

(1999) 04 NCDRC CK 0089

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE Company Limited

APPELLANT

Vs

RAJ KUMAR GUPTA

RESPONDENT

Date of Decision : 16-04-1999

Acts Referred:

Citation : 1999 2 CPJ 505

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the judgment and order dated 21.12.1998 passed by the District Forum, Aligarh in Complaint Case No. 274/97. The facts of the case stated in brief are that the complainant had got his truck No. UGE 708 insured in comprehensive manner for an amount of Rs. 2,00,000/- with Oriental Insurance Company Limited on 27.6.1995. On 2.12.1995 this truck met with an accident and got damaged and it was a total loss. He made a claim to the Insurance Company for payment of the amount but the same was not done. Therefore he filed a complaint for recovery of Rs. 2 Lacs as damages and Rs. 20,000/-as compensation and Rs. 5,000/-as cost.

2. THE opposite party filed a written statement admitting the insurance of the vehicle and alleged during the survey it was found that 13 persons were travelling in the truck at the time of accident while only five persons could have travelled in the truck. On account of over-loading the truck met with an accident and hence the claim was repudiated. The learned District Forum, after considering the evidence on record, came to the conclusion that the travelling by six more persons had no effect on the accident and the accident was not caused on account of six more persons travelling by the same truck. It, therefore, awarded the insurance amount, damages and cost.

Aggrieved against this order the appellant has come up in appeal and challenged the correctness of the findings recorded by the learned District Forum.

3. AT the time of admission, the appeal was heard and no notice was issued to

the opposite party as in view of the Commission, it was not necessary to issue notice in this case and the appeal can be dismissed without hearing the opposite party - complainant. The argument of the learned Counsel for the appellant is that 13 persons were sitting on the vehicle at the time of accident and on account of over-loading the accident took place. The learned District Forum has considered this aspect on the basis of evidence on record and came to the conclusion that there is no evidence on record to prove that the accident took place on account of excess persons in the truck.

4. ONE application of Surendra Pal Singh is on record which has been filed by the appellant. This application has been given to Sri K.P. Shastri, Enquiry Officer of the Insurance Company. According to this application the person concerned was going from the daughter's house on the date of accident to take his niece from the village. He was standing on the G .T. Road waiting for a bus. When he could not get a bus, he took a lift in a Tata Mini truck. The driver acceded to his request and he was given lift in the truck. There were about 10 passengers in the back-side. He was sitting on the front row. After some time one lady, with a little child in her lap, came. She was also allowed to sit on the front side and the driver did not charge any fare. He has specifically stated that on the front side, besides the driver and the cleaner, he and the lady were sitting. He further states that when they reached ahead of Police Station Akhrawah, Truck No. USU 9876 came from in front. The driver of the ill-fated truck tried to avoid the accident and came on the "kutcha patri" and even then the other truck driver caused the accident on account of which the vehicle was badly damaged and they were also seriously injured. Thus this statement clearly shows that the truck in dispute met with an accident on account of the fault and negligence of other truck driver. This truck had gone on the "kutcha patri" in order to avoid the accident. The contention of learned Counsel for the appellant that 13 persons were sitting on the front side is also belied by the averment of this person. The Enquiry Officer had enquired about the accident and this application was given to him. From these facts, it is nowhere proved that the accident took place on account of passengers sitting on the front side. Thus the learned District Forum was completely justified on the basis of evidence on record in coming to the conclusion that the accident did not happen on account of the fault of truck driver. Thus the appeal is liable to be dismissed. ORDER The appeal is dismissed. We also assess the cost of the proceedings at Rs. 1,000/- to be paid by the appellant. Let the order be made available within six weeks from today. Appeal dismissed.