(2010) 03 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

New India Assurance Company Ltd — APPELLANT

Vs

Chandrakant Bhujangrao Jogdand — RESPONDENT

Date of Decision : 01-03-2010

Acts Referred:

Citation : 2010 2 CPJ 170

Hon'ble Judges : K.S.Gupta , R.K.Batta J.

Final Decision : R.P. allowed

Judgement

1. MR. Justice R.K. Batta, Member-The Complainant/Respondent had purchased Tata Sumo bearing No. MH-12/AA/0085 from one Qazi Tanveer Abdul Lateef. The said vehicle was insured for a sum of Rs. 1,50,000 for the period 28.5.2003 to 27.5.2004 in favour of the said Qazi Tanveer Abdul Lateef. Though the complainant got the vehicle transferred in his name in RTO record, yet the insurance continued in the name of the previous owner. The vehicle met with an accident on 26.5.2004, that is to say, during the currency of the previous insurance. The complainant filed a claim before the Insurance Company but the same was repudiated on 6.8.2005 on the ground that the complainant had no insurable interest as the policy on the date of the accident stood in the name of the previous owner. The District Forum allowed the complaint and directed the Insurance Company to pay a sum of Rs. 1.5 lakh with 9% p.a. interest from 17.9.2004 and besides this a sum of Rs. 10,000 was awarded towards mental agony and Rs. 1000 as cost. This order was challenged by the Insurance Company before the State Commission. The State Commission, after placing reliance on the judgment in Oriental Insurance Company Ltd. v. Om Prakash Gupta and Anr., reported in I (2009) CPJ 183 (NC), held that as per GR 10, on the sale of vehicle, the benefits under the policy in force on the date of transfer shall automatically accrue to the new owner i.e. complainant and dismissed the appeal summarily. This order has been challenged by the Insurance Company in revision. Notice was issued to the complainant/respondent on condonation application as also for disposal at the admission stage itself.

2. WE have heard Counsel appearing on both sides. On the question of condonation of delay, Counsel fort he respondent/complainant has placed reliance on judgments of this Commission wherein delay of 111 days, 219 days and 233 days was not condoned. In the case before us the delay is not only for a period of 24 days only but the same has also been satisfactorily explained by the Insurance Company. In view of this, delay in filing revision is hereby condoned.

3. ON merits, learned Counsel for the Insurance Company, after placing reliance on GR-17 of Indian Motor Tariff which superseded Indian Motor Tariff in existence upto 30.6.2002 as also judgment of this Commission in Laxman Yashwant Patil v. New India Assurance Company Ltd., in R.P. No. 846 of 2009, urged that the order of the Fora below cannot be sustained.

4. ON the other hand learned Counsel for the opposite party after placing reliance on the judgment of this Commission in Narayan Singh v. New India Assurance Company Ltd., IV (2007) CPJ 289 (NC), and Oriental Insurance Company Ltd. v. Om Prakash Gupta and Anr. (supra), as also the provisions of Section 157 of the Motor Vehicle Act argued that the certificate of insurance in the policy shall be deemed to have been transferred in favour of the person to whom motor vehicle is transferred with effect from the date of its transfer.

5. THE matter has been examined by the Bench of this Commission in Oriental Insurance Company Ltd. v. G.T. Shivakumar, in R.P. No. 486 of 2009 decided on 28.8.2009 with reference to GR-17 of the Indian Motor Tariff which is applicable in the facts and circumstances of the case as also the scope of Section 157 which has been explained by the Apex Court in Complete Insulations (P) Ltd. v. New India Assurance Company Ltd., I (1996) CLT 22 (SC)=II (1996) ACC 536 (SC)=(1996) 1 SCC 221.

6. GENERAL Regulation 17 of the Indian Motor Tariff Act provides: "GR.17. Transfers On transfer of ownership, the Liability Only cover, either under a Liability Only policy or under a Package policy, is deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of transfer. The transferee shall apply within fourteen days from the date of transfer in writing under recorded delivery to the insurer who has insured the vehicle, with the details of the registration of the vehicle, the date of transfer of the vehicle, the previous owner of the vehicle and the number and date of the insurance policy so that the insurer may make the necessary changes in- his record and issue fresh Certificate of Insurance. In case of Package Policies, transfer of the "Own Damage" section of the policy in favour of the transferee, shall be made by the insurer only on receipt of a specific request from the transferee along with consent of the transferor. If the transferee is not entitled to the benefit of the No Claim Bonus (NCB) shown on the policy, or is entitled to a lesser percentage of NCB than that existing in the policy, recovery of the difference between the transferee''s entitlement, if any, and that shown on the policy shall be made before effecting the transfer. A fresh Proposal Form duly completed is to be obtained from the transferee in respect of both Liability Only

and Package Policies. Transfer of Package Policy in the name of the transferee can be done only on getting acceptable evidence of sale and a fresh proposal form duly filled and signed. The old Certificate of Insurance for the vehicle, is required to be surrendered and a fee of Rs. 50 is to be collected for issue of fresh Certificate in the name of the transferee. If for any reason, the old Certificate of Insurance cannot be surrendered, a proper declaration to that effect is to be taken from the transferee before a new Certificate of Insurance is issued."

7. IN terms of the said Regulation, the transferee has to apply in writing within 14 days from the date of transfer to the insurer for making necessary changes and issue of fresh certificate of insurance. In case of package policies, the transfer of "Own Damage" in favour of the transferee shall be made by the insurer only on receipt of a specific request along with consent of the transferor. The difference in No Claim Bonus, if the transferee is not entitled to same, is required to be taken into consideration and difference, if any is required to be paid by the transferee. Besides this, fresh Proposal Form duly completed is to be obtained from the transferee in respect of package policies.

8. THE State Commission in the impugned order has relied upon judgment of this Commission of this Commission in Om Prakash Gupta and Another (supra), which was decided on the basis of General Regulation-10 in the Indian Motor Tariff which was in existence upto 30.6.2002. Likewise, Narayan Singh v. New India Assurance Company Ltd., IV (2007) CPJ 289 (NC), was also decided on the basis of Indian Motor Tariff Regulations as it existed at that time. Therefore, the said judgments of this Commission cannot be applied to the changed senerio relating to transfer under General Regulation-17 of the Indian Motor Tariff which came into existence from 1.7.2002.

9. REGARDING the scope of Section 157 vis-a-vis insurance liability as against third party and own damage, the Apex Court in Complete Insulations (P) Ltd. v. New India Assurance Company Ltd. (supra), has laid down that the deemed transfer under Section 157 of the Motor Vehicle Act is restricted to third party risks and does not apply to other risks like damage caused to the vehicle of the insured himself which falls outside Chapter XI of the new Act and is in the realm of contract for which there must be an agreement between the insurer and the transferee the former undertaking to cover the risk or damage to the vehicle.

10. IN view of the above position, the complainant is not entitled to the sum insured since on the date of accident, the insurance policy had not been transferred in favour of the complainant and it is stood in the name of the previous owner. Accordingly, the complainant had no insurable interest under the said policy. Consequently, the orders of Fora below suffer from illegality which are required to be set aside. The result is that the revision is allowed and the complaint stands dismissed. In the facts and circumstances of the case, we leave the parties to bear their own cost. R.P. allowed.

