(2005) 05 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd. APPELLANT

Vs

A.V.ARASU RESPONDENT

Date of Decision : 17-05-2005

Acts Referred:

Citation : 2006 1 CPJ 266

Hon'ble Judges : A.Raman , PonGunasekaran J.

Final Decision : Appeal allowed with costs

Judgement

1. THE complainant had insured his commercial vehicle D.C.M. Toyota 1987 model with the opposite party for the period from 19.7.1990 to 18.7.1991. While so, on 23.10.1990, it met with an accident and was damaged. THE complainant, therefore, made a claim to the opposite party who repudiated it. Hence, the complaint.

2. THE opposite party among other things contended that there was no fitness certificate and it got expired on 4.8.1990 and on the date of accident the vehicle had no fitness certificate. Hence, on this ground, they repudiated the claim. It is not disputed that the fitness certificate had expired by 4.8.1990. The Motor Vehicles Act makes it clear that no vehicle can be plied on a public road without fitness certificate. The vehicle should be fit for plying. This rule has been brought in with the safety of public in view. Therefore, one of the essential conditions for plying a vehicle on a highway or a road or a public place is that it should have a fitness certificate. The driver should have a proper driving licence. There must be a proper insurance. Therefore, the fitness certificate is an essential condition which must be satisfied before a vehicle can be put on road. Therefore, on the date of accident as there was no fitness certificate, it follows that the vehicle was not fit to be plied on the highway. Therefore, plying a vehicle on a road without a fitness certificate is a contravention of a Statute. When an accident happens as a result of a contravention in rule or provisions of law and in that accident damage is sustained, naturally the insurer is not liable. The lower Forum has taken a peculiar view that in the insurance policy, it is not stated so. But, it is one of the

essential conditions of insurance that the vehicle had the necessary authorization or permit to ply and was fit enough to be plied on roads or public places. Only if the vehicle is fit enough to be plied on road or public places, then the question of insuring the same would arise. The contract of insurance being one based upon good faith, naturally the insurer would undertake such a risk, only if the conditions of any statute especially of Motor Vehicles Act is complied with. Therefore, in such circumstances, we hold that the condition regarding the fitness certificate is of such nature that is fundamental to the contract of insurance and, therefore, when an accident taken place when there was no fitness certificate, it follows that the insurer is not liable since the vehicle was plied in contravention of Motor Vehicles Act without a fitness certificate. Hence, there is no obligation on the part of the opposite party to honour. Hence, it follows that the repudiation is justified.

In the result, this appeal is allowed with cost of Rs. 250. The order passed by the lower Forum is set aside. The complaint will stand dismissed with cost of Rs. 250. Appeal allowed with costs