(2010) 07 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE COMPANY LIMITED — APPELLANT

Vs

Ramesh Rao Bhounsle — RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Citation : 2010 3 CPJ 445

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Advocate : Kanwal Choudhary , Radha , K.Sarada

Judgement

1. COMPLAINANT/respondent purchased a Montego Rover car being registration No. KA - 04 N 2332 in the year 1997 and got in insured with the petitioner-Insurance Company for a sum of Rs. 5,00,000 in the year 1998. The policy was got renewed further for the same amount on 13.7.1999. The car was stolen on 23.8.1999 while the Policy was still in operation. Respondent lodged an F.I.R. in Jayanagar Police Station, which was registered as Crime No. 376/99. Thereafter, respondent filed a claim for Rs. 5,00,000, i.e. the amount for which the vehicle had been insured. In February, 2000, the petitioner, instead of settling the claim of Rs. 5,00,000, offered to settle the claim for Rs. 1,50,000 which was not acceptable to the respondent. Respondent issued a legal notice dated 31.1.2000 calling upon the petitioner to settle the claim for Rs. 5,00,000 on total loss basis but the petitioner gave untenable reply to the same.

2. THUS, being aggrieved, respondent/complainant filed the complaint before the Additional District Consumer Disputes Redressal Forum, Seshadripuram, Bangalore-20 (for short the District Forum).

3. ON being served, petitioner filed its Written Statement stating that the offer made by them was as per the conditions of the Policy, viz., ''insured''s estimated value or the market value of the vehicle at the time of theft, which ever was less'' and the same could not be said to be unreasonable. That on receipt of the Report from Motor Technical Department, they offered Rs. 1,50,000, being the market value of the vehicle at the time of theft in full and final satisfaction of the claim. That the claim was not settled as the respondent did not accept the offer

made by the petitioner. Thus, there was no deficiency on the part of the petitioner. Thus, denying the allegations made in the complaint, petitioner prayed for dismissal of the complaint.

4. DISTRICT Forum, after taking into consideration, the pleadings and the evidence led by the parties, allowed the complaint and directed the petitioner-Insurance Company to pay the respondent, Rs. 5,00,000 with interest @ 6% p.a. from the date of complaint till the date of payment together with costs of Rs. 500. The Order was directed to be complied with within 4 weeks from the date of communication.

5. AGGRIEVED by the Order passed by the District Forum, petitioner filed an Appeal before the Karnataka State Consumer Disputes Redressal Commission, Bangalore (for short ''the State Commission''), along with Application under Section 5 of the Limitation Act to condone the delay of 68 days in filing the Appeal. The State Commission dismissed the Application for condonation of delay as well as the Appeal on merits.

6. AGGRIEVED by the order passed by the State Commission, petitioner has preferred this Revision Petition. Counsel for the parties have been heard at length.

7. THE point which falls for consideration before us is-as to whether the Insurance Company, after having collected the premium and estimating the market value of the car in question at Rs. 5,00,000 on 13.7.1999, can be permitted to turn around after a month, on 23.8.1999, when the vehicle was stolen, to contend that the estimated value of the vehicle on the date of theft was Rs. 1,50,000?

8. THE point in issue may not be dilated upon in detail, as the same stands concluded by a Judgment of Hon''ble the Supreme Court of India in Dharmendra Goel v. Oriental Insurance Company Limited, reported in (2008) 8 SCC 279, in which it has been held that the Insurance Company, after having accepted the value of a particular insured good disown that very figure on one pretext or the other when they are called upon to pay the compensation. This ''take it or leave it'' attitude was clearly unwarranted not only as being bad in law but ethically indefensible. It was observed as under: "We have heard the learned Counsels for the parties and have gone through the record very carefully. The facts as narrated above remain uncontroverted. Admittedly, the accident had happened on 10th September, 2002 during the validity of the Insurance Policy taken on 13th February, 2002 insuring the vehicle for Rs. 3,54,000 on a premium of Rs. 8,498. It is also the admitted position that the vehicle had been declared to be a total loss by the Surveyor appointed by the company though the value of the vehicle on total loss basis had been assessed at Rs. 1,80,000. We are, in the circumstances, of the opinion that as the company itself had accepted the value of the vehicle at Rs. 3,54,000 on 13th February, 2002, it could not claim that the value of the vehicle on total loss basis on 10th September, 2002 i.e., on the date

