(2011) 11 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO LTD — APPELLANT

Vs

Goli Sridhar — RESPONDENT

Date of Decision : 22-11-2011

Acts Referred:

Citation : 2011 0 NCDRC 688 : 2012 1 CPJ 101 : 2012 1 UC 220

Hon'ble Judges : J.

Final Decision : Appeal dismissed

Judgement

1. UNITED India Insurance Company Ltd., Petitioner herein which was the opposite party before the District Forum, has filed this Revision Petition against the order dated 4.6.07 passed by the State Consumer Disputes Redressal Commission, Andhra Pradesh (in short, ''the State Commission'') in appeal No. 643/07 whereby the State Commission has dismissed the appeal upholding the order of the District Forum directing the Petitioner to pay a sum of Rs.3,06,000/ - with 9% interest p.a. from the date of filing the petition, i.e. 1.9.06 to the Respondent/complainant along with costs of Rs.1,000/ -. FACTS: -

2. SMT . Ratna Jain, who was the owner of the Indica car bearing No. AP.15P 6285, got the vehicle insured for the period from 3.3.2004 to 2.3.05. Respondent/ Complainant purchased the said car form her and got it transferred in his name on 8.3.04. Respondent along with his family members went to Vijayawada Krishna Pushkaram in the said car. The car was stolen while the family of the Respondent was taking holy bath in the Krishana river. Respondent reported the matter to the police who registered a case of theft in crime No.260/04. Respondent also obtained a final report submitted by the police before the Magistrate that the car was not traceable. Respondent lodged the claim with the Petitioner. Claim was not settled. Alleging deficiency in service on the part of the Petitioner in not settling the claim, Respondent filed the complaint before the District Forum. Petitioner, on being served, put in appearance and filed its written statement resisting the complaint, inter -alia, on the grounds that there was no privity of contract between the complainant and the Petitioner. That

the Respondent had not applied for transfer of the policy within 14 days of the transfer of the ownership in the prescribed form to the insurer for making necessary changes. That since the policy had not been transferred in the name of the Respondent, the Petitioner was not liable to reimburse to the loss incurred by the Respondent.

3. DISTRICT Forum, relying upon the decision reported as, 2006 (2) CPR 124 and the recommendations of the GIC for settlement of the case, allowed the complaint and directed the Petitioner to pay a sum of Rs.3,06,000/ -with 9% interest p.a. from the date of filing the petition, i.e. 1.9.06 to the Respondent/ complainant along with costs of Rs.1,000/ -.

4. PETITIONER , being aggrieved, filed an appeal before the State Commission. State Commission dismissed the appeal by holding that with the transfer of the ownership of the vehicle in the name of the Respondent/Complainant, the insurance policy would be deemed to be automatically transferred in the name of the Respondent/Complainant and the Insurance Company was liable to pay the insured amount.

5. PETITIONER , being aggrieved, has filed the present Revision Petition.

6. RESPONDENT S despite several notices sent, have not appeared. For today''s hearing, notice was sent on 11.10.11. 30 days from the issuance of notice are over, the Respondents will be deemed to have been served. Ordered to be ex - parte. Respondent had got the vehicle purchased from Smt. Ratna Jain transferred in his name on 8.3.04. The vehicle was stolen on 5.9.2004 during the validity of the policy. By that time, though the ownership of the vehicle had been transferred in the name of the respondent, the insurance policy had not been transferred in the name of Respondent. Respondent had not applied for the transfer in his name within 14 days of the transfer of the ownership in terms of G.R 17.

7. LD . Counsel for the Petitioner contends that as the policy had not been transferred in the name of the Respondent, the Petitioner did not have any privity of contract with the Respondent and, therefore, the Petitioner was not liable to compensate the Respondent for the loss suffered by him. It was mandatory for the transferee to apply for transfer of policy within 14 days from the date of transfer of registration certificate. Since, no such request was made, the policy in question was not transferred in the name of the Respondent. Under GR -17 of the Tariff Advisory Committee, the transferee was required to apply for transfer of the policy in his name within 14 days of the transfer of the Registration Certificate. Under this GR -17, in the case of third party''s interest the transfer is considered to be automatic. However, in the case of own damage, the transferee has to apply for transfer of the insurance policy in his name.

8. COUNSEL for Petitioner has been heard at length. Gr -10 issued by the Tariff Advisory Committee applicable for the period 1.4.90 to 30.6.2002 read as under:
10. Transfers

On transfer of a vehicle the benefits under the policy in force on the date of transfer shall automatically accrue to the new owner. If the transferee is not entitled to the benefit of the bonus or subjected to mauls already shown on the policy, the recovery of the differences between his entitlement (if any) and that shown on the policy shall be waived till the expiry of the policy. However, on expiry and/or termination of the existing Policy the transferee will be eligible for Bonus or subjected to mauls as per his own entitlement

A bare perusal of Gr -10 would show that on sale of the vehicle, the benefits under the policy in force on the date of transfer shall automatically accrue to the new owner. Gr -10 was replaced by Gr 17 w.e.f. 1.7.2002 and the same reads as under:

On transfer of ownership, the Liability Only cover, either under a Liability Only Policy or under a Package Policy, is deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of transfer.

