(2004) 06 NCDRC CK 0097

In the National Consumer Disputes Redressal Commission

RAJUL PARAKH APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 08-06-2004

Acts Referred:

Citation : 2004 3 CPJ 254 : 2005 1 CLT 9

Hon'ble Judges : V.K.Agrawal , Veena Misra , R.S.Awasthis J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal, under Section 15 of the Consumer Protection Act, 1986, is directed against the order dated 1st May, 2002 in Complaint No. 187/2001 by the District Consumer Disputes Redressal Forum, Durg (herein-after called the ''Distt. Forum'' for short), directing the respondent/insurer to pay a sum of Rs. 20,000/- to the complainant/appellant.

2. RELEVANT undisputed facts stated briefly are, that the vehicle Maruti van No. MP-24G 6230 was comprehensively insured with the respondent/insurer for the period from 3.3.2000 to 2.3.2001. Extra premium of Rs. 50/- per passenger was charged for 8 passengers totalling Rs. 400/- under the policy and thus risk of the unnamed passengers in the car to the extent of Rs. 1,00,000/- per passenger was covered under the said policy. It is also not in dispute that on 20.10.2000, the deceased Praveen Parakh was driving the said vehicle and travelling therein along with his family members, including his wife, the complainant/appellant. The said vehicle met with an accident on Bhilai-Durg road as it collided with the bus coming from the opposite direction. As a result of the accident the deceased Praveen Parakh sustained injuries and expired. The complainant being wife of deceased laid claim with the respondent/insurer for payment of insurance amount of Rs. 1,00,000/-. However, the stand taken by the respondent/insurer was that as the deceased was driving the vehicle, only sum of Rs. 20,000/- was payable to the complainant/appellant under the terms of policy The Distt. Forum in the impugned order after considering the terms of policy held that since the deceased Praveen Parakh was driving the vehicle, the complainant was only

entitled to Rs. 20,000/-. Hence, the respondent/insurer was directed to pay the above amount to the complainant/appellant. It has been urged on behalf of the complainant/appellant in this appeal that since extra premium was charged by the insured, covering the risk of unnamed passengers travelling in the vehicle, and as the husband of the deceased was also a passenger travelling in the said car, the insured was liable to pay the sum of Rs. 1,00,000/- under the terms of the policy. As against the above, the contention of the learned Counsel for the respondent/insurer was that since the deceased was driving the vehicle, he would be covered by I.M.T.-71 of the policy.

In view of the rival contentions as above, the main question that arises for consideration is as to whether the complainant/appellant is entitled to receive a sum of Rs. 1,00,000/- under I.M.T.-5 or was only entitled to the compensation of Rs. 20,000/- as provided under I.M.T-71. To appreciate the controversy as above, it would be useful to reproduce I.M.T.-5 as well as I.M.T.-71 as forming part of the policy. I.M.T-5 reads: "Personal Accident Cover to unnamed passengers other than the insured and his paid driver or cleaner. In consideration of the payment of an additional premium it is hereby understood and agreed that the company undertakes to pay compensation and the scale provided below for bodily injury as hereinafter defined sustained by any passenger other than the insured and/or his paid driver attendant or cleaner and/or a person in the employ of the insured and/or his paid driver attendant or cleaner and/or a person in the employ of the insured coming within the scope of the Workmen''s Compensation Act, 1923 and subsequent amendments of the said Act and engaged in and upon the service of the insured at the time such injury is sustained whilst mounting into or dismounting from or travelling in the motor car and caused by violent accidental external and visible means which independently of any other cause shall within three calendar months of the occurrence of such injury result in". Scale of Computation (a) Death only 100%

I.M.T.-71 reds: PERSONAL ACCIDENT COVER FOR DRIVER (OTHER THAN PAID DRIVER): It is hereby understood and agreed that the company undertakes to pay compensation and the scale provided for bodily injury/death as hereinafter defined sustained by driver (other than paid driver) of the vehicle in direct connection with the use of Motor Vehicles or whilst mounting or dismounting or driving the vehicles and caused by violent accidental external and visible means which independently of any other cause shall within 12 calendar months of the occurrence of such injury result in". Scale of compensation Amount (a) Death only Rs. 20,000/-

