

(2004) 01 NCDRC CK 0058

In the National Consumer Disputes Redressal Commission

SURESHBHAI NARAYANLAL JOSHI

APPELLANT

Vs

MANAGER, UNITED INDIA INSURANCE CO. LTD.

RESPONDENT

Date of Decision : 19-01-2004

Acts Referred:

Citation : 2004 4 CPJ 469

Hon'ble Judges : M.S.Parikh , M.K.Joshi J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal arises from order dated 17.7.2003 rendered by the learned Consumer Disputes Redressal Forum, Banaskantha in Consumer Case No. 39 of 2001 dismissing the complaint on the count of want of evidence. We have heard the learned Advocates for the parties. We have gone through the impugned order. We have also gone through the averments made in the complaint as well as the repudiation letter.

2. IT was the complainant's case before the learned Forum that the jeep which was insured with the opponent Insurance Company met with an accident with a luxury bus coming from the opposite side when it was proceeding towards Ambaji on 12.10.1999. The complainant preferred claim which was repudiated as per the following repudiation communication dated 30.3.2001: "With reference to the above claim your vehicle met with an accident on 12.10.1999 in that mishap 5 persons were injured and 2 persons died, we have appointed investigator for investigation the matter and as per his report, according to the statement of driver Laxmanbhai, at the time of accident Chikuben [Saryuben] was driving the jeep car and while she was driving the jeep car was skidded from the road and horrible accident occurred in which Chetnaben and Arunaben both died and five persons were injured. So at the time of accident Chikuben [Saryuben] has no valid driving licence in absence of that we repudiate your claim in toto."

The learned Forum came to the conclusion that in spite of the fact that sufficient opportunity was made available to the complainant, no evidence was adduced and, therefore, the complaint was required to be dismissed on that count.

3. WE have however gone through the material which is made available in this appeal. It would appear from the FIR, xerox copy whereof has been placed on record that the driver of the jeep lost control while it was climbing up a slope in Ranpur Gati and the jeep turned turtle resulting into death of one minor girl Chetnaben. Taking this document as it stands, it would appear that the complainant did not come before the learned Forum with clean hands about the facts concerning the accident in question. The complainant has tried to project the case as if on account of luxury bus coming from the opposite side the accident occurred. WE cannot appreciate such type of approach from the side of a consumer. That apart, as it clearly appears from the repudiation letter, the jeep in question was being driven by one Chikuben [Saryuben] who did not having driving licence. Neither Chikuben nor Laxmanbhai who had given statement before the investigator has filed affidavit before the learned Forum. The affidavit which is sought to be filed is of the complainant. From the material which has been placed on record, it would appear that Laxmanbhai had an occasion to give his statement before the investigator, material facts of which have been set out in the repudiation letter. Laxmanbhai now appearing before this Commission would say on oath that he gave statement to the officers of the opponent Insurance Company upon their representation that if he would give a particular statement, the victims may get compensation. In his affidavit before this Commission he has asserted that he had given FIR No. 213/1999 against the driver of the jeep in question Shri Shantilal Narayanlal Joshi. Driver Shantilal Narayanlal Joshi has not filed any affidavit before this Commission. If the affidavit now sought to be relied upon in this appeal is accepted, it would open up litigation after litigation and detailed evidence would be necessary to be recorded proceeding after proceeding. Briefly stated it would entail multiplicity of proceedings without there being any substantial consequence out of it. If we consider the affidavit at his face value particularly when aforesaid person Chikuben has not filed any affidavit even then no relief will be awardable. The facts stated in the repudiation letter are quite different from the facts stated in the affidavit sought to be filed in the appeal. Therefore, repudiation cannot be said to be mala fide. It is settled law that when repudiation is bona fide, no deficiency in service can either be imputed or upheld. In that view of the matter, even if the material placed on record before this Commission is taken into consideration, the complainant cannot succeed. Following order is, therefore, passed. ORDER This appeal is dismissed, with no order as to costs. Appeal dismissed.