(2001) 08 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

New India Assurance Co. Ltd. APPELLANT

Vs

MUKESH CONSTRUCTION COMPANY RESPONDENT

Date of Decision : 20-08-2001

Acts Referred:

Citation : 2001 3 CPR 130 : 2002 0 CTJ 14 : 2002 1 CPC 388 : 2002 2 CLT 197 : 2002 2 CPJ 14

Hon'ble Judges : D.P.Wadhwa , C.L.Chaudhry , J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is directed against the order dated 7th December, 1994 passed by the State Consumer Disputes Redressal Commission, Rajasthan, by which, the Insurance Company, the appellant in this appeal was directed to pay a sum of Rs. 2,99,500/- to the respondent as compensation along with interest at the rate of 12% per annum with effect from 8.6.1991. Respondent in this appeal was a complainant before the State Commission. He filed a complaint against the Insurance Company claiming compensation of Rs. 3,93,000/- on account of burning of his truck. The complainant was an owner of a truck No. RPC-333 and the truck was comprehensively insured with the Insurance Company for an amount of Rs. 3,00,000/- under an insurance policy which was valid upto 15.2.1992. On 7.3.1999. when the truck was going from Ludhiana to Kandla, it was burnt by terrorists. The complainant submitted a claim to the Insurance Company on the basis of complete loss. The claim was not settled, the present complaint was filed. The claim was resisted by the Insurance Company on the ground that when the truck was burnt, it was overloaded which was a violation of the terms of the Insurance Policy and, therefore, the loss was assessed on non-standard basis for an amount of Rs. 2,24,250/-.

2. AFTER due consideration of the material supplied on the record, the State Commission allowed the claim and directed the Insurance Company to pay a sum of Rs. 2,99,500/- to the complainant as compensation along with interest at the

rate of 12% per annum w.e.f. 8.6.1991. While allowing the claim the State Commission made the following observations : "It is clear from the above facts that the value of the truck burnt was Rs. three lakhs and according to the Surveyor''s report, there was total loss. He assessed the loss at Rs. 2,99,500/- after deducting Rs. 1,500/- on account of policy clause. Admittedly, the opposite party assessed the loss on non-standard basis. It has not been established by the opposite party that the truck was overloaded. No basis was laid down for assessing the loss on non-standard basis. The complainant was entitled to get Rs. 2,99,500/- as assessed by the Surveyor. Of course, the complainant was to hand over the salvage to the Insurance Company."

The Insurance Company has assailed the order of the State Commission by filing the present appeal. We have heard Mr. Sanjiv Sharma, Counsel for the appellant. Mr. Sharma raised a contention that the finding of the State Commission that the truck was not overloaded was not legally correct and as the truck was overloaded and, therefore, the Insurance Company assessed the claim on non-standard basis.

We have perused the record of the case. We do not find any reliable material on record to hold that the truck was overloaded. We agree with the finding recorded by the State Commission that it was not established on the record placed by the Insurance Company that the truck was overloaded. Even assuming that the truck was overloaded, there was no nexus between the burning of the truck by the terrorists and overloading of the truck. The Insurance Company was not justified in settling the claim on non-standard basis for the reason that the truck was overloaded and it exceeded the limit prescribed in the policy. We find no force in the contention raised on behalf of the appellant. The order passed by the State Commission is legally correct and calls for no interference. As a result, we find no merit in this case appeal and it is dismissed with no order to costs. Appeal dismissed.