(2017) 05 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

Case No : 1407 of 2014

RELIANCE GENERAL INSURANCE CO. LTD. — APPELLANT

Vs

JIVABHAI MALDEBHAI GODHANIYA — RESPONDENT

Date of Decision : 09-05-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 2(21), Section 2(21), Section 2(21), Section 2(21) - Definitions - Definitions
<a href=3999>Consumer Protection Act

Citation : 2017 2 CPR 581

Hon'ble Judges : B.C. Gupta, S.M. Kantikar

Advocate : Suman Bagga, Manisha T. Karia, Nidhi Nagpal

Final Decision : Petition Allowed

Judgement

1. This revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986, against the impugned order dated 30.09.2013, passed by the Gujarat State Consumer Disputes Redressal Commission, (hereinafter referred to as "the State Commission") in Appeal No. 1477/2010, Reliance General Insurance Co. Ltd. vs. Jivabhai Maldebhai Godhaniya, vide which, while dismissing the appeal, the order dated 05.10.2010 passed by the District Consumer Disputes Redressal Forum, Jamnagar in Consumer Complaint No. 3/2009, filed by the present respondent, allowing the said complaint, was upheld.

2. Briefly stated, the facts of the case are that the complainant/respondent Jivabhai Maldebhai Godhaniya is the owner of a light commercial vehicle no. GJ10X 6204, manufactured by the Mahindra & Mahindra Company. He obtained a commercial vehicle package policy, bearing no. 1604372329101536, valid from 18.06.2007 to 17.06.2008 from the petitioner/opposite party (OP) Reliance General Insurance Co. Ltd. During the period of insurance, the said vehicle met with an accident on 13.08.2007 when it was being driven by Hamirbhai Lalabhai Modhvadiya. The vehicle is stated to have suffered heavy damage during the accident for which a claim for Rs. 5,25,302/- was submitted before the Insurance

Company after giving due intimation to them about the accident. The petitioner/ OP Insurance Company appointed a surveyor to assess the loss, but the insurance claim was rejected on 04.02.2008 by the petitioner, saying that the driver had no valid licence to drive the said vehicle at the time of the accident. Alleging deficiency in service on the part of the petitioner for repudiation of the claim, the complainant filed the consumer complaint in question, seeking directions to the petitioner to provide an amount of Rs. 5,25,302/- to him alongwith interest @ 18% per annum and also to give compensation of Rs. 50,000/- for mental agony etc.

3. The complaint was resisted by the petitioner Insurance Company by filing a written statement before the District Forum, in which it was stated that the complainant had a light commercial vehicle meant for carrying goods etc. and hence, it was a transport vehicle. However, the driver did not have a valid licence for driving this type of vehicle. The driver had licence for LMV vehicle i.e. Light Motor Vehicle, which was meant for driving a private vehicle only and not a transport vehicle.

4. The District Forum, after taking into account the averments of the parties, allowed the complaint on non-standard basis and stated that the complainant shall be liable to be given 75% of the amount of Rs. 2,99,000/- as assessed by the surveyor. A sum of Rs. 5,000/- as compensation was also awarded by the District Forum vide their order dated 05.10.2010. Being aggrieved against this order of the District Forum, the petitioner Insurance Company challenged the same by way of an appeal before the State Commission, but the said appeal having been dismissed, vide impugned order, the petitioner Insurance Company is before us by way of the present Revision Petition.

5. During arguments before us, the learned counsel for the petitioner Insurance Company submitted that the vehicle in question was a transport vehicle, for which a commercial vehicle package policy had been obtained from the petitioner Insurance Company, but the driver of the vehicle Hamirbhai Lalabhai Modhvadiya did not have a valid and effective driving licence to drive the vehicle at the time of accident and hence, there was a wilful breach of the terms and conditions of the policy. The learned counsel argued that the claim was not payable even on a non-standard basis, in view of the judgements given by the Hon''ble Supreme Court and this Commission in a number of cases from time to time. The learned counsel has drawn attention to the order passed by the Hon''ble Apex Court in New India Assurance Co. Ltd. vs. Prabhu Lal, AIR 2008 Supreme Court 614 (1) , saying that if the holder of a LMV licence did not have endorsement from the concerned authority to drive a transport vehicle, the Insurance Company was not liable to pay the claim in question. The learned counsel has also drawn attention to an order of the Hon''ble Supreme Court in Oriental Insurance Co. Ltd. vs. Angad Kol & Ors., AIR 2009 Supreme Court 2151 , in which it is stated that a transport vehicle may be a light motor vehicle, but for the purpose of driving the same, a distinct licence is required to be obtained. The learned counsel argued

that as per the law laid down by the Hon''ble Supreme Court, the claim in the present case was not admissible.

