(2003) 10 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE Company Limited — APPELLANT

Vs

BABULAL AGNIHOTRI — RESPONDENT

Date of Decision : 16-10-2003

Acts Referred:

Citation : 2004 1 CPJ 335 : 2004 1 CPR 630 : 2004 2 CLT 185

Hon'ble Judges : N.K.Jain , B.L.Khare , Pramila S.Kumar J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is by the Oriental Insurance Company Limited against whom, District Forum, Rewa has passed order directing the appellant to pay to the respondent-insured a sum of Rs. 10,817/- on account of damage caused to his jeep in an accident.

2. IT is no more in dispute that the jeep in question was insured with the appellant-Company and the incident took place when the insurance was still in force. The only contention raised by the Insurance Company is that the jeep at the relevant time was being used for commercial purpose, which was in violation of the terms of the policy inasmuch as the jeep was registered and insured for personal use only. The Forum below though recorded a finding that the jeep at the relevant time was used for commercial purpose but still allowed the complaint holding that the said commercial use of the vehicle was not the cause of accident. Reliance was placed on a decision of this Commission in Smt. Usha Pavaiya v. United India Insurance Co. Ltd., I (2002) CPJ 321. In the said case the violation was on account of over-loading of the vehicle and the Commission has held that though technically there was violation of terms of policy but the said violation was not the cause of accident.

National Commission in the case of Hemant Kumar Chhabra v. The Oriental Insurance Co. Ltd., Revision Petition No. 719 of 2001 decided on 3.10.2001 has held that when a vehicle registered for personal use is used for commercial purpose at the time of accident, the Insurance Company may repudiate the claim of the insured.

3. LEARNED Counsel for the respondent while defending the impugned order has contended that the finding recorded against the respondent as to the use of the vehicle is not supportable by evidence on record. He contended that the said finding ought to have been recorded in favour of the respondent. Needless to say that the respondent is entitled to take such a stand even without filing any appeal (see Order 41 Rule 22, CPC). We have therefore, examined the evidence on record. Complainant has submitted affidavit of himself, his son Kaptan Kumar Agnihotri and one Dayashankar Chaturvedi, who at the relevant time were also travelling in the jeep. Dayashankar and Kaptan Kumar have made positive statements on oath that they were travelling in the said jeep and that no passenger on payment was being taken in the jeep. According to them the persons were travelling were either relatives or friends of the complainant and that they were going to attend one marriage function. These statements made on affidavits remained unchallenged by the opposite party inasmuch as no cross-examination of these witnesses was sought or done by the appellant. As against it, the appellant''s case was based on the report of its Surveyor viz., Amitabh Tripathi who also filed his affidavit stating that on enquiry it was found that the jeep was being used for carrying passengers on payment. Along with his report certain statements are also filed. It is however, seen that in those statements also persons examined clearly admitted that they had paid no fare to the complainant or his driver. In our considered judgment, the report of the Surveyor was not conclusive proof of the fact that the jeep in question was being used for commercial purpose. The affidavit filed by the Surveyor fell within the category of hearsay evidence as he himself had no personal knowledge about the fact of use. As against it, the affidavits filed by the complainant were of the persons who were themselves travelling in the jeep at the relevant time and made positive statements that the jeep was being used for carrying relatives and friends to a marriage function and that no fare was paid by any such passenger. Their statements are supported by the FIR lodged with the police soon after the accident and wherein also it was clearly stated that the jeep was carrying relatives and friends of the complainant. We, therefore, disagree with the finding of the Forum below and hold that the jeep at the relevant time was not being used for commercial purpose and as such there was no violation of any term of the policy. In view of the aforesaid finding, this appeal filed by the Insurance Company must fail and is dismissed but without any order as to costs. Appeal dismissed.