(2017) 04 NCDRC CK 0045

In the National Consumer Disputes Redressal Commission

Case No : 236 of 2016

NEW INDIA ASSURANCE CO. LTD — APPELLANT

Vs

JAYKANT BHAGWATI PRASAD PANDEY — RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

Indian Penal Code, 1860, Section 392, Section 328 - Punishment for robbery - Causing hurt by means of poison, etc., with intent to commit an offence

<a href=2221>Motor Vehicles Act, 19

Citation : 2017 2 CPR 456

Hon'ble Judges : Ajit Bharihoke, Anup K Thakur

Advocate : SHUCHI SINGH, KRISHNAKUMAR J. TIWARI

Judgement

1. This revision is directed against the order of the State Commission Maharashtra dated 27.10.2015 in First Appeal No. A/15/87.

2. Briefly put, the facts relevant for the disposal of the revision petition are that complainant on payment of insurance premium had insured his truck with the petitioner insurance company for IDV Rs.10,94,800/-. The insurance was valid for the period from 26.02.2009 to 25.02.2010. It is the case of the complainant that during the subsistence of the insurance policy on 08.102010, while the truck was proceeding towards Renakoot Sonbhadra, three persons stopped the truck by the gesture of hand and forcibly boarded the truck. They made the driver to smell something as a result of which truck driver became unconscious and the culprits took away the truck. On 09.10.2010, the driver on gaining consciousness found himself at Kanchanpur Chauraha Mauaima District Allahabad. On seeing the truck missing, the complainant immediately lodged FIR No. 259/09 under section 392 & 328 IPC against three unknown persons at PS P.S. Allahabad. The insurance company was also intimated about the theft. Insurance claim was filed. Insurance company, however, repudiated the insurance claim on the plea of violation of terms and conditions of the insurance policy i.e. driver allowed three unknown persons to travel in the truck on payment of fare. Being aggrieved, the

complainant raised the consumer dispute by filing complaint at District Forum Thane.

3. The petitioner opposite party on being served with the notice of the complaint filed written statement wherein insurance of truck by the opposite party was admitted. The opposite party, however, justified the repudiation of the insurance claim on the plea that that theft had occurred because the driver of the truck in violation of the terms and conditions of the insurance policy allowed unknown persons to travel in the truck on payment of fare.

4. The District Forum on consideration of pleadings and evidence partly allowed the complaint and directed the petitioner opposite party to pay to the complainant 75% of the IDV of the truck i.e. Rs. 8,21,100/- within 45 days. It was also ordered that on failure of the opposite party to pay the insurance amount, the amount shall carry 9% interest from 10.05.2011 till the realization of the amount besides cost of Rs.50,000/- was also awarded as cost of litigation and other allied expenses.

5. The petitioner opposite party being aggrieved of the order of the State Commission preferred an appeal. The State Commission on re-appreciation of evidence concurred with the District forum and concluded that District Forum had rightly granted 75% of IDV on non standard basis. The appeal was accordingly dismissed with cost of Rs.10,000/-. Being aggrieved the petitioner has filed the revision petition.

6. Learned Ms. Shuchi Singh, Advocate for the petitioner has contended that concurrent findings of the Fora below is not sustainable because the Fora below have failed to appreciate that insurance contract was repudiated in view of General Exception in the insurance contract which provides as under: "Any accidental loss damage and / or liability cause sustained or incurred whilst the vehicle insured herein is :

1. Being used otherwise than in accordance with the limitations as to use."

7. In support of her contention, learned counsel has drawn our attention to Section 2 (14), 66 and 132 of Motor Vehicles Act as also Policy Schedule-cum-Certificate of Insurance.

8. Learned counsel for the respondent on the contrary has argued in support of impugned order.

9. In order to appreciate the contention of learned counsel for the petitioner, it would be useful to have a look on clause dealing with "Limitations as to use" of the insured vehicle, which reads as under: "The Policy covers use only under a permit within the meaning of the Motor Vehicles Act, 1988 or such a carriage falling under sub-section (3) of Section 66 of the Motor Vehicles Act, 1988. The policy does not cover use for (a) organised racing, (b) Pace making, (c) Reliability trails, (d) Speed Testing."

10. On reading of the above, it is clear that "Limitations as to use" puts a restriction by providing that policy will cover the insured vehicle only if it is plied under a permit issued under section 66 of the Motor Vehicles Act.

11. We have gone through Section 66 of Motor Vehicles Act, 1988. It nowhere provides a Bar on carrying passengers in the transport vehicle. It is possible that transport authority while issuing permit to a transport vehicle may provide a condition that the vehicle shall not carry the passengers but the opposite party has not placed on record copy of the permit of the subject vehicle to show us any restriction of carrying passengers in the vehicle. Otherwise also, even if it is assumed for the sake of arguments that there was a ban for carrying passengers on the insured vehicle, then also in order to succeed, the opposite party is required to show that the driver of the subject vehicle allowed the passengers to travel in the subject truck. In order to find answer to this question, we have perused the copy of the FIR regarding theft of the vehicle lodged by the driver. On perusal of the FIR No. 259 of 2009 dated 09.04.2009 registered under section 392 & 328 IPC at P.S. Mauaima, District Allahabad, we find that in the FIR recorded in hindi, the version given by the driver is that while he was driving the truck, at about 10.00 p.m in the night, three persons gave him signal to stop the truck. When he stopped the truck, those persons climbed into the driver''s cabin and made him smell some intoxicating material, as a consequence, he became drowsy. Thereafter, two persons made him lie on the backseat and third person drove the truck. When he regained consciousness, he found himself at Kanchanpur Crossing and his truck was missing. From the aforesaid version, it is obvious that this is not a case in which the driver of the truck voluntarily allowed those three persons to travel in the truck i.e. transport vehicle. Therefore, also, we are of the opinion that both the Fora below have rightly allowed the consumer complaint and no interference in exercise of revisional jurisdiction is called for.

12. In view of the discussion above, we do not find merit in the revision petition. It is accordingly dismissed with no order as to costs.

