

(2011) 05 NCDRC CK 0069

In the National Consumer Disputes Redressal Commission

Oriental Insurance Co.Ltd.

APPELLANT

Vs

Kamal Tours And Travels

RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Citation : 2011 0 NCDRC 258 : 2011 3 CPJ 39

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Advocate : Abhishek Kumar , Veena Kalra

Judgement

1. THE Oriental Insurance Co. Ltd. (hereinafter referred to as the Petitioner) has filed the present revision petition being aggrieved by the order of the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the State Commission) in which its appeal was rejected in favour of M/s Kamal Tours & Travels (hereinafter referred to as the Respondent).

2. THE facts of the case are that the Respondent who was the original complainant before the District Forum had purchased a vehicle No.HR-38ET 2999 on hire purchase basis and got the same insured with the Petitioner/Insurance Company for a sum of Rs.3,65,000/- covering own damage risk for a period of one year w.e.f. 29.03.2001 to 28.02.2002. On 18.05.2001, the vehicle which was being driven by one Shri Pawan Kumar and carrying other persons met with an accident near Village Chikanwas Hissar Road, Haryana. THE driver, Pawan Kumar and one other person died in the accident and other occupants sustained injuries. THERE was total loss of the vehicle. Respondent thereafter lodged a claim with the Petitioner/Insurance Company in respect of the loss caused by the road accident. Petitioner/Insurance Company appointed one R.L.Gupta as Surveyor who assessed the loss at Rs.2,57,455/-. THE claim of the Respondent was, however, not settled despite reminders and therefore, Respondent filed a complaint with the District Forum requesting that the Petitioner be directed to pay Rs.3,65,000/- along with 12% interest, Rs.5,000/- towards cost of litigation and Rs.25,000/- towards suffering, mental agony and unfair trade practice. Petitioner/Insurance Company challenged the above contentions of the

Respondent. While it is true that the vehicle was insured by the Petitioner/Insurance Company, it came to light after the accident that the Respondent had sold this vehicle to one Harbans Lal vide receipt No.19508 dated 12.04.2001 for Rs.2,83,000/-. The payment was made through an SBI demand draft for the above amount. The fact of transfer of the ownership of the vehicle was not informed to the Petitioner/Insurance Company. Petitioner/Insurance Company also came to know that the insured vehicle was initially purchased on hire purchase basis with Standard Chartered Bank and the financier bank had already received the payment of loan including the interest at the time of its re-sale. Further the Respondent failed to submit the valid driving licence of the driver on the date of accident despite 8 reminders sent by the Petitioner/Insurance Company. Petitioner also stated that at the time of accident the insured vehicle had not been converted from taxi to a private car in the absence of legal formalities as required by the Transport Department of Haryana and Petitioner/Insurance Company was kept in the dark even about these facts. Petitioner/Insurance Company had appointed one M/s Vipul & Co. for verification of registration certificates of the insured vehicle who after investigations reported that the fitness certificate of the vehicle had also expired on 24.03.2001 as also the permit(token tax) which expired on 30.06.2000. Since, the above actions clearly amounted to the Respondent trying to defraud the Petitioner/Insurance Company and also because the Respondent had no insurable interest on the date of the accident, Petitioner/Insurance Company closed the case as no claim. The District Forum after hearing both parties and the evidence produced before it accepted the complaint. The relevant part of the order of the District Forum reads as follows: We have heard the parties at length and have also carefully scrutinized the relevant material/documents placed on record. The complainant submitted all the relevant documents with the O.P. and O.P. cannot escape from its liability to honour the claim filed by the complainant on one pretext or the other. The surveyor appointed by the O.P. assessed the loss at Rs.2,57,455/-. On 1.2.2002, the complainant had given the consent letter to the surveyor agreeing to the assessment at Rs.2,60,500/- plus Rs.1,500/- on total loss basis and Rs.1,70,500/- less Rs.1,500/- excess clause on net of salvage basis . In our considered opinion, the contention of the O.P. that the complainant had no insurable interest in the vehicle is arbitrary and illegal.

The District Forum therefore directed the Petitioner/Insurance Company to pay the Respondent, Rs.2,57,455/- towards the claim filed by the Respondent with the Petitioner, Rs.10,000/- as compensation and Rs.2,000/- as litigation costs.

