(2012) 07 NCDRC CK 0147

In the National Consumer Disputes Redressal Commission

S R Muralidharan S/O S Ravinath — APPELLANT

Vs

NEW INDIA ASSURANCE CO LTD — RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 330 : 2012 3 CPJ 318 : 2012 3 CPR 154

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

Advocate : N.Rajaraman

Judgement

1. CHALLENGE in these proceedings is to the order dated 29.11.2011 passed by the Tamil Nadu State Consumer Disputes Redressal Commission, Chenna (Bench-II) in FA No. 362/2010. The appeal before the State Commission was filed by the petitioner - New India Assurance Co. Ltd. Against the order of the District Forum Coimbatore in OP No. 263/2009 by which order the District Forum had allowed the complaint and directed the insurance company to pay a sum of Rs.1,01,000/- towards insurance claim and Rs.5000/- as compensation for mental agony and Rs.1000/- as costs. In appeal, the State Commission has reversed the said finding and has dismissed the complaint primarily on the ground that insurance company has committed no deficiency in service in repudiating the claim of the insured inasmuch as at the time of the accident of the insured vehicle, it was carrying around 30 persons as against the prescribed capacity of 12 + 1 passengers.

2. COUNSEL for the petitioner -complainant would assail the said finding of the State Commission primarily on the ground that insurance company had not produced any cogent and sufficient proof to establish that as many as 30 persons were travelling in the insured vehicle in question at the relevant date and time of the accident and the State Commission has erred in placing reliance and going upon the report of the surveyor / investigator which had recorded this factum. He submits that it was incumbent upon the insurance company to establish the factum of the travelling of 30 persons against the prescribed capacity of the vehicle. We do not find any merit in this contention. We should remember that

consumer forum decide the cases on the basis of probabilities without insisting for the strict proof of the facts pleaded. In para 8 of the impugned order, the State Commission has recorded the following cogent reasons from which it came to the finding and conclusion that around 30 persons were travelling in the insured vehicle in question at the time of accident: On perusal of Exhibit A2 FIR it was registered on the next day of the accident on the basis of a statement given by one injured by name Anthony and in the statement itself stated that in the accident he himself along with other 11 persons got injured and he has not stated specifically how many persons were travelled in the vehicle at the time. Regarding in Exhibit A2 AIR issued by the Motor Vehicle Inspector it is not specifically stated anything about the number of persons travelled and only reveals the details of the accident and vehicles damages. Exhibit A4 charge sheet filed against the driver of the vehicle Harikrishnan under Section 279, 337 and 338 IPC stated that in the occurrence 11 persons had simple injuries and one person had severe injury and thereby for the same the accused was charge sheeted. No 161 CRPC statements were filed regarding the other witnesses to speak about the happenings of the accident. But the opposite party filed the investigating report and details as Exhibit B3 to B6 along with the details of investigation it is clearly elicited that at the time of occurrence the vehicle was carrying around 30 persons out of which more than 12 persons sustained injuries and in Exhibit B6 in page 4 the names of the persons found travelled given for 21 persons and apart from that cleaner and some other persons their names not known were alleged to have been travelled. In those circumstances as per Exhibit B2 policy conditions which was permitted to have the capacity of 12 +1 to carry in the vehicle was carrying around 30 persons at the time of accident and thereby the claim was rightly rejected by the opposite party. After considering the report of the investigation as per Exhibit B4, B5 and B6 which are acceptable one and in our view thereby there was no negligence or deficiency in service on the part of the opposite party. Without considering those details and analyzing the both sides materials in a proper way the District Forum erroneously allowed the complaint which we feel is not correct one and it is erroneous. In view of the above facts and circumstances of the case details narrated and thereby this appeal deserves to be allowed as meritorious.

3. WE have no reason to differ with the said finding and observations recorded by the State Commission which in our opinion are borne out from the evidence and material placed on record. The complainant has not produced any cogent evidence to rebut the said evidence and material produced on behalf of the insurance company and, therefore, it can be safely inferred that factum of about 30 persons travelling in the vehicle in question is not seriously disputed. This would show that there was clear violation of the terms and conditions of the insurance policy and insurance company has committed no wrong in repudiating the claim of the complainant.

4. WE do not see any merits in the revision petition. Revision petition is accordingly dismissed.

