(2016) 09 NCDRC CK 0125

In the National Consumer Disputes Redressal Commission

Case No : 2479 of 2014

THE NEW INDIA ASSURANCE CO. LTD — APPELLANT

Vs

ANOKHI DEVI W/O P.K SETHI — RESPONDENT

Date of Decision : 28-09-2016

Acts Referred:

Citation : 2016 4 CPR 172

Hon'ble Judges : Rekha Gupta, Anup K Thakur

Advocate : K.K. BHAT

Final Decision : Petition Dismissed

Judgement

1. The present revision petition no. 2479 of 2014 has been filed against the judgment dated 31.03.2014 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur (''the State Commission'') in Appeal no. 1262 of 2012.

2. The brief facts of the case as per the respondent/ complainant are that the respondent has insured her vehicle bearing number RJ 14 2G 6141 with a validity period from 30.06.2006 to 29.06.2007. The said vehicle met with an accident on 12.03.2007 and the first information report was lodged. The respondent''s vehicle was totally damaged in the said accident. The respondent had submitted a claim of Rs.9.21,203/- towards the loss suffered by her and Rs.1,90,000/- towards the estimation of the construction of the cabin to the insurance company. On the assurance of the insurance company, the respondent got the vehicle repaired at a cost of Rs.4,48,544/- and presented the same before the insurance company for the payment of the claim. The insurance company had rejected the claim of the respondent on 23.04.2008 on the ground of over loading of the goods in the vehicle. Hence, the complaint was filed claiming Rs.5,88,694/- towards the loss suffered on the truck and Rs.2,00,000/- towards the mental agony suffered by the respondent.

3. The petitioner/ opposite party/ insurance company had filed its objection by stating therein that the claim can be paid only as per the terms and conditions of

the insurance policy. After the accident, the survey and investigation of the vehicle was conducted. The investigator had stated that he had verified the royalty receipt dated 11.03.2007 issued by Shri Vinod Garg, Royalty Contractor, Makrana. Mr Garg had stated that the receipt was not available on his records and appeared to be forged. The verification of the GR no. 10 dated 11.03.2007 issued by M/s Padmavati Transport Company was made and it was found that the bilty produced before the insurance company had also been forged by concealing the actual quantity of the loaded goods. The Padmavati Transport Company had stated that on 11.03.2007, 41,940 qunitals of marble stones were loaded on the vehicle for transportation from Makrana to Lakeri Cements. During the time of the accident of the said truck, it was loaded with 41.940 quintals of goods, instead of its normal capacity of 16.200 quintals of goods. Hence, the respondent had deliberately violated the terms and conditions of the insurance policy. The claim of the respondent had been correctly rejected. Hence, the complaint should be dismissed.

4. The District Consumer Disputes Redressal Forum - III, Jaipur vide impugned order dated 05.09.2012 while dismissing the complaint observed that: "It is revealed from the perusal of the RC that the weight of the empty vehicle is 8970 kgs and its inclusive loading capacity is 25,000/- kgs. It is, therefore, clear the loading capacity of the vehicle is 16 quintals. In this case the opposite party had filed the report submitted by the Surveyor Sanjay Kumar Jain and the investigator Shri B B Rai which has been perused by us. The vehicle weight slip dated 11.03.2007 issued by Shri Vinod Garg, the Royalty Contractor has been filed as Annexure 7 stating the weight of the vehicle to be 14,900 kilogram. But Shir Rameshwar Lal had stated that the receipt issued by Shri Vinod Garg, the Royality Contractor to be false. In the slip dated 11.03.2007, issued by Padmavati Transport Company , there is a mention about 41,940 quintals of marble stone loaded in the said vehicle. The GR no. 10 dated 11.03.2007 has been filed as annexure R 10 stating that the weight was 14,900 kilogram. The investigation into the said accident was conducted. It was concluded after investigation that weighing receipt issued by Shri Vinod Garg, the Royalty Contractor, measuring 14,900 kilogram and the GR no. 10 at Annexure R 10 weighting 14,000 kilogram were found to have been forged. During the time of the accident, there was 41,900 kilograms of marble stones loaded in the vehicle. The investigation had proved his report by affidavit. Shri Kulvinder Singh Saluja has also filed his affidavit. The complainant had not refuted the investigator''s report and the affidavit filed by him. It is revealed from the report submitted by the investigator Om Prakash Sharma and the evidences on record that during the time of the accident, the vehicle in question instead of loaded with 14,600 kilograms of goods as entered in the weight slip issued by Shri Vinod Garg, the royality contractor at Anneuxre 7 and the bity GR no. 10 at Annexure R 10, was actually loaded with 41.940 quintals of goods as stated in the Annexure R 8 issued on 11.03.2007 by the Padmavati Transport Company. As such the complainant, by concealing the actual facts wants to get the claim amount. The

