

(2011) 05 NCDRC CK 0060

In the National Consumer Disputes Redressal Commission

Reliance General Insurance Co. Ltd.

APPELLANT

Vs

Dharwin K.David

RESPONDENT

Date of Decision : 11-05-2011

Acts Referred:

Citation : 2011 0 NCDRC 355 : 2011 2 CPJ 266 : 2011 2 UC 1204

Hon'ble Judges : R.C.Jain , S.K.Naik J.

Final Decision : Revision petition dismiss

Judgement

1. PETITIONER-Reliance General Insurance Co. Ltd. by this revision petition seek to challenge the order dated 26th of November, 2010 of the Kerala State Consumer Disputes Redressal Commission (for short the State Commission), who have set aside the order dated 24th of February, 2010 of the District Consumer Disputes Redressal Forum, Ernakulam (for short the District Forum) dismissing the complaint, and have directed the petitioner-Insurance Company to reimburse the amount of Rs.1,39,000/- as assessed by the surveyor with interest @ 9% per annum from the date of the complaint and in addition pay a cost of Rs.5000/- within two months from the date of the order.

2. BRIEF facts of the case are that the insured Innova car registered as tourist taxi during the currency of its insurance met with an accident on 30th of June, 2008. The vehicle at the time of the accident was carrying no passenger and was being driven by the complainant alone. The damage to the vehicle after the accident, though was assessed at Rs.1,39,000/-, the claim was repudiated on the ground that the vehicle was being plied without a valid permit. In the complaint that was filed before the District Forum by the respondent/complainant, his contention that no permit was necessary, at the time of the accident as he was returning from the workshop, did not find favour with the District Forum, who dismissed the complaint. The respondent/complainant thereafter filed an appeal before the State Commission and vide the order impugned the State Commission has accepted the plea of the complainant that in terms of Section 66 (3) (p) of the Motor Vehicle Act, 1988, a transport vehicle can be plied without a permit for

proceeding empty to any place for the purpose of repair. Accordingly, the State Commission has set aside the order of the District Forum, resulting in the order now being impugned in this revision petition. We have heard Shri Sameer Nandwani, learned counsel for the petitioner. Main thrust of his argument is that it was incumbent upon the complainant to have a permit to drive a tourist taxi on the public road and in this case the State Commission has failed to appreciate that he did not possess any permit when the accident occurred. We are afraid, the same argument had been advanced before the State Commission as well, who has after discussing the evidence of the parties before the District Forum has clearly held that the petitioner has not challenged or rebutted the affidavit of the complainant that at the time of the accident he was returning from the workshop after getting the defective lights etc. repaired. Shri Nandwani agrees that under Section 66(3)(p) of the Motor Vehicle Act use of a vehicle without permit as mandated under Section 66(1) will not apply in case the empty vehicle plies on the road for the purpose of repair. He has not been able to show us any evidence contrary to the one filed by the complainant. Once the complainant has filed his affidavit that he was returning from the workshop after repairs, the burden to prove otherwise shifted to the petitioner/opposite party. If the complainant had indeed not gone to the workshop for repair, they could have obtained the records of the workshop to prove their case. In the absence of any records, we do not find that the State Commission has committed any illegality. We also do not find any material irregularity or jurisdictional error and, therefore, dismiss the revision petition in limine.

The petitioner is directed to comply with the order of the State Commission within a period of one month from the date of passing of the order, failing which the complainant will be entitled to interest @ 12% per annum from the date of the order till its payment.