**(1990) 09 NCDRC CK 0015**

**In the National Consumer Disputes Redressal Commission**

RAWAT ENTERPRISES P. LTD. APPELLANT

Vs

National Insurance Company Limited RESPONDENT

**Date of Decision :** 14-09-1990

**Acts Referred:**

**Citation :** 1991 1 CPJ 240

**Hon'ble Judges :** S.K.Mal Lodha , Damodar Thanvi , Saria Khan J.

**Final Decision :** Complaint dismissed

## Judgement

1. M/s. Rawat Enterprises (P.) Ltd. through its Director Ravi Rawat has filed this complaint under Sec. 17(a)(i) of the Consumer Protection Act, 1986 (''the Act'' herein) against the National Insurance Company (insurance company) on 5.9.89 claiming Rs. 2,00,093.59 and interest @18% p. a. from the date of the complaint until realisation of the amount and costs. The complainant is a registered company under the Companies Act, 1956.

2. THE complainant-company acts as agent of M/s. Hindustan Motors. Ltd. who are manufacturers of Ambassador Cars. THE complainant purchased a new Ambassador Car on 16.6.88 bearing engine No. 6 Ed-026909, Chasis No. 111-567281 vide invoice No. 05/170/ 88. According to the complainant, his car was insured with the opposite party vide cover note No. 6448823 dated 16.6.88 which was valid upto 29.6.88 THE car was purchased under letter of credit from Uco Bank, M. I. Road, Jaipur. As such all the documents including invoice/ challan/cover note and temporary registration certificate were handed over to Uco. Bank, Jaipur for collection of payment. THE car met with an accident on 19.6.88 near Kachhawa district Mirzapur (U.P.) THE accident was as a result of collision of truck No. WGK-9749. THE car was completely damaged and its driver Chhotelal received serious injuries. THE information of the accident was given to opposite party and the damaged car was brought to Jaipur by a truck on the instructions of the opposite party. THE opposite party appointed surveyor who conducted investigation. THE complainant informed the opposite party that the car has been completely damaged so it should pay its total cost. THE office of the

opposite party at Jaipur did not take any action. THE complainant wrote a letter on 12.10.88 to the Asstt. General Manager of the opposite party at Delhi for appointing a surveyor at an early date to settle the claim of the complainant. THEreupon, Shri V.K. Adlakha was appointed as surveyor who inspected the car and the complainant made available all the necessary papers to them. THE appointed surveyor assured the complainant, that his claim will be settled at an early date. THE grievance of the complainant is that despite several approaches and reminders, nothing was done and as such he filed the complaint claiming Rs. 2,00,093.59. THE details are as under: 1. Cost of Car 1,18,733.59 2. Expenses incurred in bringing car from the site of accident to Jaipur by truck 5,320.00 3. Interests on the amount of interest of the price of the car expenses @18% p.a from 1.7.82 to 1.9.89 26,040.00 4. Business loss for not setting the claim in time and loss suffered on account of the profit of the compensation amount 50,000.00 2,00,093.59 With the complaint, photostat copies of the documents were filed. The opposite party resisted the complaint on various grounds. It was pleaded that the cars which were coming to Jaipur vide invoice No. 5/170/88 dated 16.3.88. The insurance was obtained on 16.6.88 through the agent of the opposite party Shri Ravi Rawat, who as Director of the complainant company has filed this complaint. Number of cover note is 648823. According to the opposite party, the insurance was to cover risk in transit of the vehicle coming from Calcutta to Jaipur. It is said that when two vehicles were coming from Calcutta to Jaipur by road the vehicle covered by cover note No. 648823 met with an accident near Kachha village district Mirzapur (U.P.)The vehicle was completely damaged. According to the opposite party, the manufacturer (company) vide invoice No. 06/170/88 on the basis of the policy cover for which a premium of Rs. 30/- was charged got the car registered by the registering authority of Hooghly and have a temporary registration WKG/9749. The gate pass of the vehicle was issued by the manufacturer (company) on 15.6.88 at 3.17 p. m. The cover note issued was of the vehicle ambassador diesel car Engine No. 6 ED-026909 and chasis No. TTT-567281 and the cover note of the vehicle was No. 922 whose entry is in challan no. 24307. On the basis of these premises on behalf of the opposite party it was stated in the version of the case that the insurance of the vehicle on 16.6.88 was after accident with a view to defraud the opposite party. It was further pleaded in the version of the case that Shri Ravi Rawat agent of the company had cover notes with him and he has used wrongfully the cover note for fastening the liability on the insurance company. As to why the opposite party is not bound by this cover note allegedly to have been issued by Shri Ravi Rawat on 16.6.88, various grounds have been stated in para 3 of the version of the case, which was propose to detail herein under. It was submitted that information about the accident was not given prior to 3.8.88. No information was sent to the place, when and where the accident had taken place and under whose authority the vehicle was removed from the place of accident. It was submitted that according to the settled practice relating to the vehicle, the information is to be sent at the nearest branch office or Divisional Office soon after the accident and spot survey is to be done. The claim form of this vehicle was submitted on 28.11.88. After filing it, surveyor Shri V.K. Adalkha was appointed who submitted a confidential report. It was denied that any assurance was given by the surveyor regarding payment of the amount. The main defence as appears from the version of the case is that cover note No. 648823 dated 16.6.88 which was valid upto 29.6.88 was issued after accident to cover the transit loss by agent Shri Ravi Rawat in favour of the complainant. On behalf of the opposite party investigation report with annexures, claim form, copy of letter dated 3.12.88, photostat copy of the cover note 648823 and invoice dated 16.6.88 were submitted. Thereafter, photostat copies of more documents were filed. The complainant has filed affidavits of CW 1 Ravi Rawat who was cross-examined and CW 2 Shri Jawahar Lal Gandhi was examined whereas opposite party has examined OPW-1 Shri J.S. Dhillo and OPW-2 Shri N.K. Sharma Development Officer. Both the learned Counsel appearing for the parties submitted written arguments after exchanging their copies with each other. They did not make any oral submissions.

