(2004) 06 NCDRC CK 0067

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE COMPANY LIMITED APPELLANT

Vs

MOHD. SABEER RESPONDENT

Date of Decision : 04-06-2004

Acts Referred:

Citation : 2004 3 CLT 617 : 2004 3 CPJ 377

Hon'ble Judges : N.K.Jain , B.L.Khare , Pramila S.Kumar J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal under Section 15 of the Consumer Protection Act, 1986 is by opposite party, the New India Assurance Co. Ltd. which has been directed to pay to the respondent-insured a sum of Rs. 1,41,000/- for the loss caused to his motor bus in an accident.

2. ADMITTEDLY, the bus belonging to the respondent-complainant was insured with the appellant-company for Rs. 7,00,000/- and the accident in question took place when the insurance was in force. However, the claim of the respondent-complainant was repudiated by the appellant-company on the ground that the accidental loss or damage was caused to the bus whilst the permitted driver of the bus was under the influence of intoxicating liquor. The Forum below though held that the driver of the bus at the time of the accident was under influence of liquor but still allowed the complaint holding that although the bus was being driven by the said driver with the consent of the owner-insured but the latter had no knowledge of the former having consumed liquor and as such the exception provided under Clause 2(c) of the policy was not attracted in the case. We have heard Mr. V.K. Saxena, learned Counsel for appellant. None has however appeared for the respondent, Tough served duly and even after issuance of SPC, on the date and time of hearing of the appeal and was, therefore, proceeded against ex parte.

This appeal involves interpretation of Clause 2(c) of the terms and conditions of the policy and which thus reads: "2. The company shall not be liable to make any payment in respect of; (c) any accidental loss or damage suffered whilst the insured or any person driving with the knowledge and consent of the insured is under the influence of intoxicating liquor or drugs."

3. INTERESTINGLY the Forum below while referring to the Hindi version of the aforesaid term came to the conclusion that the word "ANUMATI" (consent) qualifies not only the driving of the bus but also consumption of liquor. Hindi version of the aforesaid term reads: "xxx xxx xxx xxx" We are afraid the interpretation of the aforesaid condition made by the Forum below is not correct. The learned President and the Members of the Forum seem to have been misled by the unhappy wordings of the Hindi version of the said term. But if one reads the English version of the said term, it becomes abundantly clear that the word "consent" used in the term refers only to the consent for driving not the consent for driving the vehicle under influence of liquor. In fact the said term constitutes an excluding clause whereby excluding liability of the insurer to indemnify the insured for any loss or damage arisen or liability incurred whilst the insured or permitted driver is under the influence of intoxicating liquor or drugs. The word consent means permission and it relates to the driving of the vehicle not for consuming liquor.

4. THERE is yet another angle of the case which will make the things more clear. Section 185 of the Motor Vehicles Act makes driving by a drunken person or by a person under the influence of drugs, a punishable offence. This applies both to the owner as well as the driver employed by the former. A consented driver is in no better position than his master who employs him. It is too well settled that where an insured''s case amounts to a crime, it is all the more so that the risk is impliedly excluded. This rule is founded on a principle of public policy that a Court will not assist a criminal to recover any kind of benefit or indemnity for his crime. Judged with this angle also the respondent-insured cannot be allowed to take advantage of the crime committed by his permitted driver. It was wrong on the part of the Forum below to hold that in order to repudiate the policy the insurer was required to establish that the complainant-insured has consented the said driver to drive the vehicle under influence of liquor or drug. All that was required to be established is that the vehicle in question was driven either by the insured himself or by his permitted driver under the influence of intoxicating liquor or drugs. THERE is overwhelming evidence on record and as held by the Forum below also that the driver before causing accident had consumed liquor twice and was in a state of intoxication. The claim of the respondent-complainant clearly fell within the said exclusion clause and the repudiation by the appellant was fully justified. His complaint, therefore, deserved dismissal. Accordingly, we allow the appeal, set aside the impugned order and dismiss the complaint of the respondent. We, however, make no order as to costs which the parties are left to bear their own as incurred throughout. Appeal allowed.