complainant had cited the ruling passed by the Hon''ble Supreme Court in Civil Appeal no. 2703 /2010 (SC) dated 25.03.2010 ''Amalendu Sahoo vs Oriental Insurance Company Ltd.,'' and the judgment passed by the Court of the Commissioner, Workman Compensation Act, Jaipur in the Suit no. WCCNF 152/ 007 between Rafiq Mohammed vs Anokhi Devi. In the judgment of the Commissioner, Workmen Compensation Act, there is no finding about the goods loaded in the vehicle during the time of the accident. The said judgment does not come in aid of the complainant. There are not facts in the case of ''Amalendu Sahoo vs Oriental Insurance Co. Ltd., that the complainant wants to take the claim by concealing the actual facts. In the present case the complainant was taking goods in her truck more than twice of its actual capacity. Hence, the facts and circumstances of the present case being different from the case of the cited rulings, no benefit can be derived by the complainant therefrom. As a result of which the opposite party insurance company had not made any deficiency in service by dismissing the claim of the complaint.

The complaint filed by the complainant is not entitled to be allowed, according is being dismissed."

5. Aggrieved by the order of the District Forum, the respondent/ complainant filed an appeal before the State Commission. The State Commission while allowing the appeal had held as under: "The transport company was not in the need of such false GR bills. The receipt issued by Shri Vinod Garg, the Royalty Contractor cannot be relied upon heavily because there is no serial number mentioned over it and the same be generated at any point of time. The Counsel for the appellant had cited the judgment report in 2007 CPJ 341 (NC) between National Assurance Co. Ltd., Inkar Singh arguing that in such types of cases non-standard claims should have been given, according to which in the cases of overloading the claim up to 75% can be given.

Keeping in mind the facts and circumstances of the case and considering the cited rulings, it seems to us that there was overloading of around 2.5 times of the normal capacity of the vehicle. Keeping in mind the aforementioned facts, it will be justified to direct the insurance company to pay the complainant 50% of the loss suffered by her as claim amount.

Accordingly, the appeal of the complainant is being partially allowed and by making necessary corrections in the judgment/ order passed by the District Forum, it is being directed that the insurance company shall pay the complainant 50% of the loss suffered by her as claim amount. Let the direction be adhered to within a month".

6. Hence, the present revision petition.

7. We have heard the learned counsel for the petitioner. Respondent was proceeded ex-parte vide order dated 15.03.2016 as in spite of dasti service on the respondent through her husband Shri P K Sethi she did not turn up nor any one ap peared on her behalf.

8. We have heard the counsel for the petitioner. He contended that the impugned order dated dated 31.03.2004 of the State Commission Circuit Bench no. 2, Rajasthan Jaipur in FA no. 1262 of 2012 is patently against the facts, evidence on record, against the law and is thus unsustainable. The State Commission has failed to consider that the complainant had not only forged the documents with a view to obtain the claim but the truck was also carrying a load of 41.90 tons as against its registered carrying capacity of 16.200 quintals. Overloading of a vehicle beyond certain limit does have an impact on the control of the driver on the vehicle. In these set of circumstances, repudiation of the claim was fully justified as vehicle was overloaded almost 2 1/2 times in breach of law as well as the policy terms.

9. We have carefully gone through the report of the Investigator. The report has concluded as under: Conclusion:

After thorough investigation undersigned is having firm opinion that:

a. Produced GR no. 10 dated 11.03.2007 of M/s Padmavati Transport Company, D 4, New Colony, Bundi to fake as no such original GR is available with aforesaid transporter.

b. As per record of M/s Padmavati Transport Company GR no. 926 was issued on 11.03.2007 from Makrana to Lakheri for consigner M/s Padma Stone suppliers and consignee M/s ACC Cement, Lakheri in this GR "marble khanda" weight 41.940 ton was transported in insured Truck no. RJ 14 2G 6141. Royalty receipt number 843/96 is also mentioned in aforesaid original GR number 926.

