(2004) 06 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

RAMKUMAR RAJORIYA APPELLANT

Vs

SENIOR DIVISIONAL MANAGER, NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 05-06-2004

Acts Referred:

Citation : 2004 3 CLT 673 : 2004 3 CPJ 483

Hon'ble Judges : N.K.Jain , B.L.Khare , Pramila S.Kumar J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is by the complainant whose complaint against respondent, the New India Assurance Company Ltd., has been dismissed by District Consumer Disputes Redressal Forum, Sagar vide order dated 17.11.2003 passed in Case No. 49/2000.

2. APPELLANT is the owner of truck No. M.P. 15 G/0646 which was insured with the respondent-Insurance Company from 5.6.1998 to 4.6.1999 for Rs. 6,50,000/-. This truck met with an accident on 26.10.1998 and suffered extensive damage. The appellant preferred claim for Rs. 2,45,488/- with the respondent-insurer. The respondent got the matter investigated by its investigator and also the loss assessed by its Surveyor. While the investigator confirmed the factum of accident and the assessor also assessed the net loss at Rs. 1,49,520/-, the respondent-Insurance Company however repudiated the claim on the ground that driver Mahesh Prasad who was driving the truck at the relevant time did not hold any valid licence. Licence produced by the driver purported to have been issued by Licensing Authority (for short "LA"), Jhansi, but on inquiry it was found to be fake. The Forum below also after taking evidence of the parties came to the conclusion that the licence though endorsed subsequently by the L.A., Kota (Rajasthan) authorizing driver Mahesh Prasad to drive a heavy motor vehicle, was nevertheless a fake licence at its very inception and as such the repudiation of appellant''s claim by the respondent was justified. With this finding the complaint of the appellant was dismissed. This is how the

complainant is before this Commission in appeal. We have heard Mr. Sanjeev Jain, learned Counsel for appellant and Mr. V.K. Saxena, learned Counsel for respondents and also gone through the evidentiary material available on record.

Two things clearly emerge from the evidence on record and are now no more in dispute : one, that the driving licence of said driver Mahesh Prasad purporting to have been issued originally by the LA, Jhansi (U.P.) authorizing him to drive motor cycle with gear was fake, and two, that on this very licence, the LA, Kota (Rajasthan) accorded authority to said Mahesh Prasad to drive heavy motor vehicle w.e.f. 17.10.1988 to 16.10.1991 and then renewed by the same authority from 29.1.1992 to 28.1.1995, 27.1.1995 to 28.1.1998, 15.10.1998 to 14.10.2001 and 13.10.2001 to 29.10.2004. This authorization made by LA, Kota on 17.10.1988 and renewed further from time-to-time, on verification by the Forum below was found to be genuine. Both these aspects of the case are no more in dispute as the Forum below itself has verified both these facts from the LA, Jhansi and LA, Kota.

3. QUESTION thus arises whether in the light of the aforesaid factual matrix, the repudiation of the claim of the insured-complainant by the respondent-insurer was justified. Mr. Sanjeev Jain, learned Counsel for appellant has contended that notwithstanding that the licence granted by LA, Jhansi was found to be fake, the fact remains that said driver Mahesh Prasad had a valid licence from LA, Kota to drive the vehicle in question on the relevant date and in any case the complainant insured while engaging the said driver had no reason whatsoever to doubt the genuineness of his licence particularly the authorization and subsequent renewal made by LA, Kota which on verification was found to be genuine. He has placed reliance on a recent Supreme Court decision in the case of National Insurance Co. Ltd. v. Swaran Singh, I (2004) SLT 345=I (2004) ACC 1 (SC). As against it Mr. V.K. Saxena, learned Counsel for the respondents strongly defended the impugned order and contended that since the licence was fake in its very inception, it did not acquire any value on its subsequent endorsement or renewal. Any such endorsement/renewal if at all made could not transform this fake licence as genuine, submitted the Counsel. He has placed reliance on a decision of the Supreme Court in the case of Kamla, I (2002) ACC 346 (SC)=III (2001) SLT 150=2001 AIR SC 1340, and the decision of this Commission in Appeal No. 408/2003 (New India Assurance Co. Ltd. v. Satish Prasad) decided on 5.4.2004.

