(2007) 04 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO. LTD. APPELLANT

Vs

SATISH KUMAR RESPONDENT

Date of Decision : 12-04-2007

Acts Referred:

Citation : 2007 0 NCDRC 16

Hon'ble Judges : M.B.SHAH , RAJYALAKSHMI RAO J.

Final Decision : Petitions are dismissed

Judgement

1. BY judgment and order dated 21.1.2003 the State Consumer Disputes Redressal Commission, Jharkhand, allowed Appeal No.373 of 2002 filed by the Complainant and directed the Insurance Company to pay Rs.70,380/- along with interest at the rate of 12% p.a. from the date of repudiation of the claim till the date of realization. It also directed the Insurance Company to pay a sum of Rs.10,000/- by way of compensation due to deficiency in service and Rs.5,000/- as costs of litigation. There is no dispute that a Surveyor has assessed the loss, and on the basis of the loss assessed by the Surveyor the impugned order is passed.

2. HOWEVER , the learned Counsel appearing on behalf of the Insurance Company vehemently submitted that the Complainant has obtained cover note in question covering the risk with effect from 18th September, 1992 to 17th September, 1993 for the vehicle after the vehicle met with accident on 19th September, 1992. He, therefore, submitted that the order passed by the State Commission is not justified. It is his contention that the Complainant is a party to the fraud along with its agent or the Development Officer who issued the cover note. Therefore, the Insurance Company has rightly repudiated the claim. For this, the learned counsel for the Petitioner heavily relied upon the following portion of the report submitted by Shri H.S. Singh, who was appointed as an investigator by the Insurance Company with regard to the accident claim of the truck of the complainant: After going through the details and interviewing different individuals following facts have come to light. 6.01. That the reported

accident and burning of the vehicle BHU "5185 on reported date, time and place i.e on 19.09.93 at about 1300 hrs. at Baniahir No. 2 on Jharia-Sindri Road are true. 6.02. That the death of a boy named Arun Bhuian aged about 8 years, in the accident is also true. 6.03. That the boy was a regular full time "Garvago Collector" and had not any prospective future. 6.04. That after the accident case No. 420/92 dt. 19.09.92 U/s 279/304(A) IPC was recorded at Jharia Police Station and it was under investigation by the A.S.I., B.Chaubey as I/O of the case. And in his opinion the case appeared to be true. 6.05. In my opinion the captioned vehicle was not having any valid Insurance Coverage on the date and time of the accident and the cover Note No. 1368.19 dt. 18.09.92 produced appeared to be arranged and issued after the accident, Because - (i) At the time of accident along with other papers only copy of old and expired policy was found by the police officer A.S.I. B.Chaubey, in the vehicle which has been confirmed by him in writing also. If the cover note under reference was actually issued on 18.09.92, then certainly a copy of the same should have been available in the vehicle along-with other papers. (ii) The Insured has reported/ approached to Jharia police-station on 4th day of the accident i.e. on 22.09.93. (iii) The spot Survey was requisitioned/ carried out on 5th day of the accident i.e. on 23.9.93. Note:- A detailed departmental enquiry about the issue of the Cover Note is suggested".

It appears that on the basis of the above report, investigation was carried out by the Vigilance Officer " S. Abhishek, who concluded in his report as under: "Conclusion The following points have to be taken into account a) Administrative norms have not been followed regarding issue of cover note on Friday-after office hours. b) The previous policy of the truck had expired about two months back. c) The truck was more than 10 years old and as such the data sheet should have been submitted in advance (and not after the issue of covernote) d) The accident took place on 19.09.92 (Saturday) i.e. just the next day after the date of issue of the covernote (vis. 18.09.92 " Friday). e) Cover note No.136819, said to have been issued on 18.09.92, was not found in the vehicle by the Police Authorities though a photocopy of the expired policy was one of the papers seized by them. In the light light of these points, the most likely conclusion that can be drawn is that Mr. N.K. Ram antedated covernote No.136819.".

On the basis of the aforesaid report, learned counsel for the Petitioner submitted that the cover note issued, was ante dated and was issued after the accident.

3. IN our view, from the aforesaid Vigilance Officer"s report, it appears that the deficiency on the part of the Development Officer was with regard to not following the administrative norms before issuing the cover note after the office hours. Further, the Development Officer who has issued the cover note, specifically stated that the cover note was issued on 18.9.1992 after inspecting the vehicle in question. At the time of inspection of the vehicle, one Senior Officer, of the Insurance Company, namely, Shri Singh was also present. Considering the aforesaid statement of the Development Officer and findings

recorded by the Vigilance Officer, it is apparent that the Insurance Company has failed to prove that the cover note was issued by its Development Officer subsequent to the accident. Not following the administrative norms by the Development Officer would not vitiate the insurance cover/ cover-note. The State Commission, therefore, rightly observed that merely, because the cover note was not found in the vehicle at the time of accident, it could not be a ground for repudiating the claim. Even the Surveyor has not specifically stated that the cover note was not genuine. Hence, from the aforesaid facts it cannot be said that the State Commission committed any error in directing the Insurance Company to reimburse the Complainant for the loss suffered by him, as assessed by the Surveyor. In the result, the Revision Petitions are dismissed. There shall be no order as to costs.