6. The learned counsel for the respondent, on the other hand, argued that the consumer fora below had rightly allowed the claim on a non-standard basis and had rightly relied upon the order passed by the Hon''ble Supreme Court in Amalendu Sahoo vs. Oriental Insurance Co. Ltd., II (2010) CPJ 9 (SC) .

7. We have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us.

8. There is a delay of 25 days in filing the present revision petition. In view of the position explained in the application for condonation of delay filed by the petitioner, the said delay is ordered to be condoned.

9. The main issue for consideration in the matter is whether the action of the petitioner Insurance Company in repudiating the claim on the ground that the driver of the vehicle did not have a valid and effective licence at the time of the accident is in order in the eyes of law, or the orders passed by the consumer fora below in allowing the claim on non-standard basis are in accordance with law.

10. It is not denied by either of the parties that as per the facts on record, the vehicle in question was a commercial vehicle, but the driver of the vehicle at the time of the accident was carrying a licence for driving a light motor vehicle (LMV) only and there was no endorsement on the same for driving the commercial vehicle. The matter has been discussed in a number of judgments/orders passed by the Hon''ble Supreme Court of India and this Commission from time to time. The issue of grant of driving licence for a private and a commercial vehicle, was dealt with by this Commission in Revision Petition No. 579/2013, The Oriental Insurance Company & Ors. vs. Seema , in an order passed on 06.05.2014. After making a detailed analysis of the statutory provisions of The Motor Vehicles Act, 1988 and The Central Motor Vehicles Rules, 1989, this Commission concluded that the requirements of age, qualifications, medical examination, period of licence etc. for obtaining of licence for driving a transport vehicle were distinctly different from those for getting a licence for non-transport vehicle. In the said order, the differences/requirements for the grant of licence for transport vehicle and other vehicles were summed up as follows:-

Transport Vehicle Non-Transport Vehicle

1. Age The minimum age for the grant of a licence to drive a transport vehicle is 20 years

The minimum age for grant of licence for non-transport vehicle is 18 years (Section 4 of Motor Vehicles Act)

2. Medical Certificate Always required for grant or renewal of licence

Medical Certificate may not be required. (Section 8 of Motor Vehicles Act)

3. Educational Qualification The minimum qualification required for obtaining licence is 8 th standard

No qualification is prescribed. (Rule 8 of Central Motor Vehicles Rules)

4. Validity of licence The driving licence for driving a transport vehicle is valid for three years only.

The licence is valid for 20 years or till the person attains the age of 50 years, whichever is earlier. (Section 14(2) of Motor Vehicles Act)

5. No person can be granted a learner''s licence unless he has held a driving licence to drive light motor vehicle for at least one year (Section 7(1) of Motor Vehicles Act)

A person cannot appear in the driving test unless he has held a learner''s licence for at least thirty days. (Rule 15 of Central Motor Vehicle Rules)

11. After concluding that the basic requirements of age, qualifications, medical examination, period of licence etc. were entirely different for grant of licence for transport vehicle from that for non-transport vehicle, it was stated that under Section 2(21) of the Motor Vehicles Act, 1988, LMV means a transport vehicle as well but this did not mean that the holder of a licence for driving a light motor vehicle was authorised to drive a light commercial vehicle or a transport vehicle as well. It was brought out that a person holding a licence for LMV only, or the licence for a private vehicle was debarred from driving a transport vehicle, unless he has proper authority or endorsement to this effect from a competent licencing authority. The Hon''ble Supreme Court in the orders passed in Oriental Insurance Co. Ltd. vs. Angad Kol & Ors. (supra) observed as under:-

"10. The distinction between a ''light motor vehicle'' and a ''transport vehicle, is, therefore, evident. A transport vehicle may be a light motor vehicle but for the purpose of driving the same, a distinct licence is required to be obtained. The distinction between a ''transport vehicle'' and a ''passenger vehicle'' can also be noticed from Section 14 of the Act. Sub-section (2) of Section 14 provides for duration of a period of three years in case of an effective licence to drive a ''transport vehicle'' whereas in case of any other licence, it may remain effective for a period of 20 years."