Opinion:

After thorough investigation undersigned is having firm opinion that:

Aforesaid produced GR no. 10 dated 11.03.2007 of M/s Padmavti Transport Company, D - 4, New Colony, Bundi is fake in nature.

As per original GR net weight of load "marble khanda" transported in aforesaid insured Truck no. RJ 14 2G 6141 is 41.940 tons.

Insurer may dispose of aforesaid OD claim as per RTO Loading Rules and terms and conditions of Insurance Policy.

11. We have seen the receipt of Mr Vinod Garg, the Royalty Contractor which had been filed by the respondent to show that the truck was carrying 14.900 kg. The contractor has stated that as per their record this receipt is not genuine and there is no record to show that such a receipt was issued to the respondent. Placed on record is GR 10 of M/s Padmawati Transport Company dated 11.03.2007 filed by the respondent showing the weight carried as only 14.900 kg. To the naked eye there is an apparent manipulation in the GR 10. Further, as stated by the Investigatory, there is no record of this GR with M/s Padmavati Transport Co. Also placed on record by the petitioner is GR 926 filed by the petitioner for the same truck for the same date. This shows the weight as 41.940

quintals. It is an admitted fact that as per the RC of the truck placed on record that the vehicle has a carrying capacity of only 16.200 quintals. It was grossly over loaded at the time of the accident. The District Forum dismissed the complaint on these grounds. The State Commission while allowing the complaint, however, noted that there was an over loading of around 2.5 times of the normal capacity of the vehicle yet still ordered that 50% of the insured amount should be paid and the claim be settled on non-standard basis.

12. The National Commission in order dated 03.09.2013 in the case of Delhi Assam Roadways Corporation Ltd., vs United India Insurance Co. Ltd. have observed that: " Admittedly at the time of accident, the vehicle in question was carrying a load of 68,670 kgs which is over load of 80% in excess of the capacity. One cannot over-look the fact that overloading of a vehicle beyond certain limit does have an impact on the control of the driver on the vehicle. For example, when the brakes are applied to a moving vehicle, the breaking distance would be directly proportionate to the laden weight of the vehicle. Otherwise also, the increase of load on a vehicle also have an impact on the steering control. In the instant case, admittedly, at the time of accident, the truck was overloaded in excess by 80% of its weight carrying capacity which in our view had a nexus with the accident. Therefore, the fora below were right in concluding that the opposite party was justified in repudiating the claim. The petitioner in support of its contention has relied upon the judgment of the Supreme Court in the matter of '' Amalendu Sahoo Vs. Oriental Insurance Company Limited 2010 (2) RCR (Civil) 635 as also the judgment of this Commission in the matter of New India Assurance Company Limited Vs. Narayan Prasad Appaprasad Pathak (2006) CPJ 144 (NC) . We have gone through the aforesaid judgments. In our view the aforesaid judgments are of no avail to the petitioner because the said judgments are based upon entirely different facts. In the case of Amalendu Sahoo (supra), the issue before the Supreme Court was whether the insurance company was justified in repudiating the claim on the ground that a private vehicle was given on hire and as per the policy terms, such use was not appropriate. Similarly in the case of New India Assurance Company Limited vs. Narayan Prasad Appa prasad Pathak, the question before the National Commission was whether the insurance company can repudiate the claims in a case where the vehicle carrying passengers and the driver did not have a proper driving license and met with an accident, whereas in the instant case, the respondent / opposite party has repudiated the claim on the ground of excessive over-loading which in our view has a direct causal link with the accident resulting in damage to the vehicle. As such, we are of the view that the State Commission has rightly dismissed the claim on the ground of violation of terms of the policy".

13. While dismissing the revision petition in RP No. 3525 of 2013 in the matter of Dubey Travel vs Oriental Insurance Co. Ltd ., decided on 8 th April 2016, this Commission has held that " such a huge overloading obviously adversely affects the steering control and increases the chance of driver losing the control of the vehicle which may result in accident as in the case".

14. The above quoted case (supra) clearly applicable to the case on hand.

15. We are of the view that the State Commission having concluded that the vehicle was grossly over loaded at the time of accident and that "there was over loading of around 2.5 times of normal capacity of the vehicle" erred in allowing the appeal on non-standard basis ignoring the fact that over loading does contribute to accidents.

16. Hence, we allow the revision petition and set aside the impugned order of the State Commission and confirm the order of the District Forum and dismiss the complaint.

