(2002) 04 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

Oriental Insurance Co. Ltd. APPELLANT

Vs

Rakesh Kumar RESPONDENT

Date of Decision : 05-04-2002

Acts Referred:

Citation : 2004 3 CPJ 291

Hon'ble Judges : Palok Basu , Vinod Shankar Chaubey J.

Final Decision : Ordered accordingly

Judgement

1. APPEAL No. 661/1995 has been preferred by the Oriental Insurance Company Limited against Sri Rakesh Kumar both of whom shall hereinafter referred to as the insurer and the complainant respectively. The connected APPEAL No. 1797/1995 has been preferred by the complainant in which the insurer is the opposite party. Since both these matters emerge out of an order of the District Forum, Aligarh dated 22.3.1995 passed in Complaint Case No. 69/1994, as prayed by the learned Counsel for insurer as well as complainant, both have been heard together and are being disposed of accordingly.

2. MR. Hari Prasad Srivastava, learned Counsel for the insurer and the complainant Sri Rakesh Kumar Maheshwari himself have been heard at length and the entire record has been perused. During the course of argument, it transpired that the copy of the complaint and the written statement filed by the insurer were not for being part of the record and, therefore, it was good on the part of Mr. Srivastava to have furnished copies thereof which have been admitted on the record after there was no objection by the complainant Sri Rakesh Kumar Maheshwari to that effect.

Before adverting to the relevant objections to the decree passed by the District Forum, the short facts may be stated thus:

3. THE Ambassador Car bearing Registration No. DIA-4825 was admittedly having comprehensive insurance with the insurer and the valuation of the car was fixed at Rs. 50,000/-. A serious accident took place on 28.6.1987 in Village

Hashimpur in Aligarh on the Agra-Aligarh Road when the said Ambassador car smashed with a truck bearing Registration No. RRB-2383. Three occupants in the car which included the father of the complainant and also the driver were killed in the accident. The complainant preferred a claim before the Motor Accident Claims Tribunal not only for the untimely demise of his relatives but also for the damage caused to the vehicle. By its order dated 23.2.1993 the Motor Accident Claims Tribunal (hereinafter called the MACT) decreed the claim of the complainant regarding monetary compensation for the death of the persons involved but it refused to grant any compensation for the alleged damage to the Ambassador car. It was opined by him that if so advised, the complainant can pursue his remedy before the appropriate Court for claiming damages for the accidented Ambassador car.

4. THE other side of the controversy began with the claim having been registered by the complainant with the insurer who ultimately repudiated the claim which intimation was conveyed to the claimant by registered letter of the insurer said to be dated 7.1.1988. Fortified with the aforesaid observations of the MACT, the complainant lodged the instant complaint in the year 1993 for compensation of the accidented Ambassador car which was comprehensively insured with the insurer as already stated above. On notice, the insurer filed a detailed written statement. At this stage, it may be relevant to mention here that the insurer was one of the opposite parties in the MACT case. It was stated in paragraph 7 of the complaint that there was no reference of the alleged registered letter dated 7.1.1988 in the written statement filed by the insurer in the MACT. In paragraph 3 of the complaint, it was specifically pleaded by the complainant that- "...damage claim of the car...O.P. company." Para-4 says that awarding damages for the accidented car was not within the purview of the MACT and, therefore, complainant may apply appropriately. Even though claim for the death of the victims amounting to Rs. 2,41,016/- was allowed by the Tribunal.

5. IT was further pleaded in paragraph 8 that the driver Rakesh Kumar himself died in the accident on 28.6.1987.

6. THE insurer in its written statement did not deny the comprehensive insurance of the accidented Ambassador car. It also did not deny the filing of the claim by the complainant before the MACT. It has also not denied that the MACT decreed the claim regarding compensation for the deaths but at the same time refused to entertain the claim regarding the accidented vehicle. Two points canvassed through the written statement challenging the complainant''s claim are as follows: (1) claim was time barred. (2) licence of the driver then driving the accidented vehicle was not produced by the complainant.

The District Forum went into all the issues and recorded categorical finding of fact on both these issues. It has been held that question of the complaint being barred by time simply did not arise in this case. It proceeded to hold that the claim initiated separately through the instant complaint was included in the MACT but only when it refused to grant relief regarding the said amount that complaint has been preferred by the complainant which was within months of the passing of the order of MACT.

