**(2005) 05 NCDRC CK 0020**

**In the National Consumer Disputes Redressal Commission**

UNITED INDIA INSURANCE CO. LTD. APPELLANT

Vs

DHARAM RAJ RESPONDENT

**Date of Decision :** 26-05-2005

**Acts Referred:**

**Citation :** 2005 0 NCDRC 14 : 2005 2 CPC 581 : 2005 2 CPR 109 : 2005 4 CPJ 115

**Hon'ble Judges :** K.S.GUPTA , P.D.SHENOY J.

**Advocate :** KARAN MEHRA , MANDIP SINGH

## Judgement

1. , PRESIDING Memberï ½This revision is directed against the order dated 27.3.2003 of Consumer Disputes Redressal Commission Haryana Chandigarh dismissing appeal against the order dated 28.1.2003 of a District Forum whereby petitioner/ opposite pary was directed to pay to the respondent complainant amount of Rs. 90,353/- with interest @ 12% p.a. w.e.f. 22.6.2001 till realization.

2. FACTS giving rise to this revision lie in a narrow compass. Respondent was the owner of a vehicle bearing registration No. HR-47/7207 which was insured with petitioner for the period from 25.7.2000 on 24.7.2001. On 22.6.2001 when respondent was going in the vehicle for his personal work i.e. to return empty 5/6 milk tanks, it turned turtle due to failure of steering and its body was badly damaged, Intimation regarding incident was sent to the petitioner. On 31.8.2001, the petitioner repudiated the claim on ground of respondent not having a valid permit of the vehicle on 22.6.2001, the date of incident. Complaint alleging deficiency in service filed by the respondent was contested by the petitioner on the ground taken in repudiation letter. Award for said amount of Rs. 90,353/- was made taking note of the reports of B.S. Kohli and Rajesh Grover, Surveyors and Loss Assessors appointed by the petitioner.

3. ONLY submission advanced by Mr. Karan Mehra for petitioner was that the respondent was not having permit authorising the use of vehicle in question as a transport vehicle on the date of accident. Permit was obtained later on from 25.7.2000 to 24.7.2001. Use of vehicle on the date of accident was, thus, in

violation of Section 66 of the Motor Vehicles Act, 1988 (for short the Act) as also in breach of condition of insurance policy. Reliance was placed on the decision in Oriental Insurance Co. Ltd. v. Soni Cheriyan, VI (1999) SLT 565=11 (1999) CPJ 13 (SC)=1999 (6) SCC 451.

4. PERMIT is defined in Section 2(31) of the Act as under : "Permit means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle." Omitting three provisos, sub-section (1) of Section 66 which is material, reads thus: "No owner of a motor vehicle shall use or permit the use of the vehicle as transport vehicle in any public place whether or not such vehicle is carrying any passenger or goods save in accordance with the conditions of a permit granted or countersigned by Regional or State Transport Authority or any prescribed authority authorising the use of the vehicle in that place in the manner in which the vehicle is being used."

Bare reading of this provision would show that it creates a total bar on use of a vehicle in any public place whether or not such vehicle is carrying any passenger or goods unless the owner thereof holds a permit as defined in Section 2(31). It is not in dispute that respondent was not possessing a permit of the said vehicle on the date of accident. Said sub-section would, thus, be applicable even if vehicle in question was used by the respondent for his personal work i.e. to return empty 5/6 milk tanks as alleged in para No. 2 of the complaint. Insurance policy represents a contract between the insurer and the insured and insured has to, act strictly in accordance with the statutory limitations and/or the terms of policy. Since use of vehicle in question at the time of incident was in contravention of aforesaid Sub-section (1) of Section 66 and conditions of policy, the respondent is not entitled to any amount under the policy. Orders passed by Fora below being legally erroneous cannot be sustained and deserve to be set aside.

5. RESULTANTLY , while allowing revision, aforesaid orders dated 28.1.2003 and 27.3.2003 are set aside and complaint dismissed. Awarded amount received by the respondent will be refunded to the petitioner-insurance company within four weeks from the date of receipt of copy of this order. No order as to cost.

 