12. It has been clearly stated by the Hon''ble Apex Court that a transport vehicle may be a light motor vehicle as well, but for the purpose of driving the same, a distinct licence is required to be obtained. It is clear from above that if the holder of a LMV licence was authorised to drive a commercial vehicle as well, there was no necessity of prescribing distinct conditions or requirements for the grant of licence for commercial vehicle.

13. In the case, New India Assurance Co. Ltd. vs. Prabhu Lal (supra) as well, the Hon''ble Supreme Court had laid down that if a light motor vehicle falls under the category of Transport Vehicle, the driving licence has to be endorsed under

Section 3 of the Act.

14. The learned counsel for the respondent has drawn attention to an order passed by the Hon''ble Supreme Court in Lakshmi Chand vs. Reliance General Insurance, (2016) 3 SCC 100 , saying that unless there was a fundamental breach of the terms and conditions of the policy, the claim should not be repudiated in total. The Hon''ble Supreme Court referred to their earlier decision in the case, B.V. Nagaraju vs. Oriental Insurance Co. Ltd., (1996) 4 SCC 647 , in which case also, it was held that if more number of persons than permitted were being carried in a transport vehicle, it did not amount to a fundamental breach of terms and conditions of the policy and the total repudiation of the claim by the insurer was not justified. It may be observed, however, that the facts of the present case are distinct from the facts in the cases Lakshmi Chand vs. Reliance General Insurance (supra) and B.V. Nagaraju vs. Oriental Insurance Co. Ltd. (supra) . In the latter two cases, the insured committed breach of terms and conditions of the policy on account of overloading of passengers in the vehicle, but the present case is concerned with non-possession of valid and effective licence on the part of the driver. The learned counsel for the respondent has drawn attention to another order passed by the Hon''ble Supreme Court in Mukund Devangan vs. Oriental Insurance Co. Ltd. & Ors., (2016) 4 SCC 298 in which, after considering the various judgments/orders passed from time to time, the Hon''ble Court decided to refer the matter to a larger Bench in order to resolve the conflict in the views expressed by different Benches of the court. One of the issues identified for such reference has been stated to be the meaning to be given to the definition of Light Motor Vehicle as defined in Section 2(21) of the Motor Vehicles Act. A question has also been framed whether the transport vehicles were excluded from the same.

15. Considering the overall facts and circumstances of the present case, it is abundantly clear that the vehicle in question was a commercial vehicle, but the person who was driving the vehicle at the time of the accident, did not have a valid and effective licence to drive the same. Considering the distinct requirements laid down in The Motor Vehicles Act, 1988 and The Central Motor Vehicles Rules, 1989 about the grant of licence for commercial vehicles, it is clear that the holder of the LMV licence had no authority to drive the commercial vehicle without proper endorsement from the concerned transport authority. The detailed analysis of the legal provisions, made in para 10 above about the basic requirements for the grant of licence for transport/non-transport vehicles, make it clear that for enabling a person to drive a commercial vehicle, the licencing authority has to ensure that he fulfils the requisite conditions of age, educational qualifications, medical certificate etc. Unless a person satisfies the licencing authority on that score and obtains proper authorisation for driving a commercial vehicle, he cannot be stated to be in possession of a valid and effective driving licence. In the instant case, therefore, there is evidently a fundamental breach of the terms and conditions of the policy for non-possession of a proper licence. It is held, therefore, that the insured is not liable to be granted any compensation

by the petitioner under the terms and conditions of the policy.

16. Based on the foregoing discussion, the present Revision Petition is allowed and the orders passed by the consumer fora below are set aside, being perverse in the eyes of law. The consumer complaint in question stands dismissed with no order as to costs.

