

(2008) 07 NCDRC CK 0061

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE COMPANY LIMITED

APPELLANT

Vs

JYOTI RAM NEGI

RESPONDENT

Date of Decision : 01-07-2008

Acts Referred:

Citation : 2008 4 CPJ 147

Hon'ble Judges : Arun Kumar Goel , Saroj Sharma J.

Advocate : Ramesh Sharma , Sanjeev Sud

Judgement

1. -THE controversy involved in this appeal is within very narrow compass, i. e. whether the driver who was on the wheel at the time of accident was having a valid and effective driving licence or it was fake. If this question is answered in favour of the appellant, this appeal has to be allowed, otherwise consequence is obvious. Before proceeding further while dealing with the contentions of the learned Counsel for the parties, we may observe that vehicle being covered under a valid policy of insurance on the date of accident is not in dispute between the parties. As such, other facts are not being noted being not necessary for deciding this appeal and also having been noted in detail in the impugned order passed by the District Forum below in Complaint No. 477/2002 dated 18. 7. 2006.

2. MR. Sanjeev Sood, learned Counsel for the appellant submitted that District Forum fell into error by ignoring the overwhelming documentary evidence on record which clearly proved beyond any shadow of doubt that the Licence No. G-4034/89 issued in favour of Guman Singh son of Shri Kanshi Ram was fake. With a view to support this submission, great emphasis was laid by Mr. Sood on the Investigation Report of the Investigator and the endorsement made by the District Transport Officer (Kamrup West Zone, Guwahati). This endorsement has been made on the application of one Shri Munin Sarma, Investigator. It is at page 121 of the complaint file. He further drew our attention to Annexure H. 1/1 issued under the signature and stamp of District Transport Officer, Reg. and Licensing, Kamrup, Guwahati, Assam. The original certificate issued under the

seal and stamp of the said officer is at page 229. This certificate was collected by Himanta Kr. Sarma, B. Sc. Insurance Investigator (GIC). In the context of Annexure H. 1/1, our attention has been drawn by Mr. Sood to the orders dated 15. 6. 2004 passed on the application of his client under Section 13 (4) of the Consumer Protection Act, 1986, which was allowed in the following terms: "15. 6. 2004. Present : Mr. Rajesh Singh, Adv. for the comp. Mr. Ratish Sharma, Adv. for the O. P. It has been pointed out by the learned Counsel for the O. P. that the application moved by him on 1. 10. 2003 for summoning of District Transport Officer, is still pending and no order has been passed on that application. No reply is sought to be given by the complainant. In view of this, the application under Section 13 (4) for direction to District Transport Officer to file affidavit with regard to driving licence No. G-4034/89 issued in favour of Guman Singh, is allowed to this extent that on production of the copy of this order before the said DTO, the said District Transport Officer shall issue necessary certificate regarding the status of driving licence No. G-4034/89 of Shri Guman Singh and the said certificate, if any, shall be filed before this Forum by the O. P.-company on 2. 8. 2004. With this, the application in hand stands disposed of. Be listed on 2. 8. 2004. " thus, he prayed for allowing the appeal with costs.

All these pleas have been seriously contested by Mr. Sharma, learned Counsel for the respondent. Per him, Annexure H. 1/1 is of no consequence nor does it improve the case of the appellant in any manner, whatsoever, because the person who collected this document, his affidavit has not been filed by the appellant and at the same time instead of handing over this document to said Mr. Himanta Kr. Sharma, it should have been directly sent to the District Forum. Therefore, per him this document is suspicious. And, it needs to be ignored. Lastly it was urged that his client has suffered loss of more than Rs. 2,69,000 whereas he has been awarded a meagre sum of Rs. 99,000 an odd. As such this appeal deserves to be dismissed by upholding the impugned order otherwise it will result in grave hardship to the respondent.

3. WE shall deal with the submission of Mr. Sharma regarding admissibility of Annexure H. 1/1 first, as to whether this document is admissible and/or proved in accordance with law or not. In our opinion, Annexure H. 1/1 is the report given by the District Transport Officer, Kamrup, in obedience to the directions issued by the District Forum on 15. 6. 2004. In case there was any doubt and/or otherwise about the genuineness of this report, and the licence was genuine, nothing prevented the respondent/complainant to have placed material on record with a view to controvert Annexure H. 1/1, and at the same time to establish that the licence had in fact been issued by the authority concerned i. e. District Transport Officer, Kamrup, West Zone, Guwahati. And in case the respondent wanted to challenge the genuineness, legality, admissibility or otherwise of Annexure H. 1/1, nothing prevented him to have objected to the same by filing objections against it. Merely harping on the fact that neither the report of the earlier Investigator nor the report submitted by the District Transport Officer pursuant to the order of District Forum below dated 15. 6. 2004 is either

inadmissible or is not proved, does not make fake licence valid. What is initially non-existent in law is void, and it does not become valid by its subsequent renewal. In our opinion, therefore, mere non-filing of the affidavit of the person who collected the report. Annexure H. 1/1 from the District Transport Officer concerned, does not make the document either inadmissible and/or not being proved in accordance with law as was urged by Mr. Sharma. Once this conclusion is arrived at, then decision of this case need not detain us any further.

4. SUBMISSION of Mr. Sharma that his client has already been put to great hardship by awarding a meagre sum of Rs. 99,223. 95 against the loss of Rs. 2,69,000, only can invoke our sympathy in favour of his client, but cannot convert a fake licence into a genuine one. Mr. Sharma placed reliance on a decision of this Commission in the case of United India Insurance Company Ltd. v. Darshan Lal Gupta, II (2000) CPJ 468. This decision is distinguishable inasmuch as that in this decision another Investigator was appointed and in this background, this Commission held that necessity for having appointed second investigator was not explained and report of Licensing Authority not duly proved, Insurance Company was held liable to pay the amount assessed by the first surveyor. As already observed, in the appeal before us not only the first investigator has on the basis of the endorsement of the concerned District Transport Officer, Kamrup, reported that the licence in question had not been issued in response to the request made by the Investigator earlier, but again in response to the directions of the District Forum below, the same is the stand of the said Officer as is evident from Annexur H. 1/1 and it is reaffirmed.

5. FROM the above narrated facts, it is clear that licence in the instant case was fake, therefore, District Forum below fell into error in allowing the complaint and passing the impugned order. As such, there was no deficiency of service on the part of the appellant and this matter is directly covered by the decision of the Hon"ble Supreme Court in the case of United India Insurance Co. Ltd. v. Davinder Singh, IV (2007) CPJ 1 (SC)=ix (2007) SLT 235=iv (2007) ACC 705 (SC)=2008 CTJ 11 (SC) (CP), which is nearer to the facts of the present case. Nothing to the contrary has been brought to our notice.

6. NO other point was urged. In view of the aforesaid discussion, while allowing this appeal, order dated 18. 7. 2006 passed by the District Forum, Shimla, in Complaint No. 477/2002, is hereby quashed and set aside, leaving the parties to bear their own costs. All interim orders passed from time-to-time in this appeal shall stand vacated forthwith. Learned Counsel for the parties have undertaken to collect certified copy of this order free of cost as per Rules from the Reader of this Court. Appeal allowed.