(2015) 05 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

Case No : 2454 of 2009

UNITED INDIA INSURANCE CO LTD — APPELLANT

Vs

JAGPAL SINGH — RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Citation : (2015) 05 NCDRC CK 0063

Hon'ble Judges : V.K.JAIN , B.C.Gupta J.

Advocate : K.L.NANDWANI , Payal Kakra , VISHAL BALECHA

Final Decision : Revision Petition allowed.

Judgement

1. CAR No. PB -11 -W -1280 was owned by Major Harmanjit Singh, who allegedly gifted the same to his son -in -law Amanpreet Singh Sidhu in marriage on 23.10.2003. The registration of the vehicle was transferred in the name of Shri Amanpreet Singh Sidhu on 23.10.2003. The aforesaid car got damaged in an accident on 07.12.2003. A claim, seeking reimbursement was lodged with the petitioner company by Shri Harmanjit Singh. Noticing that the car had already been transferred in favour of Shri Amanpreet Singh on 23.10.2003, the insurance company rejected the claim, on the ground that Shri Harmanjit Singh did not have insurable interest in the vehicle after it had been transferred to Shri Amanpreet Singh. Being aggrieved, one Jagpal Singh Sandhu, claiming to be the attorney of both Amanpreet Singh and Harmanit Singh filed a complaint against the petitioner company, seeking payment of Rs.4,49,427/ -, being the insured value of the car alongwith compensation and cost of litigation.

2. THE complaint was resisted by the insurance company on the ground that as far as Shri Harmanjit Singh was concerned having sold the vehicle; he was left with no insurable interest in the said vehicle after 23.10.2003. As regards, Shri Amanpreet Singh, the insurance company claimed that there was no privity of contract between him and the insurance company.

3. VIDE its order dated 18.2.2008, the concerned District Forum allowed the

complaint and directed the petitioner company to pay a sum of Rs.2,71,206/ - less salvage value of Rs.20,000/ - to the complainant, along with interest @ 9% per annum. A sum of Rs.2000/ - was awarded as the cost of litigation to the complainant. Being aggrieved form the order passed by the District Forum, the insurance company approached the concerned State Commission by way of an appeal. The said appeal having been dismissed vide impugned order dated 31.3.2009, the said company is before us by way of this revision petition.

4. IT is not in dispute that the vehicle, in question, was transferred in the name of Amanpreet Singh Sidhu on 23.10.2003. Once the aforesaid car had been gifted by Shri Harmanjit Singh, he was left with no insurable interest in the said vehicle. Shri Harmanjit Singh had no legal right to claim any compensation form the insurance company on 07.12.2003 when the vehicle got damaged in an accident. As far as claim by Shri Amanpreet Singh Sidhu is concerned, having accepted the gift from his father -in -law, he should have got the insurance policy taken by his father -in -law transferred in his name. That however, was not done. Alternatively, he could have taken an independent insurance cover in his own name. In the absence of transfer of the insurance in his name, Shri Amanpreet Singh Sidhu had no privity of contract with the insurance company.

5. THOUGH , Section 157 (1) of Motor Vehicle Act, 1988 provides for the deemed transfer of the policy of insurance, along with transfer of ownership of the motor vehicle as held by the Hon''ble Supreme Court in Complete Insulations (P) Ltd. Vs. New India Assurance Company Ltd., 1996 AIR(SC) 586 the aforesaid provision applies only in respect of the third -party risks. 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 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.

6. THIS issue came up for consideration of this Commission in United India Insurance Co. Ltd. Vs. V.C. Deenadayal and Anr., 2009 3 CPJ 260 . In the aforesaid case, complainant No.1, who was the registered owner of the vehicle sold the same to complainant No.2 but did not get the registration transferred in favour of the complainant No.2. The insurance also continued in the name of the complainant No.1. The vehicle having met with an accident, a claim was lodged with the insurance company. The claim having been denied, a complaint was filed before the concerned District Forum. The State Commission having decided in favour of the complainants, the insurance company approached this Commission by way of a revision petition. Allowing the revision petition and setting aside the order of the State Commission, this Commission inter -alia held as under: "Under the provision of the Motor Vehicles Act, 1988, the registered owner of the vehicle should have informed the Transport Authority about the sale of the vehicle and the purchaser should have sought the incorporation of her name in the R.C. as the transferee owner. Further, in order to avail the benefit of insurance, the

purchaser should have informed the Insurance Company within 14 days of its purchase under Section 157(2) of the Motor Vehicles Act, 1988 which admittedly has not been done in this case. The real owner complainant had neither registration in her name nor insurance. She has no insurable interest nor privity of contract with petitioner. The original owner cannot maintain any claim against insurance. Under the circumstances, the view taken by the State Commission that the respondent/complainant No.2 who purchased the vehicle has stepped into the shoes of the respondent/complainant No.1 and therefore, entitled to the benefit of the insurance is totally erroneous and, therefore, not sustainable. In order to avail the benefit under the policy, there has to be a contract between the parties and de facto possession of the vehicle will not confer any legal right on respondent/complainant No.2 to avail the benefit under the policy".

7. IN New India Assurance Co. Ltd. Vs. Shri Divya Prashad, 2011 1 CPJ 22 , it was found that the vehicle in question had been sold by the complainant. Holding that having sold the vehicle, the complainant was left with no insurable interest in the vehicle at the time of the accident, the complaint was dismissed by this Commission. Identical view was taken by this Commission in RP/1983/2011 Hansaben Tarachand Chheda Vs. Bajaj Allianz General Insurance Co. Ltd.

8. IT is contended in the written arguments filed by the respondent that the cover note issued to the complainant carried no obligation on the part of the insured to get the policy transferred in the name of the new owner within a period of 14 days. It is also submitted that unless Exclusion Clause under the policy is explained to the insured, the same is liable to be ignored while considering the insurance claim. Reliance is placed upon Interfoto Picture Library Ltd. V. Stiletto Visual Programmes Ltd., 1988 1 AllER 348, Thornton Vs. Shoe Lane Parking Ltd., 1971 1 AllER 686, Modern Insulators Ltd. Vs. Oriental Insurance Co. Ltd., 2000 2 SCC 734, National Insurance Co. Ltd. Vs. Shri D.P. Jain, RP/186/2007, Kuldeep Singh Vs. ICICI Lombard General Insurance First Appeal/242/2009, National Insurance Company Vs. Amar Nath Garg, FA/771/2013.

9. WE have considered the judgments relied upon by the learned counsel for the respondent/complainants. None of the above -referred judgments applies to the issue involved in the present complaint. The requirement of applying to the insurance company for making necessary changes in regard to the transfer of the certificate of insurance and the policy being a statutory obligation imposed upon the transferee of the vehicle, it would be immaterial whether the aforesaid requirement is incorporated in the cover note or not. Once the vehicle is sold, the transferee is under a statutory obligation to seek transfer of the insurance in his name within 14 days from the date of transfer of the vehicle to him.

10. FOR the reasons stated hereinabove, the impugned orders passed by the fora below cannot be sustained and the same are accordingly set aside. The complaint is consequently dismissed. No order as to costs.

