(1997) 03 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

Pawan Kumar Agarwal APPELLANT

Vs

NEW INDIA ASSURANCE CO.LTD RESPONDENT

Date of Decision : 04-03-1997

Acts Referred:

Citation : 1997 2 CPJ 231 : 1997 3 CPR 199

Hon'ble Judges : P.C.Misra , Biswanath Rath , Mrinalini Padhi J.

Final Decision : Order pronounced

Judgement

1. THE complainant in C.D. Case No. 70 of 1994 before the District Forum, Koraput, Jeypore is the appellant in this appeal. Admittedly the complainant-appellant is the owner of a Mini Truck registered as OSK 6564 which was insured with the present respondent. It has been alleged by the complainant-appellant in the complaint, petition that a Cover Note was given to him in evidence of the policy of insurance regarding the aforesaid number of the vehicle correctly. His policy was not immediately given to him/but it was promised to be sent by post. THE vehicle met with an accident on 22.8.92 during the continuance of the policy. One labourer died in the course of accident and his wife filed a case under the Workmen''s Compensation Act before the Assistant Labour Commissioner, Jeypore in W.C. Case No. 6 of 1993. THE Assistant Labour Commissioner held that the labourer died as a result of the accident in course of his employment. THE petitioner in the said case was awarded a compensation of Rs. 39,044/-to be paid by the employer together with a penalty of Rs. 10,000/-and interest on the awarded amount within thirty days from the date of the award, that is, 16.2.94 so far as the compensation is concerned and so far as the penalty and interest are concerned from the due date when the compensation fell due, i.e. 22.8.92 upto the date of payment. THE Insurance Company was impleaded as a party in the said case under the Workmen''s Compensation Act. THE liability of the present complainant could not pass on to the Insurance Company as there was discrepancy in the registration number of the vehicle as noted in the policy which was different from the Cover Note. As already stated, the Cover Note correctly wrote the number of the vehicle as OSK. 6564, whereas, in the policy, the

number was recorded as O.R.K. 6564, THE Labour Court, therefore, directed that the complainant on satisfying the terms and conditions of the insurance policy and establishing that his mini truck No. OSK 6564 was insured with the insurer during the period of accident is entitled to be indemnified by the Insurance Company. THE award of the Workmen''s Compensation Assistant Labour Commissioner was passed on 16.2.94 and soon thereafter the Insurance Company in a letter to the present complainant dated 11.3.94 wrote to the complainant that consequent upon the request of the complainant, they have altered the insurance number of the vehicle which was erroneously typed in the policy as ORK-6564. instead of OSK-6564. THE Insurance Company rectified the same. Thus the correct vehicle number having been corrected in the policy, it follows as a consequence that the Insurance Company was to indemnify the deceased employee''s legal heirs by payment of the awarded compensation. THE Insurance Company did not pay the same for which the complainant approached the District Forum in the aforesaid case claiming compensation alleging deficiency in service on the part of the Insurance Company.

2. THE present respondent filed a show cause before the District Forum denying their liability. In the show cause it was admitted that the registration number of the vehicle was typed as ORK-6564 instead of OSK-6564 by a typographical error inadvertently committed. It was further mentioned that the complainant never pointed out the aforesaid mistake and as soon as the same was pointed out, the policy was rectified. THEy further maintained that they are not labile to pay the amount awarded under the Workmen''s Compensation Act inasmuch as there has been no order by the Assistant Labour Commissioner for payment of the aforesaid amount. In the aforesaid context it was said that there has been no deficiency in service on the part of the Insurance Company and hence this case is liable to be dismissed. The District Forum after hearing both parties, dismissed the complaint case taking the view that the present complainant failed to point out the mistake in the policy in the Labour Court and his conduct amounts to avoiding the consequence of the award likely to be passed in the workmen''s compensation case. It was observed that the Insurance Company which is issuing large number of policies is likely to commit some mistakes and the claim made by the complainant before the District Forum amounts to enforcement of the order of the Workmen''s Compensation Court by the Forum. Hence this appeal.

During the course of hearing of this appeal, it was strenuously argued by the learned Counsel appearing for the complainant-appellant that the complainant being the insured in respect of his vehicle is a consumer within the meaning of the definition given in the Act. The Insurance Company while issuing the policy admittedly committed a mistake in mentioning the registration number of the vehicle which was the subject-matter of the policy and as a consequence of the mistake, the liability could not pass on to the insurer though the insurer was made a party in the workmen''s compensation case. He has further argued that irrespective of whether any claim arises out of the policy or not, the very fact of issuance of a policy with mistaken number of the vehicle itself amounts to deficiency in service inasmuch as the insured had paid for the policy and it was expected on the part of the Insurance Company to issue a correct policy covering the risks of the vehicle insured. The learned Counsel appearing for the Insurance Company has argued that with force that the complaint/petition itself was not maintainable firstly for the reason that what the complainant wanted before the District Forum was to realise the money awarded by the Assistant Labour Commissioner from the Insurance Company by virtue of the policy. According to him/ this is out of the purview of the provisions of the Consumer Protection Act. He has also argued that the Insurance Company had no liability to make payment of the money awarded in the workmen''s compensation case inasmuch as there has been no direction in the said order for payment of the money by the Insurance Company.

