rs. 3 lakhs only. The OP Insurance Company stated that there was no deficiency in service on their part as no right had accrued to the complainant to file the complaint.

4. The District Forum, after taking into account the averments of the parties, vide their order dated 18.01.2006, partly allowed the complaint and directed the opposite party to pay to the complainant an amount of Rs. 3 lakhs alongwith interest @ 9% per annum. Being aggrieved against the said order, the Insurance Company challenged the same by way of an appeal before the State Commission, which was decided vide impugned order dated 12.09.2006. The appeal was partly allowed and the order passed by the District Forum was modified to say that the complainant was entitled for payment of Rs. 2,20,000/- as compensation after deducting the value of the salvage at Rs. 80,000/- as stated by the surveyor. It may be mentioned here that the surveyor, vide his report dated 26.10.1999, assessed the liability on total loss basis at Rs. 2,63,500/-. It is against this order that the petitioner Insurance Company has filed the present Revision Petition.

5. During arguments, the learned counsel for the petitioner submitted that it was clear from the documents placed on record that the medical examination of Bhuvan Singh driver was done at 2.30 pm on 12.10.1999 i.e. almost within one hour of the accident having taken place. The report of the medical examination done by Dr. T. K. Pant at 2.30 pm says that the driver was smelling of alcohol from his breath and his speech was blurred. The analysis of the blood sample

revealed the presence of alcohol at 235.75 mg per 100ml, whereas in the urine sample, it was 299 mg per 100ml. The report of the magisterial investigation done in the case also revealed that the driver was under the influence of liquor, while driving the vehicle. The investigation report carried out by M.S. Dangwal, Investigator too revealed that as per statement made by an injured passenger Puran Singh, the driver had taken alcohol at Someshwar and the bus was on the verge of accident at various places during the journey. At Hawalbagh, the bus fell into a deep ''khud'' while giving way to a truck. The learned counsel stated that the claim was not payable in accordance with the terms and conditions of the policy, based on the facts and circumstances on record.

6. The learned counsel for the respondent, however, stated that the sample of blood/urine of the driver was taken after the FIR was registered on 13.10.1999, i.e. on the next day. Moreover, the persons, who took the sample or analysed the same, had not been produced during evidence to verify the authenticity of their version. The learned counsel has drawn attention to the observation made by the State Commission that the driver could have consumed liquor after the accident, so as to minimise the pain of injuries received during the accident. Since the fact that the driver was in intoxicating condition, had not been proved on record, the order passed by the State Commission was in accordance with law and should be upheld.

7. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me.

8. The main issue for consideration in the case is whether the driver of the vehicle was under the influence of liquor at the time of accident or not and whether the Insurance Company is justified in repudiating the claim, based on the terms and conditions of the policy. It has been stated in the terms and conditions of the policy as follows:-

"The Company shall not be liable to make payment in respect of:

(a) ....

(b) ....

(c) any accidental loss or damage suffered, while the insured or any other person, driving with the knowledge and consent of the insured, was under the influence of intoxicating liquor or drugs.

9. In this case, documentary evidence has been placed on record in the shape of medical reports and investigation reports to prove that the driver Bhuvan Singh was under the influence of liquor at the time of the accident. A perusal of the report of the medical examination done by Dr. T. K. Pant at Haldwani, District Nainital at 2.30 pm on 12.10.1999, reveals that the driver was smelling of alcohol from the breath and his speech was blurred. The samples of his blood and urine were also taken at the time of the said medical examination. The left thumb impression of the said Bhuvan Singh driver has been put on the said

report. An analysis of the samples done at the Forensic Laboratory, Agra, revealed that there was 235.75 mg per 100 ml of alcohol in the blood and 299 mg per 100 ml of alcohol in the urine sample. The version given in the medical reports is further strengthened from the report of the investigation carried out during magisterial inquiry as ordered by the District Magistrate, Almora. It has been stated in the said report that the accident had taken place due to negligence of the driver under the influence of liquor. An investigator appointed by the Insurance Company also revealed that as per the version of one of the injured passengers, the driver had taken alcohol at Someshwar and that he was on the verge of accident at various places during the journey. All these reports/ investigations do not leave any doubt that the said driver, Bhuvan Singh was under the influence of alcohol, when the accident took place. The contention raised by the consumer fora below that he had taken alcohol after the accident just to minimise the pain is not supported by any evidence on record, rather it seems to be a conjecture only.

10. Further in the order dated 04.12.2004, passed by the Motor Accident Claims Tribunal (MACT), the Insurance Company was directed to pay a sum of Rs. 3 lakhs to the complainants. However, the said order was set aside by the Hon''ble High Court of Uttarakhand on 15.02.2005 and hence, any conclusion made in the said order is of no relevance for the purpose of the present case. The terms and conditions of the insurance policy, as reproduced above, make it very clear that when the insured or any other person driving the vehicle is under the influence of intoxicating liquor or drug, the Company is not liable to make payment for any accidental loss or damage. From the facts and circumstances of the case, it is amply clear that the petitioner Company is not liable to make payment of claim under the insurance policy as per the terms and conditions stated therein. The present Revision Petition is, therefore, allowed and the orders passed by the consumer fora below are set aside. It is held that the complainant is not entitled for any compensation from the Insurance Company under the policy as at the time of accident the vehicle was driven by a person who was under the influence of liquor. The Consumer Complaint is, therefore, ordered to be dismissed. There shall be no order as to costs.