

(2014) 03 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD.

APPELLANT

Vs

N.M.Mohammed Jakeer Hussain

RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Citation : 2014 0 NCDRC 164

Hon'ble Judges : B.C.Gupta J.

Advocate : V.S.Chopra , A.T.M.SAMPATH , T.S.SANTHI , D.I.Syed Swaleha

Judgement

1. THIS revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 27.09.2006, passed by the Karnataka State Consumer Disputes Redressal Commission (for short "the State Commission ") in FA No. 653 / 2006, ""United India Insurance Co. Ltd. versus N.M. Mohammed Jakeer Hussain "" vide which, while dismissing the appeal, the order dated 30.01.2006 in Consumer Complaint No. 92/2005, passed by the District Consumer Disputes Redressal Forum, allowing the said complaint, was upheld.

2. BRIEF facts of the case are that the complainant / respondent is carrying out the business of borewell drilling for the past 10 - 12 years. The complainant owns a lorry, bearing number KA 117860, which was originally a transport vehicle owned by Syed Peer Sab of Mandya. The complainant purchased this vehicle, got the registration certificate changed with effect from 30.12.95 and then, installed a rig unit on it, and the said lorry was treated as a non -transport vehicle with effect from 21.11.96. The funds for the purchase of rig unit and its accessories amounting to Rs. 30 lakh were arranged after raising a loan of Rs. 14.35 lakh from the Karnataka State Finance Corporation and from his personal resources. The said lorry with rig unit was insured with the petitioner/OP under policy number 61 and had been renewed from 8.10.2003 to the mid -night of 07.10.2004. The said lorry met with an accident on 06.10.2004 at about 10.20 PM when it was going towards Sri Rampura for digging borewell on the way near Iddlanaganahally bridge. It has been stated in the complaint that a vehicle

coming from the rear side was blowing horn for the purpose of overtaking the lorry. The road was very narrow. The driver of the rig lorry took the vehicle to the left side of the road, but lost control because the soil at that area was loose. The lorry fell down, got fire and began to burn due to short -circuit. The driver was able to contact the complainant at Nayakanahatty at 12:30 midnight over phone, but his message was not clear. The driver was able to give clear message to the complainant at about 4:30 AM on 07.10.2004. The complainant rushed to the spot, informed the Police and fire station, also took fire brigade service to the spot and the fire was put off. However, by that time, a major portion of the rig had already been burnt out. These facts were conveyed to the opponent on 07.10.2004 at 11:00 AM. The Police Authorities registered case F.A. No. 30/04 at Hiriyor. The burnt lorry was got lifted from the spot and parked in the premises of Mandimutt Oil Industry at Challakare on 25.10.2004 by paying "_25,000/ - and thereafter, the complainant was paying "_50/ - as watch and ward charges every day. The complainant preferred insurance claim with the opponent who advised him to obtain quotations for repairs and to go for repairs. The complainant contacted some leading big companies and reputed Engineers, who gave him quotations ranging from Rs. 20 lakh to Rs. 27 lakhs with their opinion that the rig unit was completely burnt out and it was not possible to repair the same. The complainant forwarded the quotations to the OP and requested that 60% of the amount should be given in advance, so that the repair work could be started. However, there was no response from the respondents. On 06.05.2005, the opposite party expressed their inability to settle the claim, following which a legal notice was sent to them, but there was no reply. It has been stated in the complaint that the actual loss sustained by the complainant on account of the accident was Rs. 19.41 lakh. The complainant requested that the said amount should be paid to him alongwith interest @ 12% p.a. from the date of the complaint till realisation. In their reply to the complaint filed by the OP, it has been stated that the said vehicle could not run on the road without getting a fitness certificate from the concerned authorities. The OPs have denied the version of the complainant about the accident and subsequent happenings and stated that the complaint was not maintainable. It has further been stated that the incident was reported to the OP with abnormal delay on 08.10.2004. Moreover, the fire force letter dated 07.10.2004 from the fire brigade indicates that the incident occurred on 07.10.2004 at 7:30 AM. The fire occurred at the front of the cabin and there was damage only to the tyres etc. The OPs have stated that they were prepared to produce the necessary evidence in support of repudiation of the claim. The District Forum after taking into account the evidence of the parties allowed the complaint, saying that the respondent/OP shall pay a sum of Rs. 15 lakh to complainants within a period of 2 months alongwith interest @9% p.a. They were also directed to pay a sum of Rs. 5,000/ - as compensation for mental harassment and Rs. 1,000/ - as cost of litigation. The appeal filed before the State Commission was ordered to be dismissed vide impugned order dated 27.09.2006. It is against this order that the present petition has been made.

