(2013) 07 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

The Manager, Bharti AXA General Insurance Co. Ltd. through its Area Manager, (Legal) — APPELLANT

Vs

B.A. Lokesh Kumar — RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Citation : 2013 3 CPJ 528

Hon'ble Judges : SURESH CHANDRA J.

Final Decision : Petition allowed

Judgement

1. THIS revision petition is directed against order dated 17.01.2012 passed by the Karnataka State Consumer Disputes Redressal Commission, Bangalore ("State Commission" in short) in appeal No. 20/2012. Petitioner is the opposite party/Insurance Company and the respondent herein is the original complainant. By its impugned order the State Commission dismissed the appeal filed by the petitioner/Company and upheld the order dated 24.10.2011 passed by the Additional District Consumer Disputes Redressal Forum, Seshadripuram, Bangalore wherein the petitioner company was directed to pay to the respondent/ complainant a lumpsum compensation of Rs. 13,31,997/ - alongwith interest @ 12% p.a. from 13.6.2011 till realization along with Rs. 2,000/ - as cost of litigation. Briefly stated, the facts of this case, which are relevant for its decision, are that the respondent/complainant had purchased a new Innova vehicle with temporary registration No. KA -01/TR -MB -2979 and got it insured under a comprehensive package with insured declared value (I.D.V.) of Rs. 11,63,284/ - from the petitioner/company for the period from 25.10.2010 to 24.10.2011. Admittedly the validity of the temporary registration certificate of the vehicle expired on 23.11.2010 after which the respondent/complainant did not obtain a registration number. On 9.6.2011, the complainant sent this vehicle to Dharamasthala on a pilgrimage trip for the conveyance of his family members and relatives and on the way to Dharmsasthala when the vehicle was proceeding on NH -48, it met with an accident and in that it got toppled and fell into a road side ditch in a topsy turvey position. The respondent intimated about the

accident and the damage to the vehicle on account of this accident to the petitioner/insurance company. It is alleged that after inspection of the damaged vehicle, damage to the tune of around Rs. 13,16,997/ - was assessed besides expenditure of about Rs. 15,000/ - incurred by the respondent towards lifting and shifting charges. The petitioner -company after considering the survey report and other relevant documents repudiated the claim of the respondent vide its letter dated 30.6.2011 stating that the vehicle in question did not have a permanent registration number and thus there was blatant violation of Section 39 of the Motor Vehicles Act, 1988. It was also indicated in its letter that the temporary registration of the vehicle had already expired on 23.11.2010 and because of this at the time of the accident the vehicle did not have either a valid temporary registration or a permanent registration. Aggrieved by the repudiation of his claim, the respondent filed a consumer complaint bearing No. 1303/2011 before the District Consumer Forum seeking compensation of Rs. 13,16,997/ - alongwith other reliefs. The District Forum vide its order dated 24.10.2011 allowed the complaint in terms of the aforesaid directions against which the petitioner filed an appeal before the State Commission which came to be dismissed by the impugned order. Thus the petitioner has approached this Commission challenging the concurrent orders of the fora below through the present revision petition.

2. WE have heard learned Shri Navneet Kumar, counsel for the petitioner and learned Mrs. Vijayshanthi Girish, counsel for the respondent. While admitting the validity of the insurance policy under a comprehensive cover and the occurrence of the accident in question involving the vehicle in dispute, learned counsel for the petitioner submitted that the fora below had failed to appreciate that the temporary registration of the vehicle had expired on 23.11.2010 itself and the respondent did not get the vehicle permanently registration and thus there was clear violation of the policy condition and the provisions of the Motor Vehicles Act, 1988. He submitted that it was made abundantly clear to the respondent by the petitioner company while repudiating his claim that since the vehicle did not have valid registration number on the date of the accident, it was violation of a mandatory requirement of law and also breach of contractual obligations by the respondent, the claim submitted by him could not be allowed. Later on, when the respondent filed the consumer complaint before the consumer forum, the petitioner -company took the same plea in addition to other submissions in the written version filed by it before the District Forum and reiterated the same before the State Commission while challenging the order of the District Forum. He submitted that in spite of this, both the fora below have rejected this plea while allowing the complaint by their concurrent finding as confirmed by the impugned order. Besides referring to the provisions of Section 39 of the Motor Vehicles Act, 1988, learned counsel has relied on two judgments of this Commission in the cases of Kaushalendra Kumar Mishra vs. The Oriental Insurance Co. Ltd. (Order dated 16.2.2012 in R.P. No. 4043/2008) and Niranjan Kumar Yadav vs. National Insurance Co. Ltd. (Order dated 29.3.2011 in R.P. No.

2926/2010). He summed up his arguments by submitting that since the crucial point regarding the expiry of the temporary registration of the vehicle before the date of the accident and non -issuance of a permanent registration to the vehicle on the date of the accident are not under dispute, the impugned orders cannot be sustained and are liable to be set aside as being violative of the express provisions of law. Per contra, learned counsel for respondent/complainant has submitted that there is no merit in the revision petition and that there is no case for interference with the concurrent finding of the two Fora below under section 21(b) of the Consumer Protection Act, 1986 and hence the revision petition should be dismissed. Having considered the submissions of the parties, the short point that has arisen for our decision is as to whether the two Fora below were right in returning their concurrent finding in favour of the respondent in spite of the undisputed fact that the vehicle in dispute did not have a valid registration number on the date of the accident and hence was being used in violation of the law and condition of the insurance policy. In this context, we may note that that registration of the vehicle is a mandatory requirement of the law and the relevant provisions as contained in Section 39 of the Motor Vehicles Act, 1988 may be reproduced as under: - 39. Necessity for registration. - -No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer to such conditions as may be prescribed by the Central Government.

In view of the aforesaid requirement of law, it is clear that both the fora below gravely erred in ignoring and rejecting the plea taken by the petitioner while returning their concurrent finding accepting the complaint. They should have appreciated that the use of the vehicle in question was in violation of the law itself and hence would take it beyond the protection of the insurance policy. We have therefore no hesitation in setting aside the impugned order and accepting the revision petition. The present case is squarely covered by the ratio of the two judgments relied upon by the counsel for the petitioner. We, therefore, allow the revision petition and set aside the impugned order leaving the parties to bear their own cost.