The transferee shall apply within fourteen days from the date of transfer in writing under recorded delivery to the insurer who has insured the vehicle, with the details of the registration of the vehicle, the date of transfer of the vehicle, the previous owner of the vehicle and the number and date of the insurance policy so that the insurer may make the necessary changes in his record and issue fresh Certificate of Insurance.

9. SINCE the vehicle had been transferred in name of the Respondent on 8.3.2004 and stolen on 5.9.2004, i.e., after the coming into force of GR -17, the provisions of GR 17 would be applicable in the present case. As per GR 17, on transfer of ownership, transferee is required to apply within 14 days from the date of transfer in writing under recorded delivery to the insurer who had insured the vehicle, with the details of registration of vehicle, date of transfer of the vehicle, previous owner of the vehicle and the date and number of the policy so that the insurer may make necessary changes in the record and issue fresh Certificate of Insurance. Unless the aforesaid procedure of transfer of vehicle is followed and complied, the transferee has no insurable interest. It would be seen that on receipt of the information from the transferee the Insurance Company is required to make changes in its record and issue a fresh Certificate of Insurance. In the present case, admittedly as pointed out earlier the transferee, i.e., Respondent though got the vehicle transferred in his name, did not apply for transfer of policy in his name within 14 days of the registration in his name to enable the petitioner to make necessary changes in its record and issue a fresh Certificate of Insurance. The transferee did not get any notation of contract of insurance in respect of the person or property and therefore, Respondent did not have any insurable interest on the date on which the vehicle was stolen. Section 157 of the Motor Vehicles Act is applicable to third party rights only and not to own damage case. This Section of the Act reads as under:

Transfer of Certificate of Insurance: (1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

1 [Explanation. -For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.]

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.

This provision came up for interpretation before the Supreme Court of India in the case of Complete Insulation Pvt. Ltd. vs. New India Assurance Co. Ltd. - : (1996) 1 SCC 221 wherein it was held:

Thus, the requirements of that chapter are in relation to third party risks only and hence the fiction of Section 157 of the New Act must be limited thereto. The certificate of insurance to be issued in the prescribed form (See Form 51 prescribed under Rule 141 of the Central Motor Vehicles Rules, 1989) must, therefore, relate to third party risks. Since the provisions under the New Act and the Old Act in this behalf are substantially the same in relation to liability in regard to third parties, the National Consumer Disputes Redressal Commission was right in the view it took based on the decision in Kondaih''s case because the transferee -insured could not be said to be a third party qua the vehicle in question. It is only in respect of third party risks that Section 157 of the New Act provides that the certificate of insurance together with the policy of insurance described therein "shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred". If the policy of insurance covers other risks as well, e.g., damage caused to the vehicle of the insured himself, that would be a matter falling outside Chapter XI of the New Act and in the realm of contract for which there must be an agreement between the insurer and the transferee, the former undertaking to cover the risk or damage to the vehicle. In the present case since there was no such agreement and since the insurer had not transferred the policy of insurance in relation thereto to the transferee, the insurer was not liable to make good the damage to the vehicle. The view taken by the National Commission is therefore correct.

10. SIMILARLY , in Rikhi Ram & Anr. vs. Sukhrania & Ors. - : (2003) 3 SCC 97, the Supreme Court while interpreting the provisions of Section 157 held that although with the transfer of vehicle the Insurance Company remains liable

towards third party claims but the transferee cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act. It was observed: 6. On an analysis of Sections 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchase. The purchase is one of the third parties to the contract and other third party is for whose benefit the vehicle was insured. So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act. However, so far as third party injured or victim is concerned, he can enforce liability undertaken by the insurer.

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8. For the aforesaid reasons, the appeal, is allowed. We set aside the order and judgment under challenge. It is hereby directed that the insurer shall pay compensation to the victims within eight weeks along with the interest @ 11% p.a. from the date of incident and it will be open to the insurer to recover the said amount either from the insured or from the transferee of the vehicle. However, there shall be no order as to the costs.

In view of the provisions of the Motor Vehicles Act and the Tariff Regulations and the decisions of the Supreme Court, if the transferee fails to inform the Insurance Company about transfer of the Registration Certificate in his name and the policy is not transferred in the name of the transferee, then the Insurance Company cannot be held liable to pay the claim in the case of own damage of vehicle. Petitioner Insurance Company was justified in not settling the claim.

For the reasons stated above, we set aside the orders passed by the fora below and the complaint is ordered to be dismissed. Accordingly, the Revision Petition is allowed and the parties are left to bear their own costs.

11. THE enclosed order is sent herewith for your kind perusal. If approved, the same may be listed for pronouncement.