(1996) 05 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE CO. LTD. APPELLANT

Vs

P.RAMARAJ RESPONDENT

Date of Decision : 09-05-1996

Acts Referred:

Citation : 1996 0 NCDRC 59 : 1996 2 CLT 413 : 1996 2 CPC 70 : 1996 2 CPJ 120 : 1996 2 CPR 19

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , R.THAMARAJAKSHI J.

Advocate : VISHNU MEHRA , RAVINDRA NATH , N.S.RANGARAJAN , V.BALACHANDRAN

Judgement

1. THIS revision petition has been filed by the opposite party against the order dated 1.1.95 passed by the State Consumer Disputes Redressal Commission, Tamil Nadu (for short State Commission) in AP No. 836/94 by which it accepted the appeal filed by the complainant, Mr. P. Ramaraj (respondent herein) and set aside the order of the District Consumer Disputes Redressal Forum, Madurai passed in O.P. No. 426/93. The State Commission directed the opposite party i.e. Insurance Company to pay to the complainant Rs. 35,000/-, amount of two insurance policies, one Janta Personal Accident Policy for Rs. 25,000/-and other one Gramin Accident Policy for Rs. 10,000/- with interest thereon @ 12% from the date of the claim till payment. It may be mentioned here that the District Forum had dismissed the complaint of the complainant and asked him to have his case decided by a Civil Court as there were mixed questions of law and facts and such questions ought to be decided only by Civil Courts.

2. THE parties will be referred to by their nomenclature in the complaint. The complainant in his complaint filed before the District Forum has alleged that he was working as a driver for several years, under one Mr. Krishnamurthy. The complainant had on his own accord taken above referred two policies to cover the risk of injuries in the course of his employment for the period from 8.1.92 to 7.1.93. The policies were renewed by payment of premium on 12.1.93 for the period from 12.1.93 to 11.1.94 for a sum of Rs. 35,000/-. On 12.1.93 the lorry

driven by the complainant met with an accident and he suffered multiple grievous injuries including fracture. The four fingers of the right hand had to be amputed, the thumb was also not functioning properly. Thus according to the complainant he is permanently disabled and therefore, under the policy conditions he is entitled to Rs. 35,000/- as compensation for permanent disability under the policies. The complainant submitted the claim, alongwith documents to the Insurance Company. However, the Insurance Company repudiated the claim on the ground that at the time of accident the risk was not covered.

3. THE opposite party-Insurance Company contended that the premium for the renewed policies was received in the office only at 2.30 p.m. on 12.1.93, while the accident had taken place at 10.00 a.m. on that day and since premium has been received after the accident, there was no policy at the time of the accident. Hence repudiation of the claim in the present circumstances does not amount to deficiency in service.

4. RELYING upon of the order of the Apex Court in New India Assurance Co. Ltd. v. Ram Dayal and Ors., 1990 (II) ACJ 545=11 (1990) ACC 90 (SC), the State Commission has held that as the premium was paid on 12.1.93 the policy got renewed on the commencement of the day i.e. from the midnight of 11/12.1.93. It was not disputed before the State Commission that the complainant has suffered serious grievous injuries in the accident including fracture of the right hand. In the course of his treatment the four fingers of his right hand have been amputed leaving the thumb which is also not functioning properly. The State Commission passed the impugned order awarding the relief, noticed above, to the complainant. Feeling aggrieved, the Insurance Company has filed this revision petition. We have heard the learned Counsel for the parties and have also gone through the record. We are of the opinion that the order of the State Commission has to be maintained. Admittedly in the present case the premium for renewal of the policies had been paid by the complainant on 12.1.93 and the accident has also took place on the same day in which the complainant has suffered the injuries. In the memorandum of revision petition the petitioner has stated that the carbon copies of the policies were filed before the District Forum as Exhibits B1 and B2. Record of the District Forum was called. Perusal of these carbon copies of the policies shows that the time from which policies were to commence is not mentioned. The validity of the policies is from 12.1.93 to 11.1.94. In such circumstances, observations of the Apex Court in Ram Dayal case apply with full force to the present case. In that care the insurer had repudiated its liability by maintaining that the policy had been taken after the accident and therefore, there is no liability to meet award of compensation against the owner under Motor Vehicles Act. In appeal, Punjab and Haryana High Court took the view, relying upon certain decisions, that the insurance policy obtained on the date of the accident became operative from the commencement of the date of insurance i.e. from the previous midnight and since the accident took place on the date of the policy the insurer became liable. The Supreme Court confirmed that decision and said that when a policy is taken on a particular

day its effectiveness is from the commencement of the day and the insurer was liable in terms of the Act to meet the liability.

5. THE learned Counsel for the petitioner argued that Section 64-VB was not brought to the notice of the Supreme Court in Ram Dayal''s case. He argued that in view of that section no risk is to be assumed unless premium is received in advance. He, therefore, urged that as the premium was not paid up to the time of accident by the complainant in the present case no risk is assumed in view of this provision. This argument has no force in the fact and circumstances of the present case. Sub-clause 2 says "For the purposes, of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the "date'' on which the premium has been paid in cash or by cheque by the insurer". It is not disputed that the word "date" means "day". Reference can also be made to Stroud''s Judicial Dictionary. As noticed above the time of commencement of the policies is not mentioned. Only the date is mentioned. Of course, Insurance Company has a right to mention the time of commencement of a insurance cover and by way of abundant caution the Insurance Company should not only specify the date but also the time of commencement of the insurance cover. Otherwise, it will give scope for unscrupulous owners of the vehicles to play fraud on the Insurance Company. However, that is a matter for Insurance Company. We have to interpret the contracts entered into between the Insurance Company with the complainant.

6. HENCE , in the light of the above discussion, we hold that the State Commission has not acted with any illegality or with material irregularity in the exercise of its jurisdiction while setting aside the order of the District Forum and awarding an award of Rs. 35,000/- to the complainant. Accordingly, the above petition is dismissed leaving the parties to bear their own costs. The record of District Forum be sent back.

