(2017) 08 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

Case No : 324 of 2017

PREM SINGH S/O. AMAR SINGH — APPELLANT

Vs

ORIENTAL INSURANCE CO. LTD. & ANR. — RESPONDENT

Date of Decision : 28-08-2017

Acts Referred:

Consumer Protection Act, 1986, Section 21(b) - Jurisdiction of the National Commission

Citation : (2017) 08 NCDRC CK 0035

Hon'ble Judges : Rekha Gupta

Advocate : VIRENDRA SINGH

Judgement

1. The present revision petition has been filed against the judgment dated 03.11.2016 of the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow ("the State Commission) in First Appeal no. 2453 of 2011.

2. The facts of the case as per the petitioner/ complainant are that the petitioner was the registered owner of the vehicle no. UP 14 E 4845. The petitioner purchased the vehicle by taking loan from the District Manager, UP Schedule Caste and Finance and Development Corporation Ltd., Ghaziabad. The said vehicle was insured under the passengers carrying package (Taxi) cover no. 415016 with effect from 24.12.1997 to 23.12.1998 with respondent/ insurance company. The said vehicle met with an accident on 24.01.1998 and the Insurance Company was informed. Expenditure of Rs.2,01,140/- was incurred on the repairing of the said vehicle. Thereafter, insurance claim was presented to the insurance company. A surveyor was appointed by the Insurance Company. The insurance claim was not accepted by the insurance company on the ground that the driver of the vehicle did not have a valid commercial driving licence at the time of accident. A complaint was filed before the District Forum for deficiency in service committed by the Insurance Company.

3. The insurance company contended that after an enquiry was conducted it came to notice that the driver of the vehicle did not have a valid driving licence

at the time of the accident. Therefore, the claim of insurance was rejected for violation of the terms of the insurance. Respondent insurance company had not committed any deficiency in service.

4. The District Consumer Disputes Redressal Forum, Ghaziabad (''the District Forum'') vide its order dated 28.11.2011 while dismissing the complaint observed as under:

" It was vehemently argued on behalf of the complainant that before sanctioning of the loan to him, a selection committee constituted by UP Scheduled Caste Finance and Development Corporation Ltd., Ghaziabad had ensured the fact that the complaint was holding a commercial driving licence. Though the complainant put forward the aforesaid arguments yet he did not submit his driving licence or its photocopy along with his complaint. It cannot be disputed that the insurance company has the right to conduct an enquiry pertaining to the insurance claim claimed regarding an accident. The insurance company has the full right to verify the driving licence of the driver. Complainant has not filed any driving licence with his complaint. The insurance company has filed the photocopy of the driving licence of the complainant along with the written statement according to which the driving licence of the complainant is for driving a light motor vehicle. There is no dispute to the fact that the vehicle in question was Jeep. The respondent insurance company has mentioned sub section 2 (25) of Motor Vehicle Act wherein a vehicle carrying less than six passengers including driver has been defined as Motor Cab. In this way it is confirmed that the vehicle in question comes under the category of Motor Cab. As per definition of Section 2 (35) Motor Cab also comes under the definition of Public Service Vehicle. Insurance Company has submitted the report prepared by its surveyor. According to surveyor the driving licence of the driver bears the no. 2689/ Gzb/88, which has been issued on 24.04.1998 by the RTO Ghaziabad. This licence was valid from 18.05.1995 to 17.05.1998. There was no endorsement of PSV on this licence by the RPO Ghaziabad. It is revealed by the record that the complainant has produced a photocopy of his licence after arguments which bears the endorsement of being transport vehicle with effect from 16.02.2006 to 15.09.2009 but the complainant is not entitled to have benefit of this because it is to be seen in the present matter whether the licence was authorised or not for Public Service Vehicle on the date of accident, i.e., 24.01.1998. As has been mentioned earlier, the complainant has not filed any original or photocopy of his driving licence for the period of accident before the forum and the complainant has also not denied the facts mentioned in the report of the surveyor pertaining to his licence that the licence which has been mentioned in the report of the surveyor this is the same licence which the complainant possessed at the time of accident. As the facts mentioned in the report of the surveyor have not been challenged so there is no valid right not to accept the facts mentioned in the report of the surveyor. There is no dispute regarding the fact that the vehicle was used for commercial purpose. It has been stated by the complainant that if he had not have a commercial driving licence then the loan would not have been sanctioned to him. On the basis of this argument only the Forum cannot come to the conclusion that licence of the driver was commercial or not. No record is filed in the Forum as to the fact that what licence the committee had seen or what conclusion was drawn by the committee. Whereas the insurance company after getting verification of the licence from the RTO Ghaziabad came to know that the licence of the complainant was not commercial. In this condition, the insurance company has not committed any deficiency in service by rejecting the claim. The complainant is not entitled to any relief.

