(2010) 08 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

NEW INDIA INSURANCE CO. LTD — APPELLANT

Vs

Executive Engineer, Haryana State Agricultural Marketing Board — RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Citation : 2010 0 NCDRC 153

Hon'ble Judges : R.K.Batta , Vinay Kumar J.

Final Decision : Revision is allowed

Judgement

1. THE jeep driven by driver Om Prakash met with an accident on 2.7.1995. THE said jeep was insured with the petitioner from 13.1.1995 to 12.1.1996. THE claim filed by the complainant was rejected by the Insurance Company/petitioner on the ground that the driver Om Prakash had no valid driving licence at the time of accident. Accordingly, a claim was filed seeking compensation of Rs.1,80,000/- with interest for own damage of the jeep. Admittedly, the driving licence of Om Prakash had expired on 13.2.1995; the accident took place on 2.7.1995 and the licence was renewed on 18.9.1995. District Forum held that in spite of the fact the driver did not have the licence on the date of accident, in view of the fact that the driver had licence prior to the date of the accident the Insurance Company was liable to pay the damages to the tune of Rs.1,80,000/- with interest at the rate of 12% p.a. from 27.8.1996 till realization. Accordingly, the claim was allowed.

2. THE Insurance Company filed appeal against the order of the District Forum with the State Commission and the State Commission relied upon the judgement of the Apex Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh & Anr. AIR (2004) 3 SCC 297 = 2005 (3) SCC 927 and the judgement of High Court of Kerala in Oriental Insurance Co. Vs. Paulose 2004 ACJ 457 and held that the Insurance Company could not repudiate the claim in the facts and circumstances of the case and as such, the appeal was dismissed. The petitioner has come in revision against the said orders of the Fora below. Ld. Counsel for

the petitioner urged before us that the State Commission had erred in placing reliance on the case of Swaran Singhs case (Supra) which relates to only third party damage and it did not cover the case of own damage and that the Insurance Company is not liable to pay the compensation inasmuch as the driver of the vehicle in question did not hold a valid driving licence on the date of accident. On the other hand, Ld. Counsel for the respondent/complainant placed reliance on para 100 (iii) of the judgement in Swaran Singhs case (Supra).

The controversy involved in this revision is no longer res Integra and has been dealt with by the Apex Court in the case of New India Assurance Co. Ltd. Vs. Suresh Chandra Aggarwal IV (2009) CPJ 14 (SC). Before we refer to the said judgement of the Apex Court, it may be mentioned here that the judgement of the Apex Court in Swaran Singhs case (Supra) is applicable only in case of third party risks. This position has been clarified by the Honble Apex Court in National Insurance Co. Ltd. Vs. Laxmi Narain Dhut (2007) 3 SCC 700 wherein it has been stated that the decision in Swaran Singhs case (Supra) has no application to cases other than third party risks. This position was reiterated by the Apex Court in Premkumari and others Vs. Prahlad Dev and others (2008) 3 SCC 193.

3. THE Apex Court in New India Assurance Co. Ltd. Vs. Suresh Chandra Aggarwal was dealing with a case where the driving licence of the driver was valid from 26.10.88 to 25.10.91 and then from 23.3.92 to 22.3.95. THE accident had taken place on 29.2.92. THE Apex Court held that the inter eqnum period between the date of expiry of the licence and the date of its renewal, there was no effective licence in existence. THErefore, the driver had no driving licence on the date of accident and the repudiation of the claim by the Insurance Company was justified. THE Apex Court had also placed reliance on the case of National Insurance Co. Ltd. Vs. Jarnail Singh & Ors. JT 2001 (SUPPL) II (SC) 218. In this case, the licence of the driver had expired on 16.5.94. THE accident took place more than five months thereafter i.e. 20.10.94 and the driving licence was renewed only w.e.f. 28.10.96. On these facts, it was held that proviso to sub-section (1) of Section 15 applied and the driver had no licence to drive the vehicle on the date of accident and the Insurance Company was not liable to pay the amount to the insured. In view of the above position, the revision is bound to succeed since at the time of accident, the driver Om Prakash did not have a valid driving licence. His licence had expired on 13.2.95 and was renewed only on 18.9.95 and the accident had taken place on 2.7.95. On the date of accident driver Om Prakash had no valid driving licence. For the aforesaid reasons, the revision is allowed and the orders of the Fora below are set aside. In the facts and circumstances, there shall be no order as to costs.