4. IN the case of Kamla (supra), the Supreme Court held: "Renewal of a document which purports to be a driving licence, will robe even a forged document with validity on account of Section 15 of the Act, propounds a very dangerous proposition. If that proposition is allowed to stand as a legal principle, it may, no doubt, thrill counterfeiters the world over as they would be encouraged to manufacture fake documents in a legion. What was originally a forgery would remain null and void forever and it would not acquire legal validity at any time by whatever process of sanctification subsequently done on it.

Forgery is antithesis to legality and law cannot afford to validate a forgery."

It was further held: "The insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence."

In a subsequent decision in United India Insurance Co. Ltd. v. Lehru & Ors., II (2003) ACC 611 (SC)=I (2003) SLT 516=(2003) 3 SCC 338, the Apex Court while affirmed the decision in the case of Kamla (supra) further held: "Therefore, it has to be held that in order to avoid liability it is not sufficient to show that a person driving at the time of accident was not duly licensed. The Insurance Company must establish that the breach was on the part of the insured."

It was further observed: "When an owner hires a driver he will, therefore, have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a Competent Authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. The Insurance Company cannot expect owners to make inquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not." (Emphasis Supplied)

In the recent decision in Swaran Singh (supra) the legal position has been made all the more luculent in following words: "The breach of policy condition e.g., disqualification of driver on invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time." (Emphasis supplied)

The Apex Court in order to resolve the purported conflict in the judgments of Kamla (supra) and Lehru (supra) observed: "We may wish to point out that the defence to the effect that the licence held by the person driving the vehicle was a fake one, would be available to the Insurance Companies, but whether despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in each case. The Court, however, in Lehru (supra), must not read that an owner of a vehicle can under no circumstances has any duty to make any inquiry in this respect. The same, however, would again be a question which would arise for consideration in each individual case."

5. IN the case in hand the licence of Mahesh Prasad contained clear authorization made by LA, Kota authorizing him to drive heavy motor vehicle. There were further endorsements of renewal from time-to-time. As already stated above all these endorsements were genuine. Under the circumstances, the complainant insured had no reason to suspect that the earlier authorization made by LA, Jhansi was fake particularly when the said authorization was only for driving a motor cycle with gear. The complainant insured under the circumstances was not expected to make inquiry from the RTO, Jhansi as to whether the driving licence issued by that authority is valid or not. IN fact it was a case of grant of altogether a new authority by LA, Kota to the said driver to drive a heavy motor vehicle. It was not a case of mere renewal of a fake licence. The licence granted by LA, Jhansi was only for motor cycle while the authority accorded by the LA, Kota was for driving a heavy motor vehicle. Needless to say that the LA, Kota must have satisfied itself as to competence of the said driver to drive such a vehicle before according him the said authority. The similar procedure must have been applied while granting renewal from time-to-time. There was thus no occasion for complainant-insured to doubt the genuineness of the licence of the said driver particularly the one granted by LA, Kota.

6. WE thus hold that the repudiation of claim of the appellant by the respondent-Insurance Company was not justified. As regards amount of compensation, the Surveyor appointed by the respondent-insurer had assessed the net loss at Rs. 1,49,520/-. The report submitted by the Surveyor is based on necessary data and we see absolutely no reason to take different view of the matter. The appellant-complainant is entitled to the said amount from the respondent-Insurance Company.

Accordingly, we allow the appeal, set aside the impugned order and direct the respondent-insurer to pay to the complainant Rs. 1,49,520/-. The amount shall also carry interest @ 6% p.a. from the date of filing of the complaint (6.3.2000) till payment. The respondent shall also bear appellant''s costs of both the Fora and the same is quantified at Rs. 2,000/-. Appeal allowed.