Hence, the complaint is dismissed".

5. Aggrieved by the order of the District Forum, the petitioner filed an appeal before the State Commission. The State Commission while dismissing the appeal observed as under:

"The Appellant/Complainant himself accepts that the insurance policy in question was issued under the passenger carrying package (Taxi) plan. This is undisputed that vehicle in question was a Jeep and it was used as a Taxi. The Appellant himself accepts that this vehicle was permitted for carrying maximum 6+1 (Driver) passengers. Motor cab has been defined under section 2 (25) of Motor Vehicle Act. According to this definition, the motor cab is a vehicle which is used to carry maximum six passengers besides the driver. The definition of "Public Service Vehicle" has been provided under Section 2 (35). In this definition, Public Service Vehicle has been included. Under these circumstances the vehicle in question will be taken as Public Service Vehicle.

The Appellant has not filed any evidence regarding driving license of the vehicle in question. The surveyor appointed by the insurance company during enquiry came to know that the driving license No.P-2689/GZB/88 of the Appellant was issued on 27.04.1987 by the RTO Ghaziabad. This license was valid with effect from 18.05.1995 to 17.05.1998 and that no endorsement of PSV was done on this license by the RTO Ghaziabad.

According to Section 3 of Motor Vehicle Act "3 Necessity for Driving License (1) no person shall drive a motor vehicle in any public place unless he hold an effective driving license issued to him authorizing him to drive the vehicle and no person shall so drive transport vehicle other than a motor cab or motor cycle under sub-section (2) of sec. 75 unless his driving license specifically entitles him so to do.

No evidence pertaining to his license was produced before the Ld. District Forum by the Appellant. It was only submitted that he took part in an interview held by the U.P. Scheduled Caste Finance and Development Corporation for the sanction of loan and his driving license was verified during the interview. His loan was sanctioned on the basis of holding the valid and effective driving license. Under this condition, the Ld. District forum did not hold this contention of the Appellant/ Complainant that actually the vehicle in question was being driven by the person holding a valid driving license.

During the hearing of the appeal, the Appellant has filed the photocopy of the letter dated 26.11.2011 allegedly issued by the Regional Transport Officer, Ghaziabad. Appellant did not make it clear that under what circumstances this evidence was not filed before the District Forum. It is also pertinent to mention that it has been mentioned in this letter that "at present there is provision for issuing license for transport vehicle only under Central Motor Vehicle Act and Rules, therefore, endorsement of P.S.V. is not being done at present". Alleged incident has been stated to occur on 24.01.1998. Therefore, this letter cannot be taken to be useful in relation to the validity of the driving license at the date of alleged incident.