The first question that arises for determination in this complaint is whether cover note no. 648823 dated 16.6.88 was issued after the accident between 19.6.88 and 20.6.88 or it was issued on 16.6.88 the date mentioned in the cover note. If it is found that the cover note was issued after the accident, no liability for the payment of the sum assured can be fastened on the opposite party. If the cover note was issued on 16.6.88, the second question which will arise is whether it covered transit risk, third party risk or it was comprehensive for, the cover note merely mentions transit risk. We propose to examine the first question first. - Both the parties attempted to prove the documents filed by them. It will be useful at this stage to notice some salient features of the cover note No. 648823 (Ex. C. 2). Effective date of commencement of the insurance for the purpose of the Insurance Act has been mentioned as 16.6.88 and date of expiry of insurance is 29.6.88. Under the column relating to the special condition words ''transit risk'' have been mentioned. So far as the payment of the premium for insurance is concerned. It is mentioned ''as per tariff''. In the cover note specific amount of premium has not been mentioned. C.W. 1 Ravi Rawat who has issued the cover note has proved his signatures C to D on it. It may be recalled that C.W. 1 Ravi Rawat is the Director of the complainant. He has dual capacity (1) as agent of the opposite party he has issued the cover note, and (2) Director of the complainant for filing the complaint. As per the statement of C.W. 1 Ravi Rawat, he possessed cover notes in a book and he has been issuing cover notes from time to time. The last cover note issued is the cover note in question and prior to that before about six months cover note No. 648822 dated 24.11.87 was issued by Shri Dayashankar. The cover notes of the book possessed by Ravi Rawat as per the statement of cover notes Ann. A were issued by the complainant. They range from 18.5.87 to 24.11.87 beside the cover note in question which is alleged to have been issued on 16.6.87. All the previous cover notes were issued in short intervals whereas the cover note in question was issued as stated above after six months. C.W. 1 Ravi Rawat in the cross-examination has deposed that the additional copies of the cover note were delivered to the Development Officer OPW2 Shri N.K. Sharma, the very day who in his statement has denied this and controverted him. With regard to the nature of the insurance, Ravi Rawat was cross examined. He has stated that he meant by transit risk'' comprehensive risk. He has categorically stated that whenever he does the insurance of vehicle as third party transit risk'' he always write specifically only ''third party''. He was confronted with the photostat copies. of the cover notes marked Exs NC 1, NC 2, NC 5, NC 7 to 9 in which the words mentioned arc ''comprehensive transit''. He was also shown the cover notes Ex. NC 3, NC 4, and NC 6. In respect of which he deposed that they were for comprehensive transit risk. With respect to Ex. NC 3, after seeing, he deposed that it was for ''transit risk'' but it has not been specifically mentioned therein. He opined that Ex. NC 3 was for comprehensive risk. Ex. NC 3 does not contain the amount of premium and the words as per tariff were written. On being asked with respect to Ex. NC 3 and Ex. NC 2 he said that he cannot say as to what amounts were adjusted for the purpose of premium. He was said that he does not remember that what premium for third party transit risk for the cover note Ex. C 2 was adjusted. It has come on record that if any cover note is issued, it should be deposited within 24 hours to the nearest branch office. The accident has taken place between the night of 19.6.88 and 20.6.88 at 11 p.m. Information about the accident was conveyed to the branch office on 3.8.88 vide letter No. RE/794/88- 89 mentioning therein that Shri N.K. Sharma, Development Officer had already been informed on 22.6.88 and also the addressee of the letter on the next working day that the car had met with an accident at Kachhwa. It is submitted on behalf of the opposite party that there is no remark of Branch officer/Development officer available on record that insured had already informed on 25.6.88. It is to be noticed that the cover note does not specify whether the same is covered for ''comprehensive insurance'' third party risk. In the cover note transit risk is written and for premium as per tariff. The explanation given by CW 1 Ravi Rawat to construe the transit risk only as comprehensively insured is not convincing, for, so far as the payment of amount is concerned, it is written ''as per tariff'' only. Had the amount been mentioned, it would have been easy to construe the words meaning it was comprehensive insurance. Another significant fact which is to be noticed is that from 23.6.86 to 16.6.88 the complainant had purchased 151 cars/ vehicle. Out of 151 vehicles, only 31 vehicles were insured by the opposite party. The cover note was issued at Jaipur on 16.6.88 and invoice was also issued on 16.6.88. It is not understandable as to how the Registering Authority. Hooghly issued temporary registration