(2013) 04 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO. LTD. — APPELLANT

Vs

Shri Ram Investment Ltd. and Anr. — RESPONDENT

Date of Decision : 03-04-2013

Acts Referred:

Citation : 2013 2 CPJ 588

Hon'ble Judges : ASHOK BHAN J.

Final Decision : Appeal allowed

Judgement

1. APPELLANT Insurance Company which was the Opposite Party before the State Commission has filed this Appeal against the judgment and order dated 23.3.2007 passed by the State Consumer Disputes Redressal Commission, Delhi (in short, ''the State Commission'') in Complaint Case No. C -101/97 wherein the State Commission partly allowing the complaint has directed the Appellant Insurance Company to pay a sum of Rs. 2,88,000 to the Respondents/ Complainants towards the loss suffered by them along with Rs. 20,000 for compensation and costs. Facts:

Complainant No. 2/Respondent No. 2 (hereinafter to be referred to as the ''Respondent'') obtained on lease from Complainant No. 1/Respondent No. 1 a Tata 407 model truck bearing registration No. HR -38A/0686 on 12.9.1995. Respondent took a comprehensive insurance policy for the vehicle from the Appellant Insurance Company for the period from 13.9.1995 to 12.9.1996 by paying the premium of Rs. 6,818. The said vehicle met with an accident on 5.11.1995. Appellant was informed immediately about the accident and a claim was lodged by the Respondent. Surveyor appointed by the Appellant Insurance Company assessed the loss at Rs. 2,88,000. Appellant did not settle the claim on the ground that the driver of the vehicle did not possess a valid driving licence at the time of accident. Being aggrieved, complainant filed complaint before the State Commission.

2. ON being served, the Appellant Insurance Company entered appearance and filed its written statement resisting the complaint on the ground that the driver,

Tilak who was driving the vehicle at the time of accident, did not have a valid driving licence; that Shri D.K. Ghai, licenced Surveyor vide his report dated 30.7.1996 informed the Appellant that as per records of the Faridabad RTO, it was confirmed that the licence No. 3025/SDO/9/91 was originally issued by the RTO, Gurgaon and they had only renewed the licence No. 3025/SDO/G/91 issued by the RTO, Gurgaon; that the licence No. 3025/500/91 was issued by RTO, Gurgaon in favour of Shri Pawan Kumar which was valid upto 10.9.1996. State Commission came to the conclusion that the Insurance Company was liable to reimburse for the loss because no employer is supposed to first make inquiry from the RTO about the validity of the licence and then employ a driver. State Commission allowed the complaint and directed the Appellant Insurance Company to pay a sum of Rs. 2,88,000 to the Respondents/Complainants towards the loss suffered by them along with Rs. 20,000 for compensation and costs. State Commission in its order held as under:

...We have accorded careful consideration to the rival contentions of the parties. Admittedly, the first Surveyor appointed by OP No. 1 assessed the loss to the tune of Rs. 2,88,000. It appears that OP appointed second Surveyor for investigating into the genuineness of the driving licence. Whenever a driver applied for renewal of licence, he is always subjected to driving test. Purpose of driving licence is to see that driver is capable of driving a vehicle for which he possesses the licence. No employer is supposed to first make inquiry from the RTO which is purported to have issued the licence. If the employer is not satisfied with the capability of the driver, he will not risk his vehicle and other perils.

3. APPELLANT , being aggrieved, has filed the present appeal. We have heard the learned Counsel for the parties at length. Point regarding renewal of fake licence in accordance with law came up for hearing before the Supreme Court in National Insurance Co. Ltd. v. Laxmi Narain Dhut, III : (2007) CPJ 13 (SC) : II (2007) ACC 28 (SC) : IV (2007) SLT 102 : (2007) 3 SCC 700. Supreme Court, after taking into consideration the entire case law, came to the conclusion that renewal of a fake licence in accordance with law cannot cure the inherent defect. That the renewal cannot transform a fake licence into a genuine licence. The judgment of the Supreme Court in the case of National Insurance Co. Ltd. v. Swaran Singh & Ors., : I (2004) SLT 345 : 109 (2004) DLT 304 (SC) : I (2004) ACC 1 (SC) : (2004) 3 SCC 297, was explained and it was held that Swaran Singh''s case (supra) was not applicable to own damage cases. That the same was applicable to third party rights only. The relevant paras read as under:

...The inevitable conclusion therefore is that the decision in Swaran Singh''s case (supra), has no application to own damage cases. The effect of fake license has to be considered in the light of what has been stated by this Court in New India Assurance Co., Shimla v. Kamla and Others, : 2001 (4) SCC 342. Once the licence is a fake one the renewal cannot take away the effect of fake licence. It was observed in Kamla''s case (supra), as follows:

12. As a point of law we have no manner of doubt that a fake licence cannot get

its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged. Section 15 of the Act only empowers any Licensing Authority to "renew a driving licence issued under the provisions of this Act with effect from the date of its expiry". No Licensing Authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine.

As noted above, the conceptual difference between third party right and own damage cases has to be kept in view. Initially, the burden is on the insurer to prove that the licence was a fake one. Once it is established the natural consequences have to flow.

Hon''ble Supreme Court summed up its conclusion as under:

In view of the above analysis the following situations emerge:

1. The decision in Swaran Singh''s case (supra), has no application to cases other than third party risks.

2. Where originally the licence was a fake one, renewal cannot cure the inherent fatality.

3. In case of third party risks the insurer has to indemnify the amount and if so advised to recover the same from the insured.

4. The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act.

4. SIMILARLY , in the case of United India Insurance Co. Ltd. v. Davinder Singh, IX : (2007) SLT 235 : IV (2007) ACC 205 (SC) : IV (2007) CPJ 1 (SC) : 2007 (8) SCC 698, the Hon''ble Supreme Court has held that when the original licence is a fake, its renewal cannot cure the inherent fatality. Order passed by the State Commission is contrary to the law laid down by the Supreme Court in Laxmi Narain Dhut''s case (supra). It is well settled law that valid renewals cannot validate a fake licence. If a fake licence is renewed, it will still remain fake. Supreme Court as well as this Commission in various judgments where the owner had engaged a driver after verifying the fact that he had a driving licence which turned out to be fake later on, has held that the Insurance Company cannot be made liable to reimburse the loss rejecting the contention raised by the Complainant that since he had appointed the driver after verifying the fact that the driver had a licence he could not be denied the benefit arising under the policy. For the reasons stated above, the impugned order passed by the State Commission is set aside and the Appeal is allowed. No order as to costs. Registry is directed to refund the sum of Rs. 35,000 deposited by the Appellant as statutory deposit along with accrued interest.

