
(2016) 12 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

Case No : 240 of 2016 IN RP of 2234 of 2015

NEW INDIA ASSURANCE CO. LTD.

APPELLANT

Vs

PARSHOTAM KUMAR

RESPONDENT

Date of Decision : 06-12-2016

Acts Referred:

Citation : (2016) 12 NCDRC CK 0015

Hon'ble Judges : Ajit Bharihoke, S.M. Kantikar

Advocate : Abhishek Kumar Gola, Parveen Kumar

Final Decision : Petition allowed

Judgement

1. Shorn off unnecessary details, the facts relevant for the disposal of the review petition are that the review petitioner filed a consumer complaint against the opposite party being aggrieved of the repudiation of his claim in respect of damage caused to the insured truck in an accident.
2. The opposite party justified the repudiation of the insurance claim on the ground that the truck at the relevant time was being driven with the excessive load beyond the permissible quantity.
3. The District Forum on consideration of pleadings and the evidence dismissed the complaint.
4. Being aggrieved of the order of the District Forum, the review petitioner/complainant approached the State Commission in appeal. The State Commission, Punjab vide its order dated 18.5.2015 allowed the appeal, set aside the order of the District Forum and directed the opposite party to pay 75% of Rs.1,31,555/- as compensation to the complainant with 9% interest thereon from the date of filing of complaint till the actual payment.
5. The opposite party insurance company being aggrieved of the order of the State Commission approached the National Commission in revision. This Commission vide order dated 1.12.2015 took the view that as at the time of

accident the truck was being driven with the load 75% in excess of the sanctioned capacity, the insurance company was justified in repudiating the claim. The National Commission, therefore, set aside the order of the State Commission and restored the order of the District Forum.

6. Review petitioner/complainant being aggrieved of the order of the National Commission filed SLP in the Supreme Court. The SLP was withdrawn with liberty to file a review application before the National Commission which permission was granted. This has led to filing of the review petition.

7. Learned counsel for the applicant/complainant has taken us through the impugned order and submitted that perusal of para-5 of the order of the National Commission would show that the National Commission has reproduced a part of para-7 of the order of the State Commission, which actually is not there in the order of the State Commission. Thus, it is contended that due to inadvertence the impugned order has been passed on the basis of incorrect facts and as such the order is liable to be reviewed.

8. We find merit in this contention. Accordingly, order dated 1.12.2015 passed by this Commission is reviewed. We have re-heard the parties on merits of the revision petition.

9. The short point involved in this revision petition is whether or not at the time of accident the subject truck was being driven with excessive load than the permissible quantity and if so whether the overloading was direct cause of accident to the truck?

10. Learned counsel for the complainant has contended that perusal of the order of the State Commission would show that the accident had taken place because a stray cattle suddenly came in front of the truck and that the accident has no correlation with the overloading of the truck. It is further contended that even the surveyor appointed by the opposite party has not commented on overloading of the truck or that the accident took place due to overloading.

11. Learned counsel for the opposite party insurance company on the contrary has taken us through the survey report and pointed out that in the survey report surveyor has given details about the load challan and observed that the vehicle at the time of accident was overloaded.

12. We have considered the rival contentions and perused the record. In order to resolve the controversy it would be useful to have a look on the survey report particularly the part dealing with the details of load challan. Relevant observations of the survey are reproduced as under: -

" DETAILS OF LOAD CHALLAN :

The vehicle was loaded with Crushed Stone 400cft., moving from Pathankot towards Lehra Mohabbat, Copy of G.R. No. 2603 dated 22.04.2011 enclosed. As per the Standard Wt. Chart, the wt. Stone per Cu/Mtr., is 2240 to 2400 per Cu.,

Meter, depending upon the condition, i.e., dry or wet. If we consider the dry stone even then it works out to $400/35.314 \times 2240 = 25372$ kg., against the permissible load of $25000-9800 = 15200$ kgs. This way, the vehicle was observed to be over-loaded" .

13. On bare reading of the above, it is clear that against the permissible load of 15,200 kgs, the subject truck at the time of accident was carrying a load of 25,372 kgs., which is almost 70% in excess of the permissible load. Having concluded that the truck at the time of accident was overloaded, it is to be seen whether the overloading was the direct cause of accident? It may be noted that the permissible load of vehicle is provided in order to ensure the safety of the driver of the vehicle as also the road users. The reason for the same is that overloading has a direct co-relation with the momentum of the vehicle as also the centre of gravity of the vehicle. No doubt the accident took place because of stray cattle coming in front of the truck but the fact remains that the truck over-turned when the driver tried to avoid the accident and this is because of change of centre of gravity of the truck due to overloading. Otherwise also, when a vehicle is overloaded it has a bearing on the momentum of the vehicle and affects the breaking distance. Thus, in our view, the accident took place as a result of overloading. Therefore, the order of the State Commission cannot be sustained and it has been rightly quashed by the earlier order of the National Commission.

14. Learned counsel for the complainant has contended that in view of the judgment of Hon''ble Supreme Court in the matter of Amalendu Sahoo vs. Oriental Insurance Co. Ltd. (2010) 4 SCC 536 , the claim ought to have been sanctioned on non-standard basis. We do not agree with this contention. Judgment in the case of Amalendu Sahoo (supra) deals with the cases in which there is a technical violation of the terms of the insurance contract and not in relation to a case where the accidental damage is direct consequence of the violation of Motor Vehicle Rules framed to ensure safety of the driver and road users etc.

15. In view of the discussion above, revision petition is allowed, impugned order of the State Commission is set aside, and the complaint is dismissed.