certificate WGK 9749 on 16.6.88. Reference may be made to Temporary Registration Certificate No. WGK 9788 dated 16.6.88. The complainant had submitted to Hindustan Motors Ltd., Calcutta a letter dated 16.11.88 in which Hindustan Motors had confirmed "We have sold to you two ambassador diesel cars vide our Bill No. 05/17/88 of 16.6.88 for Rs. 2,21,401/-". United Commercial Bank, Jaipur''s letter dated 15.11.88 addressed to M/s. Rawat Enterprises reveal that the documents were accepted for imports of car from M/ s. Hindustan Motor on 18.6.88 for Rs. 2,21,401/- and they have received insurance cover note No. 648823 dated 16.6.88 of National Insurance Co. Ltd. with the documents negotiations. ''Documents were handed over to the party along with the insurance cover when the bills were paid. Mr. J.S. Dhillo, who is the Assistant Administrative- Officer of opposite party has proved the report Ex. OP 1 and that report is accompanied by documents. We have carefully examined it. On the basis of the grounds mentioned in the report with which we agree we have come to the conclusion that the cover note in question was issued after accident. Mr. J.S. Dhillo has given reasons for this in his deposition and he has withstood the cross-examination. It is correct that a sum of Rs. 2,572/- was with the opposite party in the account of M/s. Rawat Enterprises but what amount was debited as premium money, no entry was made in it. CW 1 Ravi Rawat has admitted in his cross examination that he has not made any entry in the insurance account regarding the amount of the cover note Ex. C 2 CW 2 Jawahar Lal Gandhi who has been working as Manager, United Commercial Bank since June 1986 examined as a witness on behalf of the complainant. He has, of course, stated that on the basis of letters of credit vehicles are insured comprehensively in the transit and not on third party risk. The documents Ex. C1 to C4 are said to have been received at Jaipur but no dates is written on them and the witness CW 2 has deposed that they have written A.B.P. No. 16/88. He has further admitted that according to the rules of the Bank comprehensive transit insurance has to be done. The statement of OPW 2 N. K. Sharma is important, for according to him, the agent has to deposit the carbon copy of the cover note along with the premium in the Branch office. He has also deposed that when the copy of the cover note is received, then the amount mentioned as premium in the cover note is debited in the PD account of the complainant and their liability commences after under writing Ex. C 2 covers note was not under written in the account of the company. The reason given by him is that he received the information about the cover note after the accident and so it was not under written and further that no amount of premium is mentioned in it. He has denied the copy of the cover note Ex. C 2 was given to him for depositing it. On the basis of the statement of CW 1 and CW 2, PW 1 and OPW 2 and the documents Exs C 1 to C 4 and Exs NC 1 to NC 9, it was stated that the cover note in question was issued before the accident on 16.6.88 on the contrary on the basis of the material referred to hereinabove, the learned Counsel for the opposite party, in his written arguments stated that it was issued by Shri Ravi Rawat for his own benefit as he is the Director of the complainant company after the accident. The following facts emerge from the cover note; (1) Amount of premium has not been mentioned; (2) It is not clear from the cover note whether the vehicle was comprehensively issued or it was issued for third party risk. It has to be remembered that the opposite party is liable if it is comprehensively insured; and (3) that the Agent (Director of the complainant company) did not state about adjustment of the premium. The vehicle was not got inspected at the opposite party''s Mirzapur Branch which was its-nearest branch for as per the policy conditions the vehicle ought to have been got inspected by the nearest branch to confirm the accident and the loss. No cover note was issued by the agent preceding the cover note in question. The copy of the cover note was deposited on 3.8.88, though it is alleged to have been issued on 16.6.88. For all these reasons, we are of the opinion that cover not Ex. C 2 on the basis of which the liability is sought to fastened on the opposite party was note issued on 16.6.88 the date which it bears but it was issued subsequently after the accident. When the cover note was issued after the accident, the opposite party is not liable to pay the sum assured to the complaint.

3. THE cover note No. 648823 dated 16.6.88 is not of the date on which it was issued but Shri Ravi Rawat as agent of the opposite party issued it for the benefit of the complaint- company after the accident had taken place on the night between 19.6.88 and 20.6.88 at 11 p.m. and as such it is not a case of mere deficiency in service by the opposite party and as such no relief can be granted to the complaint company. In view of this conclusion it is not necessary to examine the question of compensation to be awarded to the complainant. The complaint is accordingly, dismissed. There will be not order as to costs. Complaint dismissed.

 