

(2008) 09 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE COMPANY LIMITED

APPELLANT

Vs

ANEES AHMED

RESPONDENT

Date of Decision : 15-09-2008

Acts Referred:

Citation : 2008 4 CPJ 517

Hon'ble Judges : Irshad Hussain , C.C.Pant J.

Advocate : Kuldeep Kumar Jakhetia , Vikas Chandra

Judgement

1. -THIS is insurer"s appeal against the order dated 12. 7. 2007 passed by the District Forum, Pauri Garhwal, allowing the Consumer Complaint No. 14 / 2006 with cost of Rs. 6,000 and directing the insurer to pay compensation of Rs. 1,05,511 by way of indemnification of the loss occasioned due to accident of the insured transport vehicle No. UA07c/7530. The compensation was to be paid by 12. 9. 2007, failing which, the amount was directed to carry compound interest with quarterly rest on the said amount @ 9 percent from the date of the order, i. e. , 12. 7. 2007.

2. WE have heard the learned Counsel for the parties and have considered their submissions in the light of the facts, circumstances and legal aspects of the case. It is not in dispute that the Surveyor of the Insurance Company had assessed the loss to the tune of Rs. 1,05,511 and for which, the complainant gave his consent. The claim was, however, repudiated later on by the Insurance Company on the ground that at the time of the accident, the driver Sh. Shahzad was under alcohol intoxication. The District Forum held that the repudiation of the claim on that ground, was legally unwarranted and finding that it amounted to deficiency in service, went on to allow the consumer complaint with the directions as aforesaid. Learned Counsel for the Insurance Company persuasively argued that the view taken by the District Forum was not at all justified in view of the fact that on medical examination of driver Sh. Shahzad, it had been affirmed that the said driver was under alcohol intoxication while he was on the steering of the insured vehicle at the time of accident. Medical report (Paper No. 30) was placed

on record. Although the medical officer, who examined Sh. Shahzad, opined that the said injured was under alcohol intoxication, but this report would not conclusively establish that the driver of the accidented vehicle was, at the time of the accident, in a drunken state, as has been contemplated by Section 185 of the Motor Vehicles Act, 1988. Concerned police station gave a report to the transport authority on 2. 12. 2004 (Paper No. 31) indicating that case under Sections 279/337/427, IPC as well as under Sections 185/202 of the Motor Vehicles Act was registered against driver Sh. Shahzad and the crime was being investigated by the police. Copy of the judgment dated 4. 10. 2006 (Paper Nos. 32 to 34) passed by the Judicial Magistrate in Crime Case No. 222 / 2005, State v. Shahzad under Sections 279, 337, 338, 304a and 427, IPC, reveal that the accused Sh. Shahzad was held not guilty and acquitted of the charges levelled against him. It appears that Sh. Shahzad was not charge-sheeted and prosecuted for an offence under Sections 185/202 of the Motor Vehicles Act, 1988 and, therefore, it was not established that Sh. Shahzad, while driving the insured vehicle at the time of the accident, was in a drunken state, as envisaged by Section 185 of the Motor Vehicles Act, 1988. This provision contemplates that a person driving a vehicle shall be held to be in a drunken state, if he has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser. The Insurance Company has not placed on record any material as may have justified a finding that in a test by a breath analyser of Sh. Shahzad, soon after the accident, he was found to be in a drunken state by reason of his having in his blood, alcohol exceeding 30 mg. per 100 ml. of blood. Therefore, the submission made by the learned Counsel for the Insurance Company cannot legally be sustained. In other words, the Insurance Company was not justified in repudiating the claim on the ground that the driver of the accidental vehicle was under alcohol intoxication at the time of the accident. The District Forum rightly held that the repudiation of the claim was unjustified and in doing so, the Insurance Company made deficiency in service. The complaint was, therefore, rightly allowed, so as to grant compensation to the tune of the loss assessed by the Insurance Company's Surveyor.

The District Forum awarded compound interest @ 9% from the date of the order, i. e. , 12. 7. 2007, in case the compensation was not paid within two months of the order. As argued, it would have been justified if the simple interest was to be awarded at the said rate of 9% p. a. from the date of filing of the consumer complaint till payment and to that extent, the impugned order is liable to be modified.

3. INsofar as the argument that the District Forum awarded exorbitant cost is concerned, we would not be able to discard the contention in that regard keeping in view the heavy amount of Rs. 6,000 awarded as cost. In the totality of the circumstances of the case, we are of the view that cost of Rs. 1,000 would have been just and proper and modification in the impugned order to that extent, is also required to be made. For the reasons aforesaid, the appeal succeeds partly and is to be allowed accordingly.

4. APPEAL is partly allowed. Order dated 12. 7. 2007 of the District Forum is modified and the complainant respondent is held entitled to the compensation of Rs. 1,05,511 together with interest @ 9% p. a. from the date of filing of the consumer complaint till payment and cost of Rs. 1,000. Cost of the appeal made easy. Appeal partly allowed.