(1998) 06 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

New India Assurance Co. Ltd. APPELLANT

Vs

Santosh Kumar RESPONDENT

Date of Decision : 30-06-1998

Acts Referred:

Citation : 1998 3 CPJ 225 : 1998 3 CPR 204 : 1999 1 CLT 244

Hon'ble Judges : Saroj Rajwade , N.K.Vaidyas J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the order dated 9.1.1995 passed by the District Consumer Disputes Redressal Forum, Betul in Case No. 53/93, wherein the District Forum directed the opposite party-New India Assurance Co. Ltd. to pay to the complainant a sum of Rs. 75,084/- for damages caused to his jeep in an accident and also directed the opposite party to pay Rs. 300/- as Advocate fees and to pay 12% interest on the amount due from 9.9.1993 till the date of payment.

2. HEARD the arguments of both the parties and perused the records of the case. The main contention of the appellant is that the jeep was being used as taxi at the time of accident and giving of private car on rent is prohibited under the exclusion clause of the insurance policy. District Forum failed to understand the policy conditions as noted in under heading Limitation as to use.

On a perusal of the records of the case we find that the only document to prove that the jeep had been given on rent is the statement of Rajkumar Jasuja s/o Shri Lakhmichand Jasuja recorded by Surveyor Shri K.S. Sharma on 17.5.1993. In the statement Shri Rajkumar has stated as under: "The vehicle was taken on hire in the presence of late Shri Savai Rao, the driver of the vehicle and paid Rs. 400/- as advance in the presence of drier at vehicle owner''s residence. The terms and condition were 300/- Rs. For the day plus 50 Rs. per night."

In support of his statement, Shri K.S. Sharma has filed his own affidavit stating that witness Rajkumar Jasuja has stated before him that jeep has been hired by

Rajkumar on rent for Rs. 300/-per day.

3. ONLY point for consideration is whether jeep was being used as a taxi or there was violation of the terms and conditions of policy. Except for the statement of Rajkumar Jasuja, there is nothing on record to prove that Rajkumar Jasuja had hired the jeep. So far as the affidavit of Shri K.S. Sharma is concerned it has only reiterated what Mr. Rajkumar Jasuja stated before him. Shri K.S. Sharma stated nothing from his personal knowledge. As against this complainant filed affidavit of Rajkumar Jasuja dated 22.9.1993 wherein he has categorically stated in para 4 that jeep was not taken by him on hire basis. In para 5, he has further stated that whatever statements were recorded by the Insurance Company were not read out to him and he being in state of shock had just signed the statement without reading the same. He has further stated in his affidavit that anything other than what is stated in this affidavit is wrong. In para 6 he has further stated that he is in full senses and is giving this affidavit without being under any kind of influence. The statement of Rajkumar Jasuja was recorded by Surveyor Shri K.S. Sharma on 17.5.1993 whereas this affidavit of the same person Rajkumar Jasuja is of a subsequent date 22.9.1993. This affidavit was filed by complainant before the District Forum on 27.9.1994. Insurance Company was represented by Mr. S.C. Jain, Advocate on that date. Case was taken up on three hearings after 27.9.1994 and statement of Insurance Company''s witness Vijay Kumar Rai, Branch Manager, New India Assurance Company, Betul was recorded on 9.1.1995. When affidavit of Rajkumar Jasuja had been filed on 27.9.1994 and Insurance Company had sufficient opportunity to request the District Forum to call for Rajkumar for cross- examination declaring him as a hostile witness, but the Insurance Company did not do so, nor filed any affidavit in rebuttal against the affidavit of Rajkumar. So much so that Vijay Kumar also did not state in his statement that Rajkumar has filed a false affidavit. Statement recorded by Surveyor on 17.5.1993 becomes infructuous in view of affidavit of Rajkumar Jasuja filed subsequently and the burden to prove the exclusion clause lies heavily on the appellant- Insurance Company. The Insurance Company also filed nothing in rebuttal of the contents of the affidavit of complainant-Santosh Kumar Khaskalam in which he has made direct allegations against the Insurance Company of being harassed repeatedly.

4. THUS, Insurance Company totally failed to prove that jeep was given on rent by the complainant at the time of accident. The appeal is, therefore, dismissed and the order of the District Forum as contained in para 5 is maintained. The appellant shall pay Rs. 500/- as proceeding expenses to the respondent. Appeal dismissed. ________________