In the light of aforementioned facts, we find no fault with the judgment of the District Forum holding that the vehicle in question was not being driven by the valid license holder. The Ld. Counsel for the Respondent insurance company has relied upon the judgments "Reliance General Insurance Co. Ltd. Vs. Shiv Kumar S, Revision No.2450/2010 delivered on 07.03.2014 by Hon''ble National Commission and National Insurance Co. Ltd. Vs. Sarita Devi and another III (2016, CPJ 329 (NC). We perused these judgments. In these judgments, Hon''ble National Commission has come to the conclusion on the basis of judgments delivered by Hon''ble Supreme Court on this point in other cases, that in case the vehicle at the time of accident is not driven by the valid license holder then it would be taken as violation of the original terms of the insurance. That the Hon''ble National Commission did not hold the deficiency in service as illegal in case the insurance claim was rejected by the Insurance Company on the basis of violation of the terms of the insurance.

In the light of above facts there is no force in the appeal in our view. So the appeal is hereby is dismissed.

The present appeal is dismissed. The judgment and order dated 28.11.2011 passed in complaint no. 307 of 2001 each affirmed."

6. Hence, the present revision petition.

7. I have heard the learned counsel for the Petitioner. Learned counsel for the petitioner Mr Virendra Singh contended that the driver of the vehicle had a valid driving licence to ply commercial vehicle at the time of the accident. He stated that as per the driving licence, the driver was authorised to drive LMV Paid and as per the counsel LMV Paid was a commercial vehicle. He drew my attention to the letter dated 26.11.2011 of the Additional Regional Transport Officer, Ghaziabad/ Assistant Public Information Officer addressed to the petitioner Mr Prem Singh, which reads as under:

"Kindly refer to your letter dated 0 whereby you have sought information under RTI. Information is hereby given point wise.

1. Maxi Cab permit is issued for the vehicles for 8 to 12 seated vehicles;

2. Motor Cab permit is issued for 6 + 1 passenger vehicle;

3. At present there is provision of issuing Transport vehicle Licence under Central Motor Vehicle Act and Rules, now endorsement of PSV is not being done;

4. LMV Paid driving licence is valid for 6 + 1 passenger Jeep Taxi.

Deputy Transport Commissioner, Meerut Region, Meerut is the Appellate Officer."

8. He also drew my attention to the reply received by him under the RTI dated 23.05.2012 which reads as under:

9. I have carefully gone through the file. Before discussing the case it would be useful to look at the meaning of some of the relevant terms used in the Motor Vehicle Act, 1988:

21. "Light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road roller the unladden weight of any of which, does not exceed (7500) kilograms;

25. "Motorcab" means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward;

35. "Public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and included a maxicab, motorcab, contract carriage, and stage carriage;

47. "Transport vehicle" means a public service vehicle, a goods carriage, and educational institution bus or a private service vehicle".

10. As per the letter of the Additional Regional Transport Officer, Ghaziabad, LMV Paid is valid for 6 + 1 passenger Jeep/ Taxi. Motor Cab permits 6 +1 passengers vehicle. On seeing the original driving licence it is not known when the word ''paid'' was added after LMV. The driving licence of Mr Prem Singh which was issued on 27.04.1988 was only endorsed for heavy transport vehicle on 24.03.2000 and was valid for transport vehicle only, with effect from 16.02.2006. The driving licence was not filed in the District Forum. Further, information given in the letter of the Additional Regional Transport Officer, Ghaziabad/ Assistant Public Information Officer, Ghaziabad dated 23.05.2012 pertains to driving licence no. P 2689/ Gzb/ 88 in the name of Shri Prem Singh son of Shri Amar Singh, but, the driving licence produced in the court today is numbered P 1345 IT/GZB/ 99 in the name of Prem Singh son of Amar Singh.

11. In view of the above discussion, it would appear from the driving licence no. P 1345 IT/Gzb/ 99 issued on 27.04.1988 that on the date of the accident i.e., 24.01.1998 the driver Prem Singh did not have the licence or endorsement to either drive a public service vehicle or a transport vehicle. Hence, the respondent insurance company had committed no deficiency in service in repudiating the claim.

12. In view of the discussion above, I find no jurisdictional error or material irregularity in the impugned order which may call for interference in exercise of

powers under section 21 (b) of the Consumer Protection Act, 1986. Revision petition is, therefore, dismissed with no order as to costs.

