(2006) 09 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd. APPELLANT

Vs

Inder Singh Chauhan RESPONDENT

Date of Decision : 04-09-2006

Acts Referred:

Citation : 2006 2 CPC 716 : 2006 3 CPR 315 : 2006 4 CPJ 15 : 2007 1 CLT 16 : 2007 1 UC 213

Hon'ble Judges : M.B.Shah , Rajyalakshmi Rao J.

Final Decision : Revision Petition dismissed

Judgement

1. THE only question and contention raised in this Revision Petition is whether the reimbursement by the Insurance Company on a non-standard basis was justified on the ground that the driver was having licence to drive ''heavy goods vehicle'', but there was no endorsement for driving ''transport vehicle''. In our view, the contention of the Insurance Company cannot be justified because if a driver is entitled to drive the ''heavy goods vehicle'' he is entitled to drive transport vehicle, and, in any case, not having endorsement would not have any bearing on the accident. Further, the heavy goods vehicle and transport vehicle are defined in Sub-sections (16) and (47) of Section 2 of the Motor Vehicles Act, 1988. "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms. "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private sector service vehicle.

2. THIS would mean that transport vehicle would include public service vehicle and goods vehicle, etc. Facts: The complainant was the owner of a bus and has taken comprehensive insurance policy for the period 19.12.1989 to 18.12.1990. The bus met with an accident on 21.9.1990. Hence, the Complainant lodged a claim with the United India Insurance Company Ltd. The Insurance Company appointed a Surveyor who has assessed the loss at Rs. 1,26,500 and the Insurance Company paid Rs. 93,375 in November, 1991 directly to the Financier, namely, M/s. Swami Financiers. It was contended that a sum of Rs. 33,125 was

deducted by the Insurance Company from the assessed amount of Rs.1,26,500 because the driver was not having endorsement on his licence to drive transport vehicle. The complainant issued a notice on 24.1.1992. Thereafter, the complainant filed Complaint No. 16/92 before the District Forum, Tehri Garhwal. The District Forum vide its order dated 27.6.1992 dismissed the complaint.

Against the order of the District Forum, the complainant filed Appeal No. 1117/ SC/92 before the UP. State Commission. That appeal was allowed by the State Commission by its judgment and order dated 27.11.2000. Hence, the Insurance Company has preferred this Revision Petition.

3. LEARNED Counsel appearing on behalf of the Insurance Company submitted that Section 3 of the Motor Vehicles Act, 1988, inter alia, provides that no person shall drive a transport vehicle unless his driving licence specifically entitles him to do so. She submitted that even though the driver was having licence to drive heavy goods vehicle he was required to have an endorsement to drive transport vehicle. It is to be stated that no such objection was raised by the petitioner before the State Commission. However, to clarify the matter, we deal with the same.

4. IN our view, the aforesaid submission cannot be accepted, because the driver was having a valid driving licence to drive heavy goods vehicle and the transport vehicle includes goods carriage vehicle. Therefore, once a person was having licence to drive heavy goods carriage vehicle it would mean that he was entitled to drive transport vehicle, and transport vehicle would include public service vehicle. Section 10 of the Motor Vehicles Act, 1988 provides different forms of licence, and Sub-section (2) of Section 10 only provides for driving licence for transport vehicle. There is no further division of transport vehicle by dividing into various parts, such as, public service vehicle, goods vehicle, etc. It is to be stated that the driver was not driving ''Public Transport Vehicle but it was only ''Public Service Vehicle''. Further, in our view, the practice adopted by the Insurance Companies of directly paying to the person from whom the loan was taken by the insured, without informing the insured or without his consent, cannot be justified. If the insurance policy is taken in the name of the complainant, there was no question of paying the amount straightaway to the financier. Finally, with regard to rate of interest awarded by the State Commission, it requires modification. Instead of 18% p.a. we reduce the same to 12% p.a. The rest of the order passed by the State Commission is maintained.

5. IN the result, the Revision Petition is dismissed. The petitioner would pay the amount as awarded by the State Commission, to the complainant with interest at the rate of 12% p.a., within a period of eight weeks from today, with costs quantified at Rs. 5,000. Revision Petition dismissed.