of the accident was only Rs. 1,80,000. It bears reiteration that the cost of the new vehicle was Rs. 4,30,000 and it was insured in that amount on 19th January, 2002 and on the expiry of this policy on 18th January, 2001, was again renewed on 19th January, 2001 on a value of Rs. 3,59,000 and on the further renewal of the policy on 13th February, 2002 the value was reduced by only Rs. 5,000 to Rs. 3,54,000. We are, therefore, unable to accept the company''s contention that within a span of seven months from 13th February, 2002 to the date of the accident, the value of the vehicle had depreciated from Rs. 3,54,000 to Rs. 1,80,000. It must be borne in mind that Section 146 of the Motors Vehicles Act, 1988 casts an obligation on the owner of a vehicle to take out an insurance policy as provided under Chapter 11 of the Act and any vehicle driven without taking such a policy invites a punishment under Section 196 thereof. It is, therefore, obvious that in the light of this stringent provision and being in a dominant position the insurance companies often act in an unreasonable manner and after having accepted the value of a particular insured good disown that very figure on one pretext or the other when they are called upon to pay compensation. This ''take it or leave it'' attitude is clearly unwarranted not only as being bad in law but ethically indefensible. We are also unable to accept the submission that it was for the appellant to produce evidence to prove that the Surveyor''s report was on the lower side in the light of the fact that a price had already been put on the vehicle by the company itself at the time of renewal of the policy. We accordingly hold that in these circumstances, the company was bound by the value put on the vehicle while renewing the policy on 13th February, 2002."

[Emphasis supplied]

9. LEARNED Counsel for the petitioner, relying upon the earlier two Judgments of the Supreme Court in National Insurance Company Limited v. Jugal Kishore and Others, reported in AIR 1988 SC 719, and Road Transport Company v. Bhan Singh and Another, reported in AIR 1998 SC 2487, contended that the Judgment of the Supreme Court in Dharmendra Goel''s case (supra), was per incuriam as it did not take into consideration the earlier Judgments of the Supreme Court in Jugal Kishore''s and Bhan Singh''s cases (supra). The submission made is totally misplaced.

10. IN Jugal Kishore''s case (supra), the Supreme Court was considering a Policy taken in terms of Section 95 of the Motor Vehicles Act, 1939 (since been repealed) for a vehicle meant for carrying passengers. Under Section 95(b) of the Motor Vehicles Act, 1939, liability of the Insurance Company was limited to Rs. 20,000 per passenger. Facts of the case were that one Jugal Kishore, while driving a three wheeler scooter, met with an accident with a bus and sustained injuries, consequent upon which, he made a claim for compensation before the Motor Accidents Claim Tribunal, Delhi (for short ''the MACT''), against the owner as well as the Insurer of the bus. The Tribunal awarded compensation of Rs. 10,000 recoverable, jointly and severally, from the Insurance Company and the

owner. Aggrieved by the Award made by the Tribunal, the Insured filed an Appeal before the High Court of Delhi asserting that the amount of compensation awarded by the Tribunal was inadequate. The Appeal was allowed by the High Court and a compensation of Rs. 1,00,000 was awarded to the Insured along with interest @ 9% p.a. from the date of the institution of the claim till realization. Aggrieved against this, the Insurance Company filed an Appeal before the Supreme Court.

11. SECTION 95(2) of the Motor Vehicles Act, 1939 provides that subject to the proviso of Sub-section (1), a Policy of Insurance shall cover any liability incurred in respect of any one accident up to the sum of Rs. 20,000. The stand taken by the Insurance Company was that its liability qua any one accident could not be extended for more than Rs. 20,000 even if the Insurer had taken the policy covering higher risk than contemplated under Clause (b) of Section 95. Accepting the contention of the Insurer, the Supreme Court observed as under: "6. We have accordingly persued the photostat copy of the policy to ascertain whether risk for any amount higher than the amount of Rs. 20,000 contemplated by Clause (b) aforesaid was covered. Our attention was invited by learned Counsel for the respondents to the circumstance that at the right hand corner on the top of page 1 of the policy the words "COMMERCIAL VEHICLE COMPREHENSIVE" were printed. On this basis and on the basis that the premium paid was higher than the premium of an "act only" policy, it was urged by the learned Counsel for the respondents that the liability of the appellant was unlimited and not confined to Rs. 20,000 only. We find it difficult to accept this submission. Even though it is not permissible to use a vehicle unless it is covered at least under an "act only" policy it is not obligatory for the owner of a vehicle to get it comprehensively insured. In case, however, it is got comprehensively insured a higher premium than for an "act only" policy is payable depending on the estimated value of the vehicle. Such insurance entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle calculated according to the rules and regulations framed in this behalf. Comprehensive insurance of the vehicle and payment of higher premium on this score, however, do not mean that the limit of the liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under Sub-section (2) of Section 95 of the Act. For this purpose a specific agreement has to be arrived at between the owner and the Insurance Company and separate premium has to be paid on the amount of liability undertaken by the Insurance Company in this behalf......."

