(2016) 08 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

Case No : 768 of 2011

ROYAL GOODS TRANSPORT CO. APPELLANT

Vs

NATIONAL INSURANCE CO. LTD. & ANR. RESPONDENT

Date of Decision : 29-08-2016

Acts Referred:
Consumer Protection Act,??1986, — Section 21(b)

Citation : 2016 3 CPR 628

Hon'ble Judges : B.C.Gupta

Advocate : S.N.Kalra, Yogesh Malhotra, Rajneesh, Udit Grover

Judgement

1. This revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986, against the impugned order dated 10.11.2010, passed by the Haryana State Consumer Disputes Redressal Commission, Panchkula (hereinafter referred to as "the State Commission") in First Appeal No. 1358/2007, National Insurance Co. Ltd. vs. M/s. Royal Goods Transport Company, vide which, while accepting the said appeal, the order passed by the District Consumer Disputes Redressal Forum, Panipat, dated 25.04.2007, in Consumer Complaint No. 210/2006, filed by the present petitioner, allowing the said complaint, was set aside and the complaint was ordered to be dismissed.

2. The facts of the case are that the petitioner/complainant Transport Company is the owner of a vehicle bearing no. HR 67A 0792, which was insured with the respondent/OP National Insurance Co. Ltd. vide cover note no. 156324, book no. 42/02/03/6253 effective from 30.06.2004 at 9.30am to 29.06.2005 upto midnight. The said vehicle was damaged in an accident in the night of 23/24.12.2004 near Beas Bridge in the area of police station Beas (Punjab). At that time, the vehicle was being driven by Ashok Kumar, driver. It is stated that Chaman Lal, cleaner sustained injuries in the said accident. An intimation about the accident and damage to the vehicle was given to the Insurance Company and the same was got repaired at a cost of Rs. 1,75,527.30/- from Metro Motors Ambala and the bill was submitted to the Insurance Company. The Insurance

Company denied the claim vide letter dated 09.12.2005, saying that the driver Ashok Kumar was not holding a valid and effective driving licence at the time of the accident. The consumer complaint in question was filed on 26.04.2006, seeking directions to the respondent Company to pay the cost of repairs as Rs. 1,75,527.30/- alongwith Rs. 50,000/- as compensation and Rs. 5,500/- as litigation expenses.

3. In their reply filed before the District Forum, the OP Insurance Company stated that there had been violation of the terms and conditions of the Insurance Policy in question, because the driving licence of the driver of the vehicle was found to be fake/invalid.

4. The District Forum, after taking into consideration the averments of the parties, allowed the complaint and directed the OP Insurance Company to pay a sum of Rs. 1,75,527/- to the petitioner

alongwith interest @ 9% per annum w.e.f. 09.12.2005 till realisation and Rs. 3,300/- as litigation expenses. Being aggrieved against the said order, the Insurance Company filed an appeal before the State Commission and the said appeal having been allowed, the complainant is before this Commission by way of the present revision petition.

5. The contention raised by the petitioner/complainant says that Ashok Kumar, driver was holding licence no. 980/98/SDO Ferozepur Zhirka, District Gurgaon at the time of the accident. The driving licence was got renewed from the transport authorities at Ambala vide DL No. 7141/DTO/AMB and it was valid upto 13.10.2007. The above facts were also got verified on the application of the said Ashok Kumar. The learned counsel stated that the record of original licence no. 980/98/SDO was burnt in fire on 11.05.2002. The claim should have been allowed by the Insurance Company, therefore. The learned counsel argued that the State Commission should not have relied upon the report of the investigator/ surveyor only.

6. The learned counsel for the respondent Insurance Company, however, stated that as per the verification done by S. A. Associates, surveyors, the original licence issued in the name of Ashok Kumar was found to be fake. It was a settled legal proposition that if a fake licence was got renewed from any other authority, such renewal did not make it a valid licence. The order passed by the State Commission was, therefore, in accordance with law and should be upheld.

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

8. The main point for consideration in the matter is whether the licence possessed by Ashok Kumar driver at the time of accident was a valid and effective licence or not, and whether the claim for damages to the vehicle was payable by the Insurance Company. On record, is a copy of the application dated 22.08.2005 made by Ashok Kumar driver, addressed to the licencing authority

Ferozepur Zhirka, requesting for verification report of licence no. 980/98/SDO Ferozepur Zhirka stated to have been issued by the said authority. The said application was returned in original to the applicant with the remarks that the licence is related to a commercial vehicle and hence, the office of District Transport Officer (DTO), Gurgaon should be contacted. There is another endorsement made on the said application by the office of District Transport Officer (DTO), Gurgaon, which says that they did not have any record in respect of the said licence and the applicant should contact the office of DTO, Faridabad. On record, is a letter sent by the National Insurance Company to DTO, Faridabad regarding the verification of said licence and it has been reported by the office of DTO, Faridabad that due to fire in the office on 11.05.2002, the concerned record had been destroyed in fire. However, the licencing authority i.e. L.A. cum Secretary Regional Transport Authority (RTA) Ambala has verified that the said licence was renewed by their office upto 23.05.2004 and then further renewed upto 13.10.2007. On the other hand, it has been brought out in the impugned order of the State Commission that the matter was investigated by Sh. V. K. Goyal, Investigator and vide his report dated 24.08.2005, it has been stated that on his inquiries made from the office of licencing authority, Ferozepur Zhirka on 16.08.2005, it was revealed that the driving licence no. 980/98 had been issued in the name of Jafru s/o Idrish for motorcycle, car, jeep, tractor valid upto 05.09.2003. The Investigator stated that the licence in the name of Ashok Kumar was a fake document. From the facts as stated above, I have no reason to disbelieve with the findings of the State Commission that when the original driving licence is found to be fake, any subsequent renewal of the same cannot make it a valid licence. The State Commission have rightly relied upon an order of the Hon''ble Supreme Court in M/s. United India Insurance Co. Ltd. vs. Davinder Singh, 2008 (1) Consumer

Protection Cases 1 (SC), while deciding the appeal in question. The State Commission have also referred to another order passed by the Hon''ble Supreme Court in New India Assurance Co. Ltd. vs. Suresh Chandra Aggarwal, 2009 (3) CPC 12 (S.C.) in support of their conclusion.

9. In this regard, reference may be made to the judgment pronounced by the Hon''ble Supreme Court in Narinder Singh vs. New India Assurance Co. Ltd. & Ors., (2014) 9 SCC 324, in which it has been observed by the Hon''ble Court that non-possession of a valid and effective driving licence constitutes a fundamental breach of the terms and conditions of the policy and hence, the claim was not payable. In the present case, therefore, there is no justification for allowing the complaint in question, because the licence produced by the driver of the vehicle has been found to be a fake document on investigation. It is held, therefore, that there is no merit in this revision petition and the same is ordered to be dismissed and the order passed by the State Commission upheld. There shall be no order as to costs.

