

(1999) 11 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

New India Assurance Co. Ltd.

APPELLANT

Vs

GUPTA CEMENT AGENCY

RESPONDENT

Date of Decision : 22-11-1999

Acts Referred:

Citation : 2000 2 CPJ 160

Hon'ble Judges : S.K.Dubey , Saroj Rajwade J.

Final Decision : Appeal allowed

Judgement

1. THE Insurance Company has come up in appeal against the order dated 14th July, 1999 passed in Case No. 23/97 by the District Consumer Disputes Redressal Forum, Rajnandgaon (for short the "District Forum").

2. IT is not necessary to reproduce the facts. Suffice it to say that the appellant/ Insurance Company repudiated the claim of the respondent/insured on the ground that the driver did not possess an effective licence at the time of accident. On investigation the licence of the driver was found to be fake and to that effect a certificate was obtained from the Licensing Authority, Regional Transport Office, Hyderabad. However, no evidence was adduced by the appellant to establish the defence, in view of the fact that it was a public document. The District Forum relying on the decision of the Supreme Court in National Insurance Company Limited v. Santro Devi & Ors., VI (1998) SLT 11, held that the said licence was renewed and that appellant has failed to establish the licence as fake, hence, ordered to pay Rs. 49,780/- with interest at the rate of 15% p.a. Learned Counsel for the appellant submitted that the decision of the Supreme Court does not support the case of the complainant as the Supreme Court has ruled that if the licence is fake, its renewal will not give life to a licence which was fake and/or its renewal will be non est. It was submitted that on the material collected the appellant has taken a bona fide decision on justifiable ground to repudiate the claim. In any case, because of the conflicting decisions of the High Court of Madhya Pradesh, the evidence could not be led. Therefore, the case be remitted to the District Forum for deciding the complaint afresh after giving an

opportunity to the parties in view of the recent decision of this Commission in Appeal No. 691/97 decided on 18.8.1999, Kunjilal Kesharavani v. Oriental Insurance Company Ltd. & Anr.

Mr. Rakesh Shukla, learned Counsel for the respondent supported the order and submitted that it was the burden of the appellant to prove the defence of fake licence which was not discharged. It is submitted that the certificate issued by the Licensing Authority does not speak the truth. However, if this Commission remits the case then the respondent was also afforded an opportunity to adduce evidence to establish that the licence of the driver was not fake.

3. THE Supreme Court in case of National Insurance Company Ltd. v. Santro Devi & Ors. (supra), observed that a forged driving licence though may be validly renewed, would not become a valid driving licence or a duly issued driving licence in accordance with the Motor Vehicles Act. However, the case being of a third party claim, the Supreme Court did not approve of the High Court having gone on the endeavour streamlining the law when its ratio on the fact situation was likely to be rendered totally obiter. THEREfore, Supreme Court affirmed the substantive part of the order, in holding that the claimants had rightly been granted compensation on account of the motor accident on the basis of the recorded finding of fact which did not positively indicate that the licence of the driver of the vehicle was fake or forged. All the same, the licence was got renewed which reinforced the impression of the High Court that it was not proved substantially that the said licence to begin, was fake or forged. This Commission in Appeal No. 691/97 decided on 18.8.1999, Kunjilal Kesharavani v. Oriental Insurance Company Ltd., after considering the provisions of Section 74(1)(iii) of the Evidence Act and the short noted decision of the Madhya Pradesh High Court in Oriental Insurance Co. Ltd. v. Smt. Mulayam Bai & Ors., in MCC No. 538 of 1998, decided on 3.8.1998, 1998 (2) MPLJ 29 and in National Insurance Co. Ltd. v. Ajay & Ors., 1998 (2) TAC 254, after referring to the decisions of the National Commission in M/s. Essma Felts Pvt. Ltd. v. United India Insurance Co. Ltd., 1995 (2) CPR 184 (NC), and the decision of the Supreme Court in National Insurance Co. Ltd. v. Santro Devi & Ors. (supra), has observed that because of the conflicting decisions of the High Court of Madhya Pradesh, the parties were misled and did not adduce the evidence to establish the fact that whether driving licence was fake or not as the renewal of fake licence will not give life to a licence which was fake and its renewal will be non est. Therefore, in the interest of justice the case was remitted to the District Forum to decide the complaint afresh after giving an opportunity to the parties to adduce evidence on the issue of genuineness of the licence.

4. IN the present case also the circumstances are similar. Therefore, we set aside the order of the District Forum and remit this case to the District Forum for deciding the complaint afresh after giving an opportunity to the parties to adduce evidence on the issue of genuineness of the licence. We also direct the District Forum to send a letter and to seek a reply from the concerned RTO whether the

licence was duly issued to the driver or not, that will save time and expenses and will facilitate the District Forum for arriving at a just decision in the case. This we say so in the light of the decision of the National Commission in M/s. Essma Felts Pvt. Ltd. v. United INdia Isurance Co. Ltd. & Anr. (supra). The District Forum shall decide the complaint within 90 days from the date of appearance of parties which is fixed on 22.12.1999 of which no notice shall be issued to the parties as they have been noticed here through their Counsel. In the result, the appeal is allowed. The order of the District Forum is set aside and the case is remitted to the District Forum for deciding the same afresh. In the circumstances, parties to bear their own costs. A copy of this order be conveyed to the parties and a copy be sent to the District Forum alongwith the record of the case post-haste. Appeal allowed.