(2015) 02 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO. LTD. — APPELLANT

Vs

Hameed Mehendhibhai Nathani — RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:

Citation : 2015 2 CPJ 324

Hon'ble Judges : S.M.Kantikar J.

Judgement

1. THE brief facts of this Revision Petition are these -The complainant, Hameed Mehendhibhai Nathani insured his jeep with the OP/petitioner -New India Assurance Company, for the period from 16.1.2006 to 15.1.2007.

2. THE vehicle met with a road accident on 5.8.2006 in the early morning at 5.00 a.m. Two passengers were died and six were injured and the vehicle was totally damaged. The complainant informed the OP about the accident and submitted the insurance claim. The OP/petitioner repudiated the claim on the ground that the jeep in question was used for carrying fare paying passengers at the time of accident, that it was the breach of terms and conditions of the policy. Against this repudiation, the complainant filed a complaint before the District Consumer Dispute Redressal Forum, Parbhani (The District Forum). The District Forum allowed the complaint and directed the OP to pay an amount in the sum of Rs. 3,68,000 with interest @9% p.a. from 1st November, 2006 and Rs. 3,500 towards mental agony and Rs. 1,500 towards costs. The OP preferred the First Appeal No. 1234 of 2008 before the State Consumer Dispute Redressal Commission, Mumbai, Circuit Bench at Aurangabad, which was also dismissed. Hence, the OP appeared here in the Revision Petition. I have heard the Counsel for both the parties. The learned Counsel for the petitioner advanced his argument on three prongs. The first, that the vehicle was carrying more passengers than allowed i.e. 11 passengers, while the capacity of vehicle as per registration was 8 persons only. Therefore, it was an overloading. Secondly, the jeep was used for fare paying passengers, therefore, it was used for commercial use/taxi, however, the vehicle was registered in personal capacity and, thirdly,

the accident took place due to overturning, thus, it was violation of terms of the policy. The Counsel relied upon the FIR and submissions of two passengers, made before the police. He has relied upon several authorities of this Commission, in which similar question was dealt, namely: "(i) Delhi Assam Roadways Corporation Ltd. v. United India Insurance Co. Ltd., : IV (2013) CPJ 334 (NC);

(ii) Canara Bank & Anr. v. Jain Motor Trading Company & Anr., : IV (2013) CPJ 336 (NC);

(iii) S.G. Shivamurtheppa v. Reliance General Insurance Co. Ltd., : I (2012) CPJ 175 (NC);

(iv) Reliance General Insurance Co. Ltd. v. Sri AWN Ganesh., : I (2012) CPJ 176 (NC);

(v) S.R. Muralidharan v. New India Assurance Co. Ltd. : III (2012) CPJ 318 (NC);

(vi) Prem Singh v. Chief Administrator, HUDA & Anr., : III (2012) CPJ 320 (NC);

(vii) G. Siddesh v. ICICI Lombard General Insurance Co. Ltd. : IV (2014) CPJ 635 (NC); and

(viii) Amrita Devi & Ors. v. Bajaj Allianz General Insurance Co., : IV (2014) CPJ 632 (NC)."

3. THE rival arguments on behalf of complainant/respondent are, that the vehicle was used for his personal use, the accident took place at about 5.00 a.m. on 5.8.2006. It was during the early morning wee hours. There were eight persons only in the vehicle, out of which two persons died and six were injured. Therefore, it was not overloading, which caused any turning of vehicle or speedily driving the vehicle. The complainant incurred repair charges of the vehicle at the tune of Rs. 5,05,409, which were paid by the complainant. The Counsel for the complainant further submitted that the evidence or statements recorded under Section 161 of CRPC are not acceptable as evidence. The OP is raising the question of overloading at revision stage. There was no such pleading before the Fora below. The OP has not given the exclusion clause of the Policy; therefore, the OP is totally responsible for payment of claim. In this context, Counsel for the complainant relied upon the following judgments of this commission: - "(i) The Manager, ICICI Lombard General Insurance Co. Ltd. & Ors. v. Shri Gafur Alamgeer Sayyad, : II (2014) CPJ 104 (NC), in Revision Petition No. 949 of 2011. Para Nos. 8 and 9 of the judgment are reproduced here as under:

"8. The view taken in the decision above has been confirmed by the Supreme Court of India in Amalendu Sahoo v. Oriental Insurance Company Ltd., : II (2010) CPJ (SC). In this case, too the claim for accident under the policy was repudiated by the insurer on the ground that vehicle was given on hire in violation of the terms of policy. The District Forum and the State Commission upheld repudiation on the ground of violation of the specific condition in the policy.

9. The National Commission refused to interfere with the concurrent findings of the Fora below. However, the Apex Court held that repudiation of the claim in this case was not sustainable. The Court confirmed the view taken in the Nitin Khandelwal case and allowed the complaint holding that -

"15. The State Commission has allowed only 75% claim of the respondent on non -standard basis. We are not deciding whether the State Commission was justified in allowing the claim of the respondent on nonstandard basis because the respondent has not filed any appeal against the said order. The said order of the State Commission was upheld by the National Commission.

16. In our considered view, no interference is called for. This appeal is accordingly disposed of. In the facts and circumstances of the case, the parties are directed to bear their own costs."

(ii) Sh. Vishnu Singh v. IFFCO TOKIO General Insurance Co. & Anr. in Revision Petition No. 4456 of 2012."

4. IN my opinion there was no fundament breach of terms and conditions of policy in this case. The accident is quite possible during early morning wee hours; therefore, without any cogent evidence, it cannot be equated to negligent driving with high speed caused overturning. The Hon''ble Apex Court in the case of Amalendu Sahoo v. Oriental Insurance Company Ltd., : II (2010) SLT 672 : II (2010) CPJ 9 (SC), allowed the quantum of compensation at 75%, if there is no fundamental breach of terms and conditions of the policy. Whereas, considering the complainant''s allegation about non supply of terms and conditions by the OP, therefore, the exclusion clause/report of the police cannot be read as evidence here. But, presume that, if the terms and conditions of the policy are not supplied to the complainant, what was the bar upon him to request or to ask for the terms and conditions of the policy from the OP? It is quite obvious and common practice that most of the time, initially cover note is issued during the insurance transactions. In this case the complainant was never bothered to take entire policy document. The obligation casts upon both the parties vice -versa, therefore, it appears the contributory negligence. On the basis of forgoing discussion, and relying upon Amalendu Sahoo''s judgment the quantum of compensation @ 7(sic) approximately will be Rs. 2,76,000. Therefore, with modification in the order passed by the State Commission, the OP is directed to pay the complainant Rs. 2,76,0007 with interest @ 9% p.a. from 1.11.2006 alongwith Rs. 10,000 towards mental agony and cost within 90 days otherwise it will carry the interest @ 12% p.a. till its realization.