(2004) 07 NCDRC CK 0105

In the National Consumer Disputes Redressal Commission

NEW INDIA INSURANCE COMPANY LIMITED — APPELLANT

Vs

KARA ALA CHETARIYA — RESPONDENT

Date of Decision : 13-07-2004

Acts Referred:

Citation : 2006 1 CPJ 185

Hon'ble Judges : M.S.Parikh , M.K.Joshi , Leenaben P.Desai J.

Final Decision : Appeal partly allowed

Judgement

1. THIS appeal arises from order dated 8.1.2004 rendered by the learned Consumer Disputes Redressal Forum, Jamnagar in Complaint No. 79 of 1995 directing the opponent Insurance Company to pay to the complainant Rs. 50,000 with interest @ 6% p.a. from the date of complaint till payment and cost quantified at Rs. 1,500. We have heard the learned Advocate for the appellant Insurance Company-original opponent. We have gone through the impugned order. No one has remained present for the respondent-original complainant. It was the complainant''s case that he had taken insurance in respect of his tractor/trailer from the opponent Insurance Company and during the period of insurance it met with an accident on 12.3.1994 when he, in the company of his brother, was going from Varvala to Dwarka for fetching water. According to the complainant, he sustained loss of Rs. 50,000. The opponent Insurance Company repudiated the claim and resisted the complaint on the ground that the vehicle in question was plied in contravention of the condition of the policy of insurance regarding use of the vehicle for commercial purpose and one passenger was allowed to occupy the vehicle in contravention of the relevant condition of the policy of insurance. The learned Forum came to the conclusion that when the vehicle was taken for fetching water, that did not amount to altering the use thereof from agricultural to commercial purpose. The submission of the learned Advocate in support of the repudiation cannot be accepted, for, the learned Forum has clearly appreciated the facts set out by the complainant which would go to indicate that the vehicle in question was not being used for commercial purpose. The learned Forum has also rightly held that allowing brother to sit in

the tractor/trailer would not amount to allowing of unauthorised passenger in the vehicle. Hence, repudiation of the claim by opponent Insurance Company clearly amounted to deficiency in service.

2. IT has been submitted that the learned Forum has committed error in not relying upon the survey report which would indicate the amount of loss to be Rs. 31,000. On appreciation of the material placed on record, it would appear that at first the complainant had got noted the loss at Rs. 25,000 in the Panchnama. He, thereafter, lodged claim of Rs. 48,000 to Rs. 50,000 to the opponent Insurance Company. He then prayed for claim of Rs. 85,981 in the complaint. Thus, the complainant has not been consistent in preferring the claim. The submission of the learned Advocate for the opponent Insurance Company, therefore, deserves to be accepted. In view of what is stated above and in the facts and circumstances of the case, following order is passed: ORDER Impugned order dated 8.1.2004 rendered by the learned Consumer Disputes Redressal Forum, Jamnagar in Complaint No. 79 of 1995 is hereby maintained except with regard to the amount of compensation which is altered from Rs. 50,000 to Rs. 31,000. This appeal is accordingly partly allowed with no further order as to costs. The opponent Insurance Company is stated to have deposited Rs. 25,000 in this Commission. Office to verify the amount and return the same to the Insurance Company by A/c payee cheque. The amount as per modified order shall be paid to the complainant within 10 weeks from today. Appeal partly allowed.