3. AFTER hearing the Counsel of both parties at length, the admitted facts are that the complainant''s vehicle OSK-6564 was insured with the present respondent and it met with an accident during the continuance of the policy as a consequence of which a workman died and his legal heirs having applied before the Workmen''s Compensation Court, an award was passed against the employer of the deceased. The Assistant Labour Commissioner in the judgment passed by him clearly stated that there is discrepancy between the registration number of the mini truck which met with an accident and registration number of the mini truck shown in the insurance certificate. Such difference having been found, the Workmen''s Compensation Court could not pass the liability for payment of the awarded amount to the Insurance Company and, therefore, directed that the Insurance Company shall pay the compensation on being satisfied about the correct registration number of the vehicle which was insured by them. In the aforesaid circumstances/ we are of the view that there has been deficiency in service on the part of the Insurance Company by mentioning the wrong number of the vehicle in the policy of insurance issued by them. Under the Workmen''s Compensation Act, death or injury caused to a workman in the accident in course of his employment is to be compensated for by his employer. By virtue of the insurance liability of the employer, it would pass on to the Insurance Company. In this case also the liability of the employer could have passed over to the Insurance Company had the correct registration number of the vehicle been mentioned in the insurance policy. This is what has really been observed by the Workmen''s Compensation Court. Because of the mistaken number given in the policy, the complainant has been put to harassment. Soon after the award was passed by the Workmen''s Compensation Court, the Insurance Company discovered and rectified its mistake by correcting the registration number of the vehicle and communicated the said fact to the complainant. The Insurance Company was also a party to the case under the Workmen''s Compensation Act. The award passed by the Workmen''s Compensation Court read with the rectified policy would mean that the liability is that of the Insurance Company. It is unfortunate that the Insurance Company even after detection of its mistake did

not bother to pay the awarded amount to the legal heir of the workman who was the claimant in the workmen''s Compensation case. But instead took the plea before the District Forum that there having been no order against the Insurance Company, they are not to pay the awarded amount. It is equally unfortunate that the complainant who was the employer of the deceased employee did not pay the awarded amount to the claimant in the said case taking the plea that the Insurance Company is to pay and not he. It was legal and proper on the part of the employer to pay the awarded amount forthwith to the claimant in the Workmen''s Compensation case and recover the said amount from the Insurance Company as it is ultimately the liability of the Insurance Company to indemnify the loss occasioned by the accident. It is not a case where the award of the Workmen''s Compensation Court is being executed before the District Forum. It is the deficiency in service on the part of the Insurance Company for which the complainant has been put to loss and harassment. The learned Counsel appearing for the respondent-Insurance Company relied on a decision of the Hon''ble Supreme Court in Chairman, Thiruvalluvar Transport Corporation v. Consumer Protection Council, reported in I (1995) CPJ 3 (SC)=1995 (1) CPR 371, where their Lordships took the view that a Forum constituted under the Consumer Protection Act has no jurisdiction to entertain the claim application and award compensation in respect of an accident involving the death of a person as the remedy lies under the Motor Vehicles Act, 1988. The principle decided in the said case is fully applicable to the facts of the present case inasmuch as the complainant in this case does not claim compensation for the death occurring during the continuance of the policy. The claim arising out of the death of a deceased employee has already been agitated and compensation has already been awarded against the employer by the Workmen''s Compensation Court. What has been alleged before the District Forum is that on account of the deficiency in service on the part of the Insurance Company, the complainant was made liable to pay the awarded amount and his liability would have passed on to the Insurance Company had the correct registration number of the vehicle been noted in the insurance policy. It was next argued by the learned Counsel appearing for the respondent that the complainant is at fault having not pointed out the mistake to the Insurance Company earlier which in course of issuing several policies committed a typographical mistake in mentioning the registration number of the vehicle in the policy. The said argument is wholly unacceptable for the simple reason that there is no legal right for the Insurance Company to make mistakes and there is no legal obligation on the part of the insured to point out the mistake and get the same rectified. It may be that the Insurance Company is issuing large number of policies, but it was equally true that for which they are taking the premium an 4 if a policy is required to be issued by an Insurance Company it is required to take adequate care and caution in issuing correct policy.

4. AS already stated, the Workmen''s Compensation Court awarded Rs. 39,044/- as compensation and further awarded a sum of Rs. 10,000/-as penalty against the present complainant. The penalty is not covered by the policy and, therefore,

the respondent should have paid the awarded amount of Rs.39,044/-soon after the mistake was discovered in the policy instead of taking a plea unsustainable in law that there has been no order for payment of the awarded amount by the Insurance Company. We, therefore, direct the Insurance Company to pay the sum of Rs. 39,044/-together with interest at the rate of 12% per annum with effect from 11.3.94 till the date of payment which amount shall be deposited before the District Forum within a month from the date of receipt of this order. The District Forum shall after the aforesaid amount being deposited remit the same to the Commissioner for Workmen''s Compensation and ASsistant Labour Commissioner, Jeypore, Koraput to be paid to the complainant, in Workmen''s Compensation Case No. 6 of 1993. The interest on the awarded amount from the date of accident till 11.3.94 shall be as awarded by the Workmen''s Compensation Court and shall be taken by the complainant i.e. Smt. Padma Harijan, w/o late Bali Harijan in the said case by the employer together with the penalty of Rs. 10.000/-awarded by the said Court, failing which the ASsistant Labour Commissioner shall take appropriate steps for its recovery. A copy of this order be sent to the ASsistant Labour Commissioner, Koraput, Jeypore for information and necessary action. Order pronounced.