3. IT would appear from the above, that I.M.T.-71 provides personal accident cover for driver other than paid driver, to the extent of Rs. 20,000/- in case of his death. Under I.M.T.-5 personal accident cover to unnamed passengers other than the insured and his paid driver or cleaner, etc., in case of death is provided to the extent of 100%. IT would thus appear that both the above clauses of policy viz., I.M.T.- 5 and I.M.T.-71 exclude the risk of a paid driver. As already mentioned

under I.M.T.-71 the risk of a driver other than the paid driver is covered without payment of any additional premium. Under I.M.T.-5, risk of passengers-excluding that of the insured, his paid driver, cleaner, etc., is covered on payment of additional premium. When the said clause I.M.T.-5 is closely read, it would clearly indicate that on payment of additional premium, the risk of passengers-excluding that of the insured, his paid driver, cleaner or attendant, etc.- is covered. In other words under I.M.T.-71, risk of a driver other than paid driver is covered without payment of any extra premium; while under I.M.T.-5 on payment of extra-premium risk of passengers other than insured and his paid driver, etc. is covered. IT is thus clear that risk of any passenger except the insured or his paid driver, etc. is covered under I.M.T.-5. Accordingly under I.M.T.-5, the risk of a passenger would be covered, notwithstanding the fact that he may also be driving the vehicle. Risk of such a passenger, who was also incidentally driving the vehicle does not stand excluded in I.M.T.-5, in view of its clear and unambiguous language, which covers the risk of passengers and only excluding that of the insured and his paid driver, etc. Had it been intended to exclude the risk of unpaid driver also, it would have been specifically so mentioned in the said clause or instead of the words ''paid driver'' only the word driver would have been used therein. Thus, reading and interpreting the two clauses of the policy namely I.M.T.-5 and I.M.T.-71, it would appear that both the said clauses exclude the risk of a paid driver. However, I.M.T.-71 does not require payment of any extra premium and provides limited cover to the unpaid driver to the extent of Rs. 20,000/- in the case of death; while I.M.T.-5, on payment of extra premium, risk of passengers, if they are not the insured or paid driver of the insured. etc., is covered to the extent of 100%, depending upon the amount of extra-premium paid to cover such risk.

4. THEREFORE, reading harmoniously, the aforesaid two clauses of the policy viz., I.M.T.-5 and I.M.T.-71, it is abundantly clear that when extra premium is paid, the risk of a passenger who may also be driving the vehicle would be covered by I.M.T.-5. In view of the above, contention of the learned Counsel for the respondent/insurer that, since the deceased Praveen Parakh, was driving the vehicle, compensation on account of his death would be governed by and payable under I.M.T.-71 cannot be accepted. It is, therefore, clear that the claim of the complainant, on account of death of her husband Praveen Parakh in road accident, would be covered by I.M.T.-5, notwithstanding the fact that he was driving the vehicle. It is not in dispute that the owner had paid extra premium @ Rs. 50.00 per passenger totalling Rs. 400/- covering the risk of 8 passengers and that as per tariff of the respondent/insurer coverage of risk in case of death was to the extent of Rs. 1 lac per passenger. The said amount would, therefore, be payable to the complainant/appellant. Accordingly the appeal is allowed. The impugned order of the Distt. Forum stands modified. Instead of Rs. 20,000/- awarded by the Distt. Forum as compensation to the complainant/appellant, Rs. 1,00,000/- (one lac) only is awarded as compensation to her, with interest @ 10% per annum which will be payable from the date of complaint. The

respondent/insurer shall also pay to the complainant/appellant cost of this appeal which is quantified as Rs. 1,000/- (one thousand) only. Appeal allowed.