7. IT has recorded a finding that it was the truck driver who in fact smashed the heavy vehicle into the Ambassador car which is a much smaller unit than the truck and due to the said charge the massive destruction of the vehicle took place and the driver was crushed within. In view of these two findings, the sum of Rs. 50,000/- which was the insured amount for which premium was regularly paid has been decreed. No interest, however, has been allowed.

8. MR. Srivastava on behalf of the insurer argued that the liability to produce the driver''s licence lay with the complainant. He said that the finding to the contrary in the instant case was not correct and lawful. He further said that the accident having taken place in the year 1987, filing of the complaint in the year 1993 was clearly time barred. He further contended that just no interest was paid by the District Forum, it should have also refrain from decreeing the original policy amount of Rs. 50,000/-. Mr. Maheshwari on the other hand contended that in the written statement argument, he has clearly indicated fallacy of the arguments sought to be raised by the insurer. After having heard the parties, one conclusion is irresistible that no interference with the order of the District Forum is called for two reasons. First, the policy covered the insurance of the Ambassador car comprehensively. It met with an accident. The type of accident which had happened was akin to a natural calamity suddenly incapacitating a vehicle and its driver. The truck smashed the Ambassador car. It becomes irrelevant at that point of time whether the driver was having licence or not. Moreover, in the instant case the photocopy of the driving licence was furnished by the complainant to the Surveyor appointed by the insurer. These averments specifically exist as is noted in the paragraph above. It is also stated here that Mr. Maheshwari rightly emphasised that the Surveyor''s report was never filed by the insurer either before the District Forum or here in the appeal.

9. IN view of these special circumstances existing in this case, it is held that on these facts the non production of another copy of the licence of the driver was wholly immaterial and the view of the District Forum was correct.

10. THE fact that the complainant filed the complaint within months of the order of the MACT permitting him to pursue remedy appropriately for compensation of damaged vehicle, no adverse inference can be drawn against the complainant inasmuch as he laid the claim well within time and his action is fully continence by Section 14 of the Indian Limitation Act. It may be mentioned that Mr. Srivastava laid emphasise on the decision of the Hon''ble National Consumer Disputes Redressal Commission in MP Exide Battery v. M.P. State Electricity Board, and also three decisions of this Commission wherein on the face of those cases, it was held that Sections 12 and 17 of COPRA would not permit question of limitation being waived. All the cited cases are totally distinguishable and have no relevance whatsoever to the points raised. The only point now surviving is regarding the appeal filed by Sri Rakesh Kumar Maheshwari claiming interest on

the insurance amount. The repudiation admittedly was intimated by the insurer through its letter dated 7.1.1988. The complainant is, therefore, clearly entitled to the interest on the aforesaid sum of Rs. 50,000/- with effect from 7.1.1988.

Coming now to the rate of interest. Mjr. Srivastava said that nothing more than 6% should be allowed on the special facts and circumstances of the instant case, for which he relied upon the decision of the Hon''ble Supreme Court recently pronounced in the compensation matters relating to Ghaziabad Development Authority and Others. He also relied upon the decision of the Hon''ble Supreme Court in Prititiajeams Mahajan''s case, Supreme Court 2000 TAC in which 9% interest was allowed.

11. LOOKING to the overall circumstance, it is, hereby, held that 6% interest to the complainant with effect from 7.1.1988 is payable by the insurer. In view of the aforesaid discussion, the Appeal No. 661/99 fails and is dismissed while Appeal No. 1797/95 succeeds. The insurer is allowed two months time to pay a sum of Rs. 50,000/- in cash or by Bank Draft to the complainant Sri Rakesh Kumar Maheshwari s/o late Shri Ram Swaroop along with interest @ 6% with effect from 7.1.1988 till the date of payment. The parties will bear their own costs.

12. LET original copy of this order be kept in Appeal File No. A/661/95 and a certified copy of this order be placed in the Appeal File No. A/1797/95 which shall also be governed by this order. LET copy of this order be made available to the parties as per rules. Ordered accordingly.