(2012) 01 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO. LTD APPELLANT

Vs

Darvesh Oil Carriers Pvt. Ltd RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Citation : 2012 0 NCDRC 292 : 2012 1 CPJ 449

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Advocate : JOS CHIRAMEL

Judgement

1. THIS revision petition has been filed by the New India Assurance Co. Ltd. (hereinafter referred to as the ''Petitioner'') being aggrieved by the order of the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the ''State Commission'') in Appeal No.136/2003 wherein M/s. Darvesh Oil Carriers Pvt. Ltd. was the Respondent.

2. THE facts according to the Respondent who was the original complainant before the District Forum are that he had insured his Maruti Esteem Car No.DL 4CE 6419 with the Petitioner/Insurance Company for the period from 27.01.1998 to 26.01.1999 for an estimated value of Rs.2,50,000/ -. On 08.06.1998, Respondent purchased a brand new Maruti Esteem Car No.DL 6CE 3533 and again approached the Petitioner/Insurance Company to cancel the insurance of the earlier vehicle which was no longer in the possession of the Respondent and issue an insurance policy in respect of the new vehicle. THE Respondent was asked to pay an additional premium of Rs.6,067/ - for the new car after adjusting the refundable premium from the old insurance policy which he paid. Petitioner/Insurance Company thereafter issued a cover note for the new Maruti Esteem Car for a total value of Rs.5,35,000/ - which was later enhanced to Rs.5,40,000/ - and in the cover note it was clearly stated that the insurance was valid from 08.06.1998 to 07.07.1999. On 04.02.1999 the new Maruti Esteem Car met with an accident and the Respondent, therefore, filed a claim with the Petitioner/Insurance Company. A Surveyor was appointed to assess the damage to whom all the necessary information was supplied by the Respondent.

However, vide letter dated 10.02.1999, Petitioner/Insurance Company rejected the claim by stating that the cover note in which the date of insurance has been mentioned from 08.06.1998 to 07.06.1999 was an error whereas the correct date of insurance was 08.06.1998 to 26.01.1999. THE claim as such does not fall within the scope of this policy and was, therefore, rejected. Since the Respondent had at no stage any reason to suspect the correctness of the dates given in the cover note, he was aggrieved by the rejection of the claim and filed a complaint before the District Forum on grounds of deficiency in service and requested that Petitioner/Insurance Company be directed to pay Rs.62,859/ - towards the repairs of the vehicle along with interest @ 18% per annum, Rs.25,000/ - for negligence and Rs.7,500/ - as litigation cost.

3. THE Petitioner/Insurance Company on the other hand stated that it needed to be appreciated that no fresh insurance policy was issued or sanctioned in respect of the new vehicle and only an endorsement was made on the existing insurance policy regarding the new vehicle and additional premium charged. A fresh cover note was, however, issued on the request of the Respondent for registration purposes. In this cover note the period was inadvertently mentioned as 08.06.1998 to 07.06.1999 instead of 08.06.1998 to 26.01.1999 but it needs to be appreciated that the cover note is not a binding or a concluded document/ agreement especially when no fresh insurance policy was issued and only an endorsement was made in the old insurance policy in respect of the new vehicle wherein it was clearly stated that this was valid for the period from 08.01.1998 to 26.01.1999. THErefore, at the time of the accident, there was no insurance cover for the vehicle of the Respondent and the claim was rightly rejected.

4. THE District Forum after hearing both parties and considering the evidence on record dismissed the complaint on the grounds that the Respondent was capitalizing on an error committed on the part of a Development Officer of the Petitioner/Insurance Company who had made a wrong endorsement only in the cover note and that the dates were correctly recorded in the actual insurance policy which was very much in the knowledge of the Respondent. Further, the Respondent had asked for only an endorsement of the new vehicle in the old insurance policy and he was, therefore, aware that no new insurance policy was issued.

5. AGGRIEVED by this, Respondent filed an appeal before the State Commission which allowed the appeal by observing as follows: "Even if we accept the stand taken by the respondent as correct still the fact remains that the appellant was given impression at the time of issuing Cover Note that the new policy being issued to him was n respect of the new car which was valid for the period from 08 -01 -1998 to 07 -01 -1999. It is the impression gathered by a consumer on the strength of documents, particularly the Cover Note issued by the Insurance Company which determines the rights of the parties. If there is some internal practice or procedure as to the endorsement made on the existing policy regarding the new vehicle and issuing Cover Note accordingly, the appellant was

neither made aware of this fact nor was concerned with it. It is the respondent company who made the appellant to labour under the belief that his vehicle was insured against the payment of requisite premium as the new policy was issued after adjustment of premium of the old policy. However, the fact remains that the amount of premium charged by the respondent was in respect of new vehicle of the value of Rs.5,35,000/ - and therefore, in our view, the appellant can be adequately compensated for the negligence of the respondent in issuing policy which made the appellant believe that it was as good a policy as a new policy by proportionately reducing the amount of compensation. In our view, the expenses incurred, as per the appellant, on repairs were Rs. 62,859/ -. In view of the peculiar facts of the case and there being no malafide on the part of the appellant or any allegation of his having played fraud upon the respondent and there being inadvertent negligence on the part of the official of the respondent, we deem that lump sum compensation of Rs.25,000/ - would meet the ends of justice. Besides this respondent shall pay Rs.5,000/ - as cost of litigation."

Hence, the present revision petition.

6. COUNSEL for Petitioner was present. None was present on behalf of the Respondent. Since, the service is complete; the case is being proceeded ex parte. COUNSEL for Petitioner/Insurance Company forcefully reiterated that the District Forum was right in observing that the Respondent was capitalizing on a small error inadvertently committed in the cover note by trying to make out a case that the period of insurance was from 08.06.1998 to 07.06.1999. The Respondent himself had requested the concerned officer in the Petitioner/ Insurance Company to insure the new vehicle "for the remaining period of the policy already in existence." He was thus aware that the relevant period for the insurance was from 27.01.1998 to 26.01.1999. Further, issuing of a temporary cover note is not a binding or a concluded contract and no fresh insurance policy was issued to the Respondent in respect of his new vehicle for the period 08.06.1998 to 07.06.1999. The State Commission, therefore, by observing that while there was no malafide on the part of the Petitioner/Insurance Company in making this mistake, erroneously directed the Petitioner/Insurance Company to pay Rs.25,000/ - for a minor error made in the cover note.

7. WE have heard learned Counsel for Petitioner/Insurance Company and have carefully gone through the evidence on record. The fact that a fresh cover note was issued specifically indicating that the date of the insurance policy was from 08.06.1998 to 07.06.1999 is not in dispute. While this may be a genuine error on the part of the concerned officer of the Petitioner/Insurance Company, we agree with the reasoning of the State Commission that it would be reasonable and understandable for the Respondent to presume that the fresh cover note would indicate the actual dates of the validity of the insurance policy. The State Commission thus rightly concluded that in view of the above facts, there was negligence and deficiency in service on the part of the Petitioner/Insurance Company for which the Respondent needed to be compensated. WE, therefore,

uphold the order of the State Commission and direct the Petitioner/Insurance Company to pay a lump -sum amount of Rs.25,000/ - as compensation to the Respondent as well as Rs.5,000/ - as cost of litigation within a period of six weeks from the date of receipt of a copy of this order. Ordered accordingly.

