

(2009) 01 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

P.B. Venkata Reddy

APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LIMITED

RESPONDENT

Date of Decision : 27-01-2009

Acts Referred:

Citation : 2009 0 NCDRC 56 : 2009 1 CPJ 299 : 2009 2 UC 1346

Hon'ble Judges : P.D.SHENOY J.

Judgement

1. IN this case, the complainant had taken a loan from the Karnataka Bank, Chitradurga and insured his Tata Indica Car (Taxi) with the Insurance Company for Rs. 3,35,000. After the accident, the vehicle was taken to the Marufi Auto Garage and the amount of loss was assessed to the tune of Rs. 3,51,293 with Rs. 23,550 as labour charges. The complainant alleged that the Insurance Company agreed to pay Rs. 2,24,000 and asked the complainant to hand over the vehicle to their custody along with the RC book, it is contended by the Insurance Company that the car had got a seating capacity of 5 passengers but there were seven persons at the time of the accident. Hence, the complainant was not entitled to any claim.

2. HENCE the complainant filed a complaint before the District Forum seeking Rs. 3,15,000 from the Insurance Company after deducting 5% depreciation along with Rs. 50,000 towards compensation, Rs. 40,000 towards interest, Rs. 10,000 towards the garage charges and Rs. 50,000 towards mental agony. According to the report given by the Surveyor, the repair of the vehicle was done at Rs. 3,75,000 and the total loss was assessed at Rs. 3,42,295. The complainant who had insured the vehicle at Rs. 3,35,000 had claimed Rs. 3,18,550 after calculating 5% depreciation. This was held to be valid by the District Forum and accordingly, directed the Insurance Company to pay Rs. 3,18,750 within one month from the date of the order failing which the opposite party shall pay interest @ 18% per annum until the money is totally paid to the complainant. In addition, the District Forum also ordered Rs. 10,000 for the loss incurred in business and Rs. 10,000 towards mental agony and Rs. 20,000 towards cost.

Aggrieved by the order of the District Forum, the Insurance Company filed an appeal before the State Commission, which reduced the compensation to Rs. 2,75,000 with 12% interest and also directed to return the salvage to the Insurance Company. The State Commission observed that "there were three children as per the post mortem report and these children were in the age group of 2,3 and 7 years. If these three children are excluded, as they do not require a separate seat in the vehicle, the remaining persons are only 1 +4. Taking into consideration that all these persons who were travelling are all dead awarding a sum of Rs. 2,75,000 as compensation which appears to be little more than the compensation offered by the Insurance Company on non -standard basis would meet the ends of justice".

3. DISSATISFIED by the order of the State Commission, the complainant has filed this revision petition before us seeking restoration of the order of the District Forum.

4. WE have heard the Learned Counsel for the Petitioner as well as the Respondent. Three children were travelling as per the post mortem report, if from the number of passengers are excluded children, there is no overloading. Hence, we do not see any merit in the analysis of the State Commission that the Insurance Company can award compensation on non -standard basis. Assuming for a moment, even if there is an extra passenger or two, it cannot be construed as a violation of the terms of policy. Hence, we draw inspiration from the following judgments. The Apex Court in B.V. Nagaraju v. Oriental Insurance Company Ltd., : 1996 (4) SCC 647, has held as follows: It is plain from the terms of the Insurance Policy that the insured vehicle was entitled to carry 6 workmen, excluding the driver. If those 6 workmen when travelling in the vehicle, are assumed not to have increased any risk from the point of view of the Insurance Company on occurring of any incident, how could those added persons be said to have contributed to the causing of it is the poser, keeping apart the load it was carrying. Here, it is nobody's case that the driver of the insured vehicle was responsible for the accident. In fact, it was not disputed that the oncoming vehicle had collided head -on against the insured vehicle, which resulted in the damage. Merely by lifting a person or two -, or even three, by the driver or the cleaner of the vehicle without the knowledge of the owner, cannot be said to be such a fundamental breach that the owner should, in all events, be denied indemnification. The misuse of the vehicle was somewhat irregular bough, but not so fundamental in nature so as to put an end to the contract, unless some factors existed which, by themselves had gone to contribute to the causing of the accident. In the instant case, however, we find no such contributory factor.

The Learned Counsel for the Petitioner drew our attention to Clause 1 Section (i) loss or damage, wherein it is mentioned as follows: Subject to a deduction for depreciation at the rates mentioned below in respect of parts replaced:

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(i)

For all rubber, nylon, plastic parts, tyres and battery 50%

(ii)

For all parts made of glass NIL

(iii)

For all other parts Age of vehicle % of depreciation

Upto 6 months

NIL

5. ACCORDINGLY she submitted that as the vehicle had not completed six months period no depreciation is applicable. As the complainant has already deducted 5% depreciation, his claim should receive positive response. As against this contention, the Learned Counsel for the Insurance Company has pointed out Clause 4, which reads as follows: The complaint may at its own option repair, reinstate or replace the motor vehicle or part thereof and/or its accessories or may pay in cash. The amount of the loss or damage and the liability of the company shall not exceed the actual value of the parts damaged or lost less depreciation plus the reasonable cost of fitting and shall in no case exceed the insured's estimate of the value of the motor vehicle (including accessories thereon) as specified in the Schedule or the Market Value of the Motor Vehicle (including accessories thereof) at the time of the loss or damage whichever is less.

6. IN this case, the insured's estimate value is Rs. 3,35,050 hence, we cannot award compensation above this amount. At the same time, we cannot also award compensation more than what is claimed by the complainant that is Rs. 3,18,000. We have held in many cases that the depreciation for the vehicle to be assessed at 5% per annum for a private vehicle and 10% for the commercial vehicle. In this case, the complainant himself has reduced his claim by 10% from the insured estimated value, hence, we do not see any necessity to reduce the same further. However, as there is no policy for the loss of business or loss of profit this could not have been awarded by the District Forum. The State Commission has already reduced the compensation for the loss due to accident from Rs. 3,18,750 to Rs. 2,75,000. The Insurance Company has not filed any revision petition. However, as the District Forum has awarded abnormal rate of interest @ 18% per annum, despite having granted liberal compensation and cost, we deem it proper that the State Commission has reduced the interest rate to 12%. Accordingly, we modify the State Commission's order and direct that the Insurance Company to pay the insured Rs. 3,18,750 with 12% interest from one month from the date of the order of the District Forum till the money is paid to the complainant along with Rs. 10,000 towards compensation and mental agony and Rs. 20,000 as cost to the Respondent. Complainant shall return the

salvage along with the registration certificate to the Insurance Company Within a week of the receipt of this amount. The revision petition stands disposed of as per the above terms.