(1997) 03 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

Oriental Insurance Company Ltd. APPELLANT

Vs

Ishar Singh RESPONDENT

Date of Decision : 27-03-1997

Acts Referred:

Citation : 1997 2 CPJ 568

Hon'ble Judges : A.L.Bahri , R.L.Gupta J.

Final Decision : Appeal allowed

Judgement

1. ORIENTAL Insurance Company challenges in this appeal order of District Forum, Fatehgarh Sahab dated August 29,1996 whereby the complaint filed by Isher Singh and Avtar Kaur was allowed and the Insurance Company, the appellant was directed to pay a sum of Rs. 9,851/-with 18% p.a. interest thereon from February 28, 1990 till payment. Costs of Rs. 500/-were also ordered to be paid by the appellant.

2. THE broad facts are not in dispute on which a question of law arises as under : Whether a person authorised to drive the Light Motor Vehicle under the driving licence could drive motor cycle and thus make the Insurance Company liable to reimburse damages caused to the motor cycle in an accident. On August 27,1989, motor cycle No. PIP 524 owned by Gurdarshan Singh and driven by him was involved in an accident resulting his death and causing damages to the motor cycle. A claim petition arising out of his death was allowed by Motor Accident Claims Tribunal (District & Sessions Judge, Patiala). Isher Singh and Avtar Kaur, parents of Gurdarshan Singh filed the present complaint against the Oriental Insurance Company with whom the motor cycle was insured at the relevant time, claiming compensation suffered on account of damage to the motor cycle. A Surveyor appointed by the Insurance Company had assessed the loss at Rs. 9,851/-but the amount was not paid by the Insurance Company. On notice of the complaint, the Insurance Company contested the claim inter-alia asserting that the driver of the motor cycle was not possessing a valid driving licence to drive the motor cycle. It was denied that the Surveyor had assessed

the loss, however, the claim was repudiated. The complainant in the replication denied having communicated any such repudiation letter. Both the parties produced evidence on affidavit and documents. The District Forum passed the order as referred to above.

We have heard learned Counsel for the parties and have perused the records of the District Forum. The fact that the motor cycle was insured with the appellant-the Insurance Company is not being disputed. Annexure R 1 is the copy of the Insurance Policy. The only dispute as referred to above relates to competency of Gurdarshan Singh to drive the motor cycle. The driving licence (copy) is Annexure A2. This licence authorised Gurdarshan Singh to drive light transport vehicle only. The contention of learned Counsel for the appellant-Insurance Company is that under the aforesaid licence, Gurdarshan Singh was not authorised to drive motor cycle and repudiation of the claim by the appellant Insurance Company was legal and no compensation can be ordered to be paid by the Insurance Company. There is merit in this contention. Section 2(10) of the Motor Vehicle Act, 1988 defines driving licence meaning the licence issued by a Competent Authority under Chapter II, authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description. Different categories of motor vehicles are defined under Section 2 of the Act. Subsection (21) defines ''light motor vehicle'' to mean a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road roller the unladen weight of any of which does not exceed 6000 kgs. ''Motor Cycle'' has been defined under Sub-section (27) of Section 2 of the Act to mean a two wheeler motor vehicle inclusive of any detachable side car having an extra wheel attached to the motor vehicle. Section 3 of the Act prohibits driving of any motor vehicle as described under the Act by a person who is not possessing a driving licence as issued under the Act. Section 9 deals with the grant of driving licences providing procedure.

3. THE provisions of the statute as referred to above leaves no manner of doubt that a person who has been issued a driving licence for driving a specified vehicle is only authorised to drive the same and he cannot drive any other vehicle for which no such authorisation has been given. A person may be knowing driving but unless and until he obtains a licence for the same as required under the Motor Vehicles Act, he is not permitted to drive any such vehicle. Insurance policy is nothing but a contract and if the policy provides that only a person holding valid and effective driving licence would drive the vehicle insured and only then risk under the policy would stand cover, it would be valid contract. THE Insurance Company cannot be burdened with liability, if the person who is not legally authorised to drive such a vehicle, drives it and causes damage. Learned Counsel for the appellant-Insurance Company referred to the decision of Andhra Pradesh High Court in "M. Sammamma and Another v. Syed Kaja Maunuddin and Others" II (1992) ACC 477=1992 ACJ 375. In that case, a person holding licence to drive light motor vehicle was found driving heavy motor vehicle, which was involved in an accident. It was held that the Insurance Company was not liable

as the validity of the licence was to be considered with reference to the vehicle involved. THE ratio of the decision referred to above supports the view as taken up above by this Commission. For the reasons recorded above, this appeal is allowed. The order of the District Forum is set aside and the complaint stands dismissed as no compensation can be awarded to the complainant against the Insurance Company as the deceased Gurdarshan Singh was not holding a valid, effective driving licence for driving the motor cycle, which was involved in the accident. There will be no order as to costs. Appeal allowed.

