

(2009) 03 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO. LTD.

APPELLANT

Vs

Raj Kumar Chaudhary

RESPONDENT

Date of Decision : 16-03-2009

Acts Referred:

Citation : 2009 3 CPJ 191

Hon'ble Judges : R.K.BATTA , S.K.NAIK J.

Advocate : S.D.WADHWA , RAM NIWAS

Judgement

1. THE complainant got his Truck No. RJ.1G.5653 insured with the opposite party for a sum of Rs. 7,00,000 for the period w.e.f. 18.10.2003 to 17.10.2004. On 24.4.2004, near Sardar Shahara on Ratangarh Road, the truck in order to save collusion with the oncoming truck from the other side went towards the side, fell in a pit and overturned after which it caught fire and the entire truck was burnt. The information of the accident was given to the police as also to the respondent on 26.4.2004. The opposite party had appointed Surveyor, Mr. Pavan Kumar Sharma who did spot survey and found that the truck was burnt. The claim put forward by the complainant was not settled and it was repudiated by the opposite party on the ground that the vehicle at the time of accident was 100% overloaded. Accordingly, the complainant had approached the District Forum for compensation of Rs. 7,00,000 with 15% interest thereon. Besides that, the complainant had sought Rs. 15,000 for mental agony and Rs. 10,000 for towing the truck as also cost of litigation.

2. THE District Forum, after analyzing the material on record as also the 3 Surveyors' reports held that the opposite party had committed default in service and accepted the claim of the complainant. The District Forum accordingly awarded compensation of Rs. 5,78,800 on the basis of the Surveyors' Report of Mr. Ajay Kumar Sharma with 9% interest on the said amount from 3.3.2005 till payments. Besides this, the District Forum also awarded Rs. 5,000 for mental agony and Rs. 2,000 as costs of litigation. This order was challenged by the opposite party before the State Commission. The State Commission concurred

with the findings of the District Forum and dismissed the appeal. This order is subject matter of challenge in revision before this Commission.

3. WE have heard the learned Counsel appearing on behalf of the petitioner who has urged before us that the complainant had played fraud by not supplying the details of consignment, which was being carried in the truck in question inasmuch as the truck was carrying 37.060 MTs of open cement clinkers against its capacity of 15,500 kilograms. According to the learned Counsel for the petitioner, the truck met with an accident on account of heavy overloading as a result of which, the Insurance Company was not bound to reimburse the claim of the complainant. He also submitted that the complainant never furnished the documents relating to the consignment. It is further submitted that the Surveyor, Mr. D.D. Mantri had approached the transporter's office and came to know that the two consignments had been sent through M/s. Mayur Roadways the total weight of which was 37.06 MTs. and two entry passes had been issued for the same. On the basis of this information, which the transporter had refused to verify, it was proved that the vehicle in question was overloaded at the time of accident. He, therefore, contends that the orders of two Fora below are required to be set aside. The petitioner had initially appointed Surveyor, Pavan Kumar Sharma who had carried out spot survey. In the schedule of assessment of the said survey report, various parts of the truck were found as burnt and broken. The tyres were also found to be burnt. He did not assess the virtual loss and stated in the report that the same shall be considered at the time of final survey. In his report, he has stated that the insured had not produced load challan. According to him, the vehicle was running on the road at turn and at slope another vehicle came from the opposite direction due to which, the insured vehicle became uncontrolled due to overloading and overturned on left side of the road. On what basis the Surveyor, Pavan Kumar Sharma came to the conclusion that the vehicle was overloaded is not disclosed. If the load challan had not been produced, he could have reported that load which the vehicle was carrying at the time of accident, requires verification. However, he could not have come to the conclusion that the accident was contributed by overloading for which there was no material before the said Surveyor. It is pertinent to note that the petitioner sent letter dated 14.6.2004 to the complainant in which it was nowhere stated that the truck in question was overloaded. In this letter, the complainant was asked to send estimate of accidental damage to the vehicle so that the Surveyor and Loss Assessor could be appointed for preparing final loss assessment report and in case he had given details of papers/documents already in the office, the same be informed. Another letter dated 12.7.2004 was sent by the petitioner to the complainant on the same lines. The complainant was never asked to produce documents connected with the consignment, which the truck was carrying at the time of incidence. In none of the two letters referred to above, there was any reference to overloading.

4. IN the meantime, M/s. Alfin Marketing Pvt. Ltd., Jaipur asked Mr. Ajay Kumar Sharma, Surveyor and Loss Assessor to assess the damage to the truck. He

carried out the survey on 12.7.2004 and found that majority of the parts of the truck were burnt. He assessed the damages at Rs. 7,47,290.54 and after deducting depreciation rounded the damage to Rs. 6,31,837. Labour and towing charges were separately assessed. After assessing the salvage value, the amount payable on net loss basis was stated to be Rs. 5,78,500. This report was accepted by the District Forum as also by the State Commission.

5. THE petitioner had appointed Mr. D.D. Mantri for G.R. and load verification report and he gave his report on 20.9.2004. According to him, he went to transporter office and came to the conclusion that the vehicle in question was loaded with 37.060 MTs open cement clinkers under two G.R. and two challan numbers. However, the transporter had refused to verify the correctness of the said information. On the basis of his information alone, which was not authenticated by the transporter, he came to the conclusion that the truck was overloaded at the time of accident.

6. BOTH the Fora below have not accepted the report of Mr. D.D. Mantri. The District Forum on the basis of material on record held that the petitioner had failed to prove that the truck in question was overloaded at the time of accident. We would like to point out that the report of Mr. D.D. Mantri may at the most create suspicion but it is now well settled that suspicion, howsoever strong, cannot take place of proof. The State Commission has very rightly pointed out that the petitioner could have collected information and material from the consignor or the consignee regarding the factum of overloading but nothing was done in this behalf by the petitioner.

7. BEFORE the State Commission, the main argument advanced by the learned Counsel for the petitioner was that the vehicle was carrying 37.06 MTs of open cement clinkers against its capacity of 15,500 kilograms and since the vehicle was heavily overloaded, it met with an accident due to which, the Insurance Company was not liable to pay the claim. The State Commission also did not place reliance on the report of the Surveyor, Mr. D.D. Mantri. In this connection, it was pointed out that the petitioner could have requisitioned records through notice; it was not explained as to why two challans were prepared when the goods were sent through Mayur Roadways; there was no material to show that the goods were loaded in the same truck in question; the Surveyor did not obtain any explanation from M/s. Vikaram Cement that if the goods were sent in one truck why two challans were issued and that the petitioner had failed to prove that at the time of accident, the truck was overloaded. It was further observed that the information furnished by Mr. D.D. Mantri carried no importance in law. The State Commission also observed that since no Surveyor was appointed by the petitioner, the Surveyors Report of Mr. Ajay Kumar Sharma was rightly accepted by the District Forum. It was further held by the State Commission that the sum of Rs. 5,78,500 awarded by the District Forum could not be said to be unreasonable.

8. IN our opinion, the petitioner has failed to prove that the complainant had

played fraud as no convincing material has been placed in support of the said pleas before the Fora below.

9. IN view of the above and findings of the two Fora below, we do not find that any case has been made out by the petitioner for interference in the exercise of revisional jurisdiction under Clause (b) of Section 21 of the Consumer Protection Act, 1986, as we do not find any material irregularity, illegality or jurisdictional error in the orders of the Fora below. The revision petition is accordingly dismissed with no order as to costs. R.P. dismissed.