(2011) 08 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

New India Assurance Co. Ltd. APPELLANT

Vs

M.S.Venkatesh Babu RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

Citation : 2011 0 NCDRC 732 : 2011 4 CPJ 243 : 2011 4 CPR 23

Hon'ble Judges : R.K.Batta , Anupam Dasgupta J.

Advocate : Mohan Babu Agrawal , B.K.Choudhry , Brajesh Verma

Judgement

1. THE vehicle No. KA-11/M-1007 belonging to the complainant/respondent met with an accident on way to Tirupathi on 28.2.2004. THE said vehicle was insured with the petitioner/OP for the period 25.9.2003 to 24.9.2004. THE OP appointed a surveyor to assess the loss and the surveyor assessed the loss at Rs.1,11,190.55. However, the OP repudiated the claim on the ground that the vehicle was being used as a commercial vehicle though it was registered as a private vehicle.

2. THE District Forum dismissed the complaint on the basis of the statements made by the driver of the vehicle, Shri G.B. Shivakumar and other witnesses before the police to the effect that the vehicle was taken on hire by Shri G.B. Shivakumar. THE District Forum also came to the conclusion, on the basis of the police record, that the complainant and his family members were not travelling in the said vehicle at the time of accident and only Shri G.B. Shivakumar and his son were travelling along with the driver. This order of the District Forum was challenged by the complainant/respondent before the State Commission. The State Commission relied upon the affidavits of the driver and Shri G.B. Shivakumar filed before the District Forum and held that mere complaint given by the driver to the police was not a conclusive proof. The State Commission, therefore, allowed the complaint and ordered payment of Rs.1,11,200/- to the complainant/respondent with 6% interest per annum from the date of complaint till realisation. This order is the subject matter of challenge in this revision filed before us.

We have heard the counsel appearing on both sides. Learned counsel for the petitioner placed heavy reliance on the FIR as also the statements recorded by the police and urged that the State Commission was not justified in allowing the complaint. Learned counsel for the respondent stated that the statements made before the police could not be relied upon and that the petitioner/OP had not cross-examined the driver as also Shri G.B. Shivakumar who had filed affidavits before the District Forum. He, therefore, submitted that there is no ground to interfere with the order of the State Commission.

3. SECTION 162 of the Code of Criminal Procedure (Cr. P.C) deals with the statements recorded by the police and use of such statements in evidence. SECTION 162 Cr.PC reads as under: "SECTION 162. Statements to police not to be signed: Use of statements in evidence.- (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made: Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act , 1872; (1 of 1872) and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination. (2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872, (1 of 1872) or to affect the provisions of section 27 of that Act. Explanation.-An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

It is now well settled that FIR is not a substantive piece of evidence. Section 162 Cr.PC lays down that the statements recorded by the police shall not be signed by the persons giving the statements. It is also well settled that the statements recorded under section 162 Cr.PC cannot be used for any purpose except as provided under section 162 Cr.PC. Such statements can be used for the limited purpose of impeaching credibility of the witness in accordance with section 145 of the Evidence Act.The complainant/driver of the vehicle and Shri G.B. Shivakumar had filed affidavits in the District Forum stating that they were travelling in the vehicle at the time of accident. These witnesses were neither subjected to any cross-examination nor were they confronted with the FIR/ statement recorded by the police. Therefore, the FIR as also the statements recorded by the police cannot be used by the insurance company in support of its case since the FIR and the statements recorded by the police are not substantive piece of evidence. The State Commission had, therefore, very rightly refused to rely on the FIR and the statements recorded by the police and placed reliance on affidavits filed before the District Forum, which were not subjected to any cross-examination. The State Commission was, therefore, right in accepting the case of the complainant that he along with Shri G.B. Shivakumar was travelling in the vehicle and the vehicle was not given on hire to Shri G.B. Shivakumar. Therefore, the order of the State Commission does not suffer from any jurisdictional error, illegality or material irregularity. The revision petition is accordingly dismissed with no order as to costs.

