

(2000) 02 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE COMPANY LIMITED

APPELLANT

Vs

POONAM RASTOGI

RESPONDENT

Date of Decision : 04-02-2000

Acts Referred:

Citation : 2000 1 CPJ 353

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Appeal partly allowed

Judgement

1. THIS is an appeal against the judgment and order dated 30.8.1999 passed by District Consumer Forum-I, Moradabad in Complaint Case No. 723/1994.

2. THE facts of the case stated in brief are that the complainant had claimed a sum of Rs. 2,50,000/- as damages to the truck alongwith interest at the rate of 18% per annum from 1.4.1994 till the date of payment as well as Rs. 5,000/- compensation for mental tension etc. and Rs. 2,000/- as cost of the litigation. Truck No. UP 21 8126 belonging to the complainant No. 1's husband was insured with the opposite party, New India Assurance Company Limited. The premium had been paid upto August, 1993. The truck met with an accident on 22.1.1994. A Surveyor was appointed by the opposite party when the intimation was given immediately after the accident. The claim has not been settled by the opposite party.

The opposite party had admitted the insurance of the truck, but has alleged that on account of late submission of the claim, the claim has been repudiated. There were passengers in the truck also on account of which there was breach of the contract of the insurance. Hence the claim was repudiated. The information was sent by registered letter dated 23.8.1995.

3. THE learned District Forum, after considering the entire case of the parties, decreed the claim of the complainant for a sum of Rs. 1,05,000/- alongwith interest at the rate of Rs. 18% from 1.4.1994 till the date of payment alongwith cost of Rs. 2,000/-. Aggrieved against the order of the learned District Forum,

the Insurance Company has come in appeal and has challenged the correctness of the order.

4. WE have heard the learned Counsel for the appellant and respondents. Learned Counsel for the appellant has argued that the truck is a commercial vehicle and at the time of its accident 3-4 labourers were travelling in the truck at that time. There were no goods in the truck. There was a head on collision. According to the learned Counsel, the terms of the policy were breached. Hence the claim was repudiated. He has further argued that the rate of interest should not exceed 12% as has been held by the National Commission and the Hon'ble Supreme Court. Learned Counsel for the opposite party has argued that there was deficiency of service as the claim was repudiated after seven months.

5. A perusal of the facts will go to show that at the time of accident the vehicle was empty but 3-4 labourers were travelling in it. The learned District Forum has placed reliance on a decision of the Hon'ble Supreme Court in the case of B.V. Nagraj v. Oriental Insurance Company Ltd., 1996 (II) CLR p. 582. Thus in view of the ruling cited by the learned District Forum, the arguments of the learned Counsel for the appellant cannot be relied upon because the accident was not on account of over loading or due to the labourers who were sitting on the truck. Moreover, it is a common knowledge that in a truck which carries goods, labourers do travel in order to load or unload the goods at the site. Thus the finding of the learned District Forum is perfectly right and is confirmed.

6. AS regards the interest, the Hon'ble Supreme Court in the case of United India Insurance Company Ltd. v. M.K.J. Corporation, III (1996) CPJ 8 (S.C.) and National Commission in the case of United India Insurance Company Ltd. v. Jahangir Spinners (P) Ltd., I (1999) CPJ 5 (NC), have held that the interest in the cases against the Insurance Company shall be awarded at the rate of 12% per annum only. Thus the rate of interest awarded by the learned District Forum at the rate of 18% per annum is reduced to 12% per annum. With this modification in the rate of interest the appeal is partially allowed. Order

The appeal is partly allowed and the rate of interest awarded by the learned District Forum is reduced to 12% per annum. Rest of the judgment of the learned District Forum is confirmed. On order as to the cost. Let copy of this order be made available to the parties as per rules. Appeal partly allowed.