3. AGGRIEVED by this order Petitioner/Insurance Company filed an appeal before the State Commission which rejected the appeal by recording the following reasons: So far as the insurance policy is concerned, it is qua the vehicle and not qua the person. If such kinds of plea as raised by the appellant are allowed then appellant will in both cases unsaddle itself from the liability against the insurance policy. If the original owner files a claim the insurance company will take plea that since he has sold the vehicle therefore he has no insurable interest and if

the subsequent purchaser of the vehicle files the claim then the insurance company will take the plea that since his name has not been transferred in the Registration Certificate or in the insurance policy therefore he too has no insurable interest. This is a situation which is like heads I win, tails you loose. By no means Insurance Company can be allowed to deny the claim of a person, be it original owner or subsequent purchaser against the risks covered by insurance. It appears that in such cases the only concern of the Insurance Company is to see that double payment is not made and the precautions the Company can take in such situation is to obtain a no objection certificate from the person who has not filed the claim and also indemnity bond from the person who has filed the claim. Merely because the name of the purchaser is not changed in the Registration Certificate and Insurance Policy does not disentitle both the original owner as well as the subsequent purchaser from claiming the loss or damage.

4. SINCE in the instant case the original owner has filed the claim, the appellant company was only concerned with the assessment of the loss of the damages and also to take indemnity bond from the claimant and also no objection certificate from the subsequent purchaser. Hence the revision petition. Learned counsel for both parties were present. Learned counsel for Petitioner contended that the question whether there is an insurable interest when a vehicle is sold to another person by the insuree before the date of the accident and that also without intimation to the Insurance Company has been settled by a number of judgments of this Commission. It has been ruled that in such cases the insurable interest ceases and the claim can be justifiably repudiated by the insurance company. Counsel for Petitioner cited a recent ruling of this Commission on this issue in *New India Assurance Co. Ltd. Vs. Divya Prashad* 1(2011) CPJ 22(NC). He further stated that apart from this fact the driver did not have a valid licence at the time of the accident since his licence which was issued on 17.09.1996 had expired on 16.09.1999 and only a duplicate copy of licence was issued to him in 2001. Learned for below failed to take into account these important facts and erroneously decided the case in favour of the Respondent. Counsel for Respondent on the other hand stated that the State Commission had given convincing and cogent reasons for deciding the appeal in its favour while observing that so far as the insurance policy is concerned, it is qua the vehicle and not qua the person and, therefore, it cannot deny the claim against the risks covered by insurance. Since in the instant case the original owner has filed the claim and the Surveyor had assessed the loss which had not been challenged by the Petitioner/Insurance Company, the Petitioner/Insurance Company is duty bound to indemnify the claim. We have heard the learned counsel for both parties and have gone through the evidence on record as also the rulings of the Commission on the subject including the case cited by Counsel for Petitioner.

5. IT is not in dispute that Respondent had got the vehicle insured with the Petitioner/Insurance Company which was involved in an accident causing loss of the vehicle and which was assessed by the Petitioners Surveyor at Rs.2,57,455/-. There is, however, credible documentary evidence in the instant case that at the

time when the accident took place, insuree had already sold the vehicle to another person. He also did not inform the Petitioner/Insurance Company regarding the sale of vehicle nor was the vehicle transferred in the name of the new owner. As stated by the Counsel for Petitioner, in a case under similar circumstances, this Commission has given a clear ruling that if a vehicle is sold by the insuree to another person without intimation to the insurance company then in case of any claim covered under the insurance policy, the insuree ceases to have an insurable interest. The present case is squarely covered by our decision in *New India Assurance Co. Ltd. Vs. Divya Prashad*(supra). Regarding the point of the driver not having a valid licence at the time of driving the vehicle, although there is documentary evidence that the validity of the license of Pawan Kumar had expired in 1999 and only a duplicate (and not a renewed) licence was issued to him in 2001, since this was not a part of the written statement filed before the District Forum nor was this pressed as an issue before the District Forum, in our revisional jurisdiction, we do not propose to take cognizance of this fact in deciding the case.

6. HOWEVER, taking cognizance of the fact that as discussed earlier, Respondent did have any insurable interest at the time of the accident, we set aside the order of the State Commission and accept the revision petition with no order as to costs.