[Emphasis supplied]

12. SIMILARLY, in Bhan Singh''s case (supra), a passenger bus met with an accident because of rash and negligent driving by its driver, as a result of which, 35 passengers died. In all nine claim case were filed before the Tribunal. Two cases were dismissed and, in the remaining seven cases, the Tribunal awarded different sums of money by way of compensation and order that in each case,

out of the total amount payable to the claimants, Rs. 5,000 shall be paid by the Insurance Company and, the rest, shall be paid by the owner of the vehicle. The owner of the vehicle, being aggrieved by the amount of compensation and the finding recorded by the Tribunal that the Insurance Company was liable to pay only Rs. 5,000 per passenger and Rs. 75,000 in all, preferred an Appeal before the High Court. Two-fold contentions were raised before the High Court. It was contended that the Insurance Policy was a comprehensive policy and, therefore, the Insurance Company was legally liable to pay the whole amount of compensation and, limiting its liability to Rs. 5,000 per passenger and Rs. 75,000 in all, was contrary to the Motor Vehicles Act, 1939. The second contention was that the owner had paid additional premium of Rs. 300 and, therefore, limiting the liability of the Insurance Company to Rs. 75,000 in all, was not justified. The High Court rejected both these contentions relying upon the decision of the Supreme Court in Jugal Kishore''s case (supra). Aggrieved against the order passed by the High Court, the owner of the vehicle, filed an Appeal before the Supreme Court. The Supreme Court reiterated the view taken by Jugal Kishore''s case (supra), and observed us under: "9. The next submission was that the appellant had paid additional premium of Rs. 300 to cover liability higher than the limited liability fixed by Section 95(2). It was submitted by Mr. Ranjit Kumar that the policy being a comprehensive policy it covered all the statutory liabilities and the additional premium of Rs. 300 was paid for covering liability higher than the statutory liability in respect of passengers. The insurance policy, relevant part of which has been set out above, shows that it covered the following risks: (1) comprehensive risk, (2) S and R risk, (3) passenger risk, and (4) legal liability in respect of paid driver, cleaner and conductor under Workmen''s Compensation Act. For the comprehensive risk the appellant had paid Rs. 626 as basic premium. Ordinarily the insurance policy does not cover strike and riot risk and, therefore, to cover that risk also the insured had paid additional premium of Rs. 100. To cover 50 passengers'' risk the insured had paid Rs. 300 as premium and for covering the risk in respect of driver, etc. he had paid Rs. 721.20 as additional premium. If the comprehensive risk covered all other risks as contended by the appellant then the policy would not have mentioned separately the S and R risk and passenger risk. Not only that they have been separately mentioned but separate amounts were paid by way of premium for covering those risks. Thus the basic premium of Rs. 626 paid for the comprehensive risk was obviously in respect of the bus and not in respect of other risks as contended by the learned Counsel for the respondent Insurance Company. A fair reading of the insurance policy discloses that the basic premium of Rs. 626 though paid for comprehensive risk was not intended to cover all the statutory liabilities but it was really intended to cover the entire loss or damage to the vehicle. As observed by this Court in Jugal Kishore''s case (AIR 1998 SC 719), "even though it is not permissible to use a vehicle unless it is covered at least under an ''Act only'' policy it is not obligatory for the owner of a vehicle to get it comprehensively insured. In case, however, it is not comprehensively insured a higher premium than for an ''Act only'' policy is payable depending on the estimated value of the vehicle. Such insurance entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle calculated according to the rules and regulations framed in this behalf."

[Emphasis supplied]

13. IT would be seen that in both these cases, the Supreme Court was considering the liability of the Insurance Company in respect of the policy taken in terms of Section 95 of the Motor Vehicles Act, 1939. Both these Judgments are distinguishable and have no applicability to the facts of the present case. In the present case, the vehicle was not a transport vehicle where the liability of the Insurer was fixed in terms of Section 95 of the Motor Vehicles Act, 1939 and a comprehensive policy had been taken by the Insured wherein no statutory limit has been prescribed in terms of Section 95 of the Motor Vehicles Act, 1939.

14. THE Orders passed by the Fora below are in consonance with the view taken by the Supreme Court in Dharmendra Goel''s case (supra), and, therefore, do not call for any interference. The Revision Petition is, accordingly, dismissed with costs, which are assessed at Rs. 5,000 Revision Petition dismissed.