3. AT the time of hearing before me, learned counsel for the petitioner insurance company stated that the respondent/ complainant does not qualify to be covered under the definition of "consumer " as he was indulging in commercial activity related to digging of tube -well bores. The claim in question was a fictitious one and hence, the consumer complaint was not maintainable. The State Commission and the District Forum had not given any weightage to the evidence produced by the petitioner. The learned counsel also argued that there were three different versions of the accident, as made out from various reports available. In one of the reports, it has been stated that the vehicle caught fire due to short -circuit in the battery. In another version, it had been stated that another vehicle was coming from opposite side and while crossing this vehicle, it hit against the battery box and the fire occurred due to short -circuit. This version has been given by Shri B.R. Manjunath, the surveyor appointed by the Insurance Company. In the report of the second surveyor, Shri K. Kumar, it has been stated that another vehicle was coming from the same side and when the said vehicle came to the side of insured vehicle, the vehicle took a sudden turn and it capsized on the left side, resulting in fire. In the claim filed by the complainant, it has been stated that when the vehicle coming from the rear side tried to overtake this vehicle, the driver took the rig lorry to the left side and in the process, lost control of the vehicle, due to loose soil and hence, the vehicle fell down to the left side of the road. The learned counsel has drawn our attention to the reports given by Shri B.R. Manjunath, surveyor, Shri Shyam Sunder, investigator and Shri K. Kumar, surveyor about the incident. Learned counsel argued that they had not got the chance to do quantification of the damage. Referring to the report of the Motor Vehicle Inspector, the learned counsel stated that such inspectors are not concerned with insurance claim in any manner and hence, their report could not be believed. Further, the claim of the complainant for total loss was not substantiated from the evidence on record, because the vehicle had suffered damage on the front portion and the tyres only. Even their own witness had stated that the vehicle could be repaired by spending Rs. 10.87 lakh only.

4. LEARNED counsel for the respondent in reply stated that the orders passed by the State Commission and District Forum are in accordance with law and should be upheld being concurrent findings. The OPs had themselves admitted that the insurance cover had been taken by the complainant, showing the IDV of the vehicle as Rs. 15 lakh. Further, it had been stated that the Transport Department had registered the vehicle as a non -transport vehicle. It was clear, therefore, that fitness certificate was not required for plying the vehicle on the road. The Insurance Company had also issued the insurance policy, treating it as a rig vehicle. There had been no violation of the terms and conditions of the policy. It was evidently, a case of total loss and the consumer fora below had rightly allowed the claim. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me. It has been admitted by the OP that they issued the insurance policy in question, showing

the IDV of the vehicle as Rs. 15 lakh and fully knowing, that it was a vehicle being used for tubewell boring and for that purpose, a rig was mounted on the chassis of a truck. It has been stated that the said vehicle is registered as a non - transport vehicle by the Transport Department. Hence, the version of the OP that fitness certificate is required for plying the vehicle is not correct. Moreover, it is the job of the Transport Department to see whether fitness certificate is required in such cases or not. It is not desirable on the part of the Insurance Company to raise such objections, once they have issued the insurance policy in question and accepted premium from the insured.

5. THERE is a delay of 34 days in filing the present revision petition. An application for condonation of delay has been filed, saying that some time was spent in obtaining legal opinion and then completing the official formalities, involving making reference to the Head Office of the company. For the reasons mentioned in the application for condonation of delay, the said delay is ordered to be condoned.

6. FURTHER , the State Commission have examined in detail the issue of fitness certificate by referring to section 39 and 56(1) of the Motor Vehicles Act and also referred to the definition of "transport vehicle " including that for public service vehicle, goods carriage, educational institution bus and private service vehicle " as defined in the Act, saying that the vehicle in question does not fall in any of the above categories and hence, does not come under the definition of transport vehicle. The District Forum has carried out a detailed analysis of the evidence on record, including the reports of the two surveyors and that of the investigator. They have stated that Shyam Sunder, Investigator, told during cross - examination that the engine - cabin were completely burnt, whereas parts of the rig unit were also burnt. The District Forum reached the conclusion that it was not possible to have the vehicle repaired and hence, they allowed the claim on a "total loss " basis. They have also stated that looking at the quotations for repairing the vehicle and adding labour charges to the same, the cost of repair shall be more than the IDV of the vehicle.

7. THIS version of the District Forum has been upheld by the State Commission as well, by observing that six tyres, disk cabin, engine parts, compressor, batteries and borewell machinery of the vehicle were damaged in the accident. The motor vehicle inspector also stated in his report that the vehicle could not be repaired.

8. IT is also observed that while hearing a revision petition, re -appraisal of evidence is not required and the orders passed by the Fora below can be interfered with only if there is a patent jurisdictional error. In the present case, therefore, there is no justification for any modification in the well -reasoned orders passed by the State Commission and the District Fora and the same are confirmed. The revision petition is ordered to be dismissed. There shall be no order as to costs.