
(2015) 12 NCDRC CK 0080

In the National Consumer Disputes Redressal Commission

Case No : 2234 of 2015

NEW INDIA ASSURANCE CO. LTD.

APPELLANT

Vs

PARSHOTAM KUMAR

RESPONDENT

Date of Decision : 01-12-2015

Acts Referred:

Citation : 2016 1 CPJ 381

Hon'ble Judges : J.M. Malik, Dr. S.M. Kantikar

Advocate : Abhishek Kumar Gola, Yogendra Verma, Parveen Kumar

Judgement

1. The rash, negligent and irresponsible drivers cause serious accidents without due regard to traffic regulations. The Principal reason for these fatal accidents is over-loading of the trucks. It is painful and galling that the authorities particularly the police turns a Nelson's eye towards such like illegalities.

2. Sh. Parshotam Kumar, the complainant, is the owner of the Tata Truck, which was insured with the New India Assurance Co. Ltd., the petitioner/OP. The above said Truck met with an accident near Thatian Mahnta. A report was lodged with the police and information was given to the insurance company. The vehicle was driven by Ram Pal Sharma, who passed away in that accident. The Surveyor, observed, 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" .

3. The District Forum dismissed the complaint vide order dated 11.05.2012.

However, the State Commission, while placing reliance on IFFCO TOKYO General Insurance Co. Ltd. Vs. Kana Rupa Chhanga, [2015 (2) CPR 71 (NC)] I, wherein, reliance was placed on the judgment of Hon"ble Supreme Court, reported in Amalendu Sahoo vs. Oriental Insurance Company Ltd., (2010) 4 SCC 536, granted 75% of the amount as assessed by the Surveyor, i.e., at Rs.98,666/- (i.e., total amount of Rs.1,35,555/- minus Rs.32,889/-) to the complainant, along with interest @ 9% p.a., from the date of filing of the complaint, in the District Forum, till actual payment.

4. The present revision petition was filed by the Insurance Company before this Commission.

5. We have heard the counsel for the parties. The learned counsel for the petitioner ? Insurance Co., denied that the Truck was not over-loaded. In this context, he has invited our attention towards the judgment of the State Commission, wherein, the last portion of Para No.7, runs as follows :- "7. It is confirmed by the police that the cause of accident was that the stray animal came in front of the truck and in order to save the animal, truck met with an accident, therefore, it is wrong to state that the complainant /Appellant is not entitled for any claim, even for the sake of argument, even if the vehicle is overloaded".

6. The counsel for the respondent/complainant tried to mislead this Commission by stating that the police did not come to the conclusion that the vehicle was over-loaded. That was not the subject matter pertaining to the police and the police did not investigate the case in this context. Secondly, the learned counsel alleged that the Surveyor was working in cahoots with the Insurance Company. However, he could not point out any evidence in this respect.

7. On the other hand, the counsel for the petitioner / OP, has cited another judgment of this Commission, reported in RP No. 3369 of 2010, titled Bhagirathi Bishnoi Vs. New India Assurance Co. Ltd., decided on 19.03.2011, wherein, it was reported as under :- " Counsel for the respondent has put on record the revised guidelines on settlement of claims on "non-standard" basis, according to which, the respondent is not liable to pay any compensation, if the overloading was in excess of 75%. In the present case, the overloading was 90.46% of the sanctioned capacity, which was more than 75% and, therefore, the petitioner is not entitled to any compensation".

8. In the instant case, the Truck was loaded in excess of more than 70% of the sanctioned capacity. Had it not been overloaded, the life of the driver, Sh. Ram Pal Sharma, could have been saved. The complainant / respondent should not get the benefit of both the worlds. He will get more amount for over-loading the vehicle and would get compensation for the accidental truck and death of Ram Pal Sharma, the driver, due to over-loading. As a result, we set aside the order passed by the State Commission and restore the order of the District Forum. The revision petition stands accepted.