

(2008) 04 NCDRC CK 0038

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE COMPANY

APPELLANT

Vs

BABU RAM

RESPONDENT

Date of Decision : 16-04-2008

Acts Referred:

Citation : 2008 3 CPJ 269

Hon'ble Judges : G.D.Sharma , Khalid Hussain J.

Final Decision : Appeal allowed

Judgement

1. -THROUGH the medium of this appeal order dated 13. 11. 2004 passed by the learned Divisional Forum, Jammu (hereinafter to be referred to as the Forum) has been challenged. The Forum in terms of the order had directed the appellant to pay an amount of Rs. 55,030 along with interest @ 9% per annum with effect from two months after the submission of the report of the Surveyor till its realization as well as burdened the litigation charges in the amount of Rs. 3,000. The brief facts of the case are that respondent's passenger bus bearing registration No. JKQ-8335 was insured with the appellant under policy No. 31/2000/00016 for an amount of Rs. 1. 50 lakh for damages to it as well as towards public liability and the policy was effective from 13. 4. 99 to 12. 4. 2000. The said bus met with an accident on 31. 12. 1999, when it was on its way from Kalakote towards its destination and suffered total loss. The bus was being driven by the driver namely, Deep Raj s/o Sita Ram. The claim before the Forum was resisted by the appellant herein on the main plea that driver Deep Raj was possessing fake driving licence even though it had been got renewed from the Regional Transport Officer. It was specifically pleaded that the original Driving Licence had been issued in the name of Sh. K. P. Sudhakaran and not in favour of Deep Raj s/o Sita Ram. The learned Forum has relied upon the law laid down by the Apex Court in the case of United India Insurance Co. Ltd. v. Lehu and Ors. , II (2003) SLT 516=i (2003) ACC 611 (SC)=air 2003 SC 1292.

2. HEARD the arguments. The learned Counsel appearing for the appellant has contended that the law laid down by the Apex Court in AIR 2003 SC 1292

(supra) has been changed by the recent decisions given by the Apex Court in the cases of - National Insurance Co. Ltd. v. Laxmi Narain Dhut, III (2007) CPJ 13 (SC)=iv (2007) SLT 102=ii (2007) ACC 28 (SC)= (2007) 3 SCC 700 and United India Insurance Co. Ltd. v. Davinder Singh, IV (2007) CPJ 1 (SC)=ix (2007) SLT 235=iv (2007) ACC 705 (SC)= (2007) 8 SCC 698. The sum and substance of the above stated decisions is that once the licence is a fake one the renewal cannot take away the effect of fake licence. He has further contended that from the record it is established that Mr. Deep Raj was having a fictitious licence. During the course of arguments he has referred to the information given by the Licensing Authority, Pathankot in reply to the letter written by the concerned Divisional Manager of the insurer wherein it is clearly stated that driving licence No. 1693/p/79 obtained on 19. 7. 1979 was issued in the name of Sh. K. P. Sudhakaran S/o Kunju Ponickan, P. O. Koathigoppally, Maha Devi CAD, Distt. Alleppey, Kerala. With the assistance of the Counsel of the parties we have perused the evidence of Mr. Sanjay Sahni who was appointed as an investigator by the appellant. He in very categorical terms has deposed that licence No. 1693/p/79 was issued by the Licensing Authority, Pathankot in favour of one Mr. K. P. Sudhakaran and not in favour of Babu Ram. The learned Counsel appearing for the respondent has stated that Mr. Sanjay Sahni had conducted the investigation regarding that licence which was issued in favour of one Babu Ram and not in favour of driver Deep Raj s/o Sita Ram. We have appreciated this argument but do not agree with him because from the record it is found that the driver Deep Raj s/o Sita Ram was holding the same driving licence which bears No. 1693/p/79 and in the official records stood issued by the concerned Licensing Authority, Pathankot in favour of Mr. K. P. Sudhakaran. Though Mr. Sanjay Sahni had committed an error in naming Babu Ram instead of Deep Raj s/o Sita Ram yet this mistake of identity shall not qualify the driver Deep Raj s/o Sita Ram to be a holder of valid driving licence bearing No. 1693/p/79 which on the record stood issued in favour of above stated K. P. Sudhakaran. From the factual matrix we find that the driver Deep Raj s/o Sita Ram was possessing a fake licence and its subsequent renewals would not make it a valid one. Applying the ratio decidendi of the cases of National Insurance Co. Ltd. v. Laxmi Narain Dhut (supra), decided by the Hon''ble Apex Court, we hold that the principle of law laid down therein applies in all fours to the facts of the present case. In this view of the matter, we accept the appeal and set aside the impugned order but the parties are left to bear their own costs. The office shall send back the record of the DF and appellant company is allowed to withdraw the amount of the statutory deposit made in the Forum for filing the appeal. The appeal be consigned to the records. Appeal allowed.