(2005) 08 NCDRC CK 0065

In the National Consumer Disputes Redressal Commission

SOLARTECH S-U APPELLANT

Vs

Oriental Insurance Co. Ltd. RESPONDENT

Date of Decision : 04-08-2005

Acts Referred:

Citation : 2006 1 CLT 512 : 2006 1 CPC 353 : 2006 1 CPJ 69

Hon'ble Judges : M.B.Shah , P.D.Shenoy J.

Final Decision : Revision Petition allowed

Judgement

1. THIS revision petition was dismissed on 11.5.2005 for non-prosecution. Subsequently, an application was filed for restoration on 18.5.2005 stating that Mr. I.K. Mehta, Senior Advocate could not appear on account of serious illness and he was taking treatment at Chandigarh. We consider that there is a justifiable reason for recall of order. Accordingly, the order is recalled and the case is restored to its original number.

2. AT the request of the Senior Counsel for the petitioner and the Counsel for the respondent, the case was taken up for hearing. The dispute involved in this case lies in a narrow compass whether the driver of the insured vehicle which met with an accident during the currency of the insurance policy i.e., on 29.1.1997 at Jalandhar, had a valid licence or not. A Tata Mobile vehicle bearing No. CH-01K-6687 belonging to the complainant was insured comprehensively by the opposite party. It met with accident on 29.1.1997 at Jalandhar and the claim was lodged with the opposite party. The opposite party appointed the Surveyor who assessed the loss at Rs. 1.62 lakh, but it repudiated the claim vide its letter dated 27.6.1997 on the plea that the driver was competent to drive car and jeep whereas the vehicle in question was a Tata Mobile 207. According to the complainant this is an arbitrary action on the part of the opposite party as the driver possessed valid driving licence for LMV and the vehicle in question falls in that category. He prayed that the opposite party be directed to pay the total sum insured viz., Rs. 2,40,000 along with interest and compensation for harassment, costs of the case, etc.

The District Forum directed the opposite party to pay a sum of Rs. 1,60,500 assessed by the Surveyor in his report dated 3.2.1997 with interest @ 12% p.a. w.e.f. 1.5.1997 till payment to the complainant. The order was assailed by the Insurance Company before the State Commission. The State Commission while passing an order, relying upon the judgment of the National Commission in the case of Oriental Insurance Company Ltd. v. Ashok, II (1995) CPJ 208 (NC), concluded that the Insurance Company was legally justified in repudiating the claim of the respondent/complainant. Dissatisfied and aggrieved by the order, the complainant has filed a revision petition in this Commission.

3. MR. Mehta, Senior Counsel submitted that the Supreme Court in the case of Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd., III (1999) CPJ 5 (SC)=VII (1999) SLT 317=(1999) 6 SCC 620, has overruled the aforesaid decision of the National Commission. Further, he submitted that the driver of the vehicle did hold a valid driving licence for motor car and jeep, Tata Motor 207 is in the category of light motor vehicles as its gross unladen weight as mentioned in the registration certificate is 1540 kg. which itself is much less than the maximum limit of 7500 kg. for LMV. Though, Surveyor had assessed the total loss at Rs. 1,60,500 subject to the deposit of the salvage, the Insurance Company has wrongly repudiated the claim. Mr. Kishore Rawat, learned Counsel for the Insurance Company submitted that the insurance cover is for a commercial vehicle and specially for a private goods vehicle. He contended that the driver of the vehicle in question did not possess a valid driving licence to drive a transport vehicle as he had licence to drive a car or jeep only. Hence, the complainant-insurer was not entitled for any relief as there is no specific endorsement to drive a transport vehicle in the licence issued to the driver. However, in the event, this Commission decides to grant relief to the complainant, the value of the salvage may be deducted from the loss assessed by the Surveyor.

4. IN this case the driver was authorized to drive a car or a jeep which is a light motor vehicle. Tata Mobile is a light motor vehicle which is authorized to carry 4 passengers and some goods. IN effect, Tata Mobile is a hybrid between a car and a jeep. Admittedly at the time of the accident no goods were carried in this vehicle. Accordingly, this case is squarely covered by the judgment of the Apex Court in Ashok Gangadhar Maratha v. Oriental INsurance Company Ltd. (supra). Therefore, we direct the Insurance Company to pay the amount assessed by the Surveyor i.e., Rs. 1,65,000 with 9% interest p.a. w.e.f. 1.5.1997 till the date of payment. The complainant is directed to return the salvage to the Insurance Company. Insurance Company shall pay Rs. 10,000 as costs. R.P. allowed.

