(1996) 09 NCDRC CK 0056

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd. APPELLANT

Vs

Deepak Sharma RESPONDENT

Date of Decision : 02-09-1996

Acts Referred:

Citation : 1996 2 CPC 412 : 1996 3 CPJ 206 : 1996 3 CPR 189

Hon'ble Judges : P.N.Nag , I.D.Bali , Krishana Tandon J.

Final Decision : Appeal partly allowed with costs

Judgement

1. THIS appeal is directed against the order of the District Forum,.Solan, dated 12.1.94, whereby Appellant No. 1 "hereinafter referred to an appellant" is directed to settle and pass the claim of the complainant which is found just and proper within three months from today. The cost of Rs. 2000/- has also been awarded.

2. THE brief facts necessary for determining the points in controversy are that the truck of the complainant bearing registration No. HIA-690 Eicher Mitshubishi was comprehensively insured with the appellant vide policy No. 111301/31/ 21/02002/90 for a period from 6.9.90 to 5.9.91. THE said truck was financed by the State Bank of India, Solan. THE truck unfortunately, met with an accident on 3.7.91 near Jubbar Hatti, District Shimla and the FIR No. 78/91 in Police Station Boileuganj, District Shimla was lodged. THE driver of the accidented vehicle was having driving licence. THE accident resulted into the total loss of the vehicle and as such the complainant preferred the claim on cash loss basis and sighed consent form a per the demand raised by the respondent No. 1 appellant. THE appellant however, repudiated the claim merely on the ground that the driver was under the influence of liquor at the time the truck met with an accident. THE driver was also challaned under Section 185 of the Motor Vehicle Act, and fined Rs. 500/- The complainant has submitted a claim of Rs. 1,51,343.70 calculated till 8.9.92 alongwith the interest due on account of Bank loan towards the complainant. Mr. Naresh Gupta, learned Counsel for the appellant have vehemently submitted that the driver was under the influence of liquor at the

time of accident and the Insurance Company has rightly repudiated the claim of the complainant in terms of the policy. He has referred to the report of the investigator dated 7.1.92 which mentions that at the time of the accident, the driver of the truck was under the influence of liquor.

There is no force in this submission. No doubt, the driver was challaned under Section 185 of the Motor Vehicles Act and was fined also as he was under the influence of liquor, but this challan does not show that the driver was under the influence of liquor on 3.7.91, when the accident took place. Merely, the driver has been challaned u/Section 185 of the Motor Vehicles Act, it leads nowhere that the driver was drunk at the time of the accident and hence such submission cannot be accepted. No doubt mention has been made in the report that the driver was in drunken state, but no MLC has been filed on the record nor has any affidavit been filed on behalf of a Doctor or a Police Officer who has made mention to this effect.

3. MR. Naresh Gupta, learned Counsel for the appellant has also relied upon the terms of the insurance policy Sub-clause 2(c) which is reproduced below : "The Company shall not be liable to make any payment in respect of : any accidental loss or damage suffered whilst the insured or any person driving with the knowledge and consent of the insured in under the influence of intoxicating liquor or drugs".

Sub-clause 2(c) of the insurance policy clearly stipulates that the Company shall not be liable to make any payment in respect of any accidental loss or damage suffered whilst the insured or, any person driving with the knowledge & consent of the insured is under the influence of intoxicating liquor or drugs. In other words, if insured or any person driving with the knowledge and consent of the insured under the influence of intoxicating liquor or drugs causes an accidental loss and damage, the Insurance Company within terms of the policy can repudiate the claim. In this case, we find that the complainant has sworn an affidavit dated 7.6.93 which clearly specifies that he had no knowledge that the driver while driving the truck at the time of accident was under the influence of liquor and that he never consented and permitted him to drive the vehicle in drunken position. In such a situation, there is no violation of the terms of the insurance policy and the appellant is not justified in repudiating the claim of the complainant.

4. THE next question which requires our consideration is whether the District Forum is justified in directing the Appellant No. 1 to settle the whole claim of the complainant. In our opinion, such a direction was not quite correct. Mr. Naresh Gupta learned Counsel for the appellant has placed on record certain documents particularly the consent letter of the owner of the vehicle addressed to the Branch Manager by the complainant whereby he has agreed to accept a sum of Rs. 95,000/- on total loss basis in full and final settlement of his claim. It is on the basis of the Surveyor''s report which is placed on the record. THE learned Counsel Mr. B.S. Chauhan accepts this letter as correct and has no objection on

the placing of this letter on the record, and further states that in case this claim of Rs. 95,000/- is awarded alongwith interest, he would be satisfied. In the light of what is discussed above, we partly allow the appeal. The appellant is directed to pay an amount of Rs. 95,000/- to the complainant within three weeks. The complainant shall also be paid interest @ 18% per annum from the date of accident till the date of payment. Cost of Rs. 2000/- is also awarded against the appellant. Appeal partly allowed with costs.

