

(2012) 05 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE CO. LTD

APPELLANT

Vs

SANJEEV KUMAR

RESPONDENT

Date of Decision : 21-05-2012

Acts Referred:

Citation : 2012 0 NCDRC 798 : 2012 3 CPJ 134

Hon'ble Judges : SURESH CHANDRA J.

Final Decision : Petition dismissed

Judgement

1. THIS revision petition has been filed by Oriental Insurance Co. Ltd. The concurrent findings of both the Fora below go against the petitioner. The main question which falls for consideration is "whether the driving licence of the driver was or was not a valid licence? ". The facts giving rise to this petition may be summarised as follows.

2. SANJEEV Kumar, the complainant is the registered owner of Mahindra pick-up LMV bearing No. HP-33-0223. The said vehicle was insured with the Oriental Insurance Co. Ltd. During the currency of the Policy, the said vehicle met with an accident on 11.1.2003 at Garaudu, Near Kalkhar. According to the complainant, Sanjeev Kumar, the said vehicle was driven by duly licensed driver. Thereafter, the dispute about the insurance amount arose between the parties and the complaint was filed by Sanjeev Kumar, the complainant, before the District Forum. The District Forum accepted the claim and directed the petitioner to pay to the respondent a sum of Rs. 1,27,770 together with interest @ 6% p.a. from 8.7.2003, the date of repudiation, till the entire amount is realised as well as Rs. 2,500 as compensation towards the harassment and costs of litigation.

3. AGGRIEVED by the District Forum 's order, an Appeal was preferred by the petitioner herein, before the State Commission. The State Commission dismissed the appeal.

4. WE have heard the Counsel for the petitioner and have perused the written submissions made by the respondent. The learned Counsel for the petitioner

vehemently argued that the said licence was not valid and in support of his case, cited few authorities, in case reference - New India Assurance Co. Ltd. v. Prabhu Lal, I (2008) CPJ 1 (SC)=IX (2007) SLT 841=I (2008) ACC 54 (SC)=Civil Appeal No. 5539/07 and verdict given by this Commission in case reference -Oriental Insurance Co. Ltd. v. Sohan Singh, III (2006) CPJ 254, (RP No. 982/2006, decided on 26.4.2007). We have perused both the judgments. So far as the first judgment is concerned, the facts are, bee bit different from the facts of the instant case. Secondly, and most importantly, the Apex Court has taken contrary view in the judgment cited by the respondent in his written submissions. The said judgment is reported as National Insurance Co. Ltd. v. Annappa Irappa Nesaria & Ors., IV (2008) ACC 169 (SC)=AIR 2008 SC 1418. The relevant paras are reproduced below: "14. Rule 14 prescribes for filing of an application in Form 4, for a licence to drive a motor vehicle, categorizing the same in nine types of vehicles. Clause (e) provides for transport vehicle which has been substituted by G.S.R. 221(E) with effect from 28.3.2001. Before the amendment in 2001, the entries medium goods vehicle and heavy goods vehicle existed which have been substituted by transport vehicle. As noticed hereinbefore, Light Motor Vehicles also found place therein. 15. xxxx 16. From what has been noticed hereinbefore, it is evident that transport vehicle has now been substituted for "medium goods vehicle " and "heavy goods vehicle ". The light motor vehicle continued, at the relevant point of time, to cover both "light passenger carriage vehicle " and "light goods carriage vehicle " as well. 17. The amendments carried on in the Rules having a prospective operation, the licence held by the driver of the vehicle in question cannot be said to be invalid in law. "

In this authority, it was further held that LMV licence is valid for vehicles of which, gross weight is less than 7500 kg. In the instant case, the vehicle was registered as LMV only, with gross weight of 2750 kgs and unladen weight of 1610 kgs, with seating capacity of 2 + 1 (including driver) and as such, the "vehicle " falls under the category of LMV, as defined in Section 2(21) and para No. 11 of the judgment. No route permit is granted for such type of vehicles. Consequently, the driving licence of the driver Sh. Om Prakash Sharma, since deceased, is valid. The judgment relied upon by the respondent is latest in time, and has to be followed. Consequently, the revision petition stands dismissed. Revision Petition dismissed.