(2010) 04 NCDRC CK 0062

In the National Consumer Disputes Redressal Commission

New India Assurance Company Ltd. APPELLANT

Vs

Mam Chand Matania RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Citation : 2010 0 NCDRC 48 : 2010 3 CPJ 62

Hon'ble Judges : Ashok Bhan , S.K.Naik J.

Final Decision : Revision petition accordingly is dismissed

Judgement

1. NEW India Assurance Company Ltd., opposite party before the District Consumer Disputes Redressal Forum, Koraput at Jeypore (District Forum for short) seeks to challenge the order dated 31st of January, 2005 of the Orissa State Consumer Disputes Redressal Commission, Cuttack (State Commission for short), dismissing their appeal against the order dated 13th of January, 2003 of the District Forum. The District Forum vide the said order had overruled the pleadings of the petitioner-Insurance Company that the claim of the respondent-complainant was inadmissible, as the truck, though insured, was being plied in contravention of the terms of the policy, in that it was carrying passengers in excess of its capacity authorized in the Registration Certificate. The District Forum had also rejected the petitioner''s contention that the driver of the truck at the time of the accident was not holding an effective driving license, as required under the Motor Vehicle Act, 1939. Since the State Commission had affirmed the order of the District Forum, the petitioner-Insurance Company is before us in this revision petition to challenge the findings of the fora below.

2. BRIEFLY stated, the facts of the case are that truck bearing registration no. OR 1O 0236 during the subsistence of its insurance cover met with an accident on 12th of May, 1996. Local police was informed about the accident and claim intimation was lodged with the petitioner-Insurance Company, who appointed a surveyor. Even though the surveyor declared the vehicle to be a total loss, the claim was repudiated on 4th of February, 1998 as "no claim" on the ground that it was carrying passengers beyond its carrying capacity as per entry in the

registration book. A consumer case thereafter came to be filed before the District Forum, which was resisted by the petitioner-Insurance Company. On the basis of their written statement and the evidence adduced by the parties, the District Forum arrived at the conclusion that the petitioner''s objection with regard to carrying of extra passengers was not substantiated and similarly their objection with regard to driver not having a valid driving license was not found to be correct, as the Motor Vehicle Inspector (MVI) had verified the driving license and found that the driver was authorized to drive a heavy motor vehicle. The District Forum, relying on the damage and loss assessed by the final surveyor at Rs.1,38,520/-, directed the petitioner-Insurance Company to pay a sum of Rs.1,30,000/-, which was acceptable to the complainant, along with interest @ 12% per annum from 12th of May, 1996 till payment, besides a cost of Rs.1000/-, within 45 days from the date of the order.

Dissatisfied with the District Forum''s order, the petitioner-Insurance Company filed an appeal before the State Commission, seeking dismissal of the complaint on the twin grounds of the vehicle carrying excess passengers and there being no effective and valid license with the driver. As already stated, the State Commission did not find any substance in the appeal and dismissed the same, thereby affirming the order of the District Forum.

3. HAVING failed to receive any relief from the two fora below that the petitioner-Insurance Company has filed this revision petition. We have heard the learned counsel for the parties and have also perused the records of the case.

4. SUFFICE it to say that the petitioner-Insurance Company intends to invoke our authority under the powers conferred under Section 21 (b) of the Consumer Protection Act, 1986 in the exercise of our revisional jurisdiction, once again reiterating the same grounds, which it had advanced before the State Commission. Learned counsel for the petitioner-Insurance Company has vehemently argued that both the fora below have ignored the contentions raised that vehicle was carrying passengers in excess of its capacity authorized by the Registration Certificate and that the driver was not having a valid and effective driving license. With regard to the carrying of extra passengers, learned counsel himself admits that as per the Registration Certificate the vehicle could carry 4 coolies in addition to the driver and a cleaner. However, he claims that there were more than 12 passengers. On being asked as to on what basis he comes to such a conclusion, he has not been able to show us any evidence except the report of the surveyor. On the contrary, we find that the police authorities, who registered the FIR, nor the surveyors in their reports have stated the exact number and names of passengers who were traveling in the truck. Besides, the petitioner-Insurance Company itself has been giving contradictory estimates of their own fancies, inasmuch as in their OP they state that there were 9 passengers while in the written argument filed before us they claim that 13 persons, besides the driver, were traveling in the truck. The fora below, in our view, have rightly rejected the contention that vehicle at the time of the accident

was carrying more than its authorized capacity of 6 persons and thus, there was no violation of the terms of the policy. At the time of argument before us learned counsel for the petitioner has referred to some affidavits procured from some individuals, which the petitioner-Insurance Company claims traveled in the truck on the day of the accident, but on being asked as to whether these affidavits were filed before the District Forum, he had no answer. Obviously, these affidavits cannot be taken into consideration at this stage and have to be ignored for the simple reason that the respondent-complainant did not have an opportunity to challenge or rebut the same. Insofar as the contention with regard to the driver being without valid and effective driving license is concerned, the Regional Transport Authority in its letter addressed to the petitioner-Insurance Company has clearly stated that the Motor Vehicle Inspector had verified the driving license of the driver and found that he was authorized to drive a heavy motor vehicle. We agree with the view expressed by the State Commission that there was no reason as to why the information of the Regional Transport Authority is to be suspected. Besides, this objection appears to have been advanced only as an afterthought since the letter of repudiation refers only to the carrying of extra passengers and does not make any mention of the driver being without an effective driving license. Thus, both the twin grounds advanced by the learned counsel for the petitioner miserably fail. Further, we find that immediately after the accident on 12th of May, 1996, the respondent-complainant had preferred an insurance claim before the petitioner-Insurance Company. The petitioner-Insurance Company kept the claim pending until 4th of February, 1998, when it finally repudiated the claim on the grounds mentioned above. However, the Insurance Regulatory and Development Authority (Protection of Policyholders" Interests) Regulations, 2002 prescribe a 30 days time limit, after receipt of all relevant papers and clarifications, for the Insurance Company to settle all life and general insurance claims. On being asked as to why the claim was kept pending for such a long period, learned counsel for the petitioner-Insurance Company has not been able to offer any satisfactory explanation.

5. THE revision petition accordingly is dismissed being bereft of any merit. THE petitioner is directed to comply with the award of the District Forum within a period of two months. Under the facts and circumstances of the case, however, there will be no order as to cost.

