(2004) 08 NCDRC CK 0095

In the National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd. APPELLANT

Vs

PATEL PARSOTAMBHAI GIRDHARBHAI RESPONDENT

Date of Decision : 18-08-2004

Acts Referred:

Citation : 2004 3 CLT 442 : 2004 3 CPR 131 : 2004 4 CPJ 45 : 2005 1 CLT 82 : 2005 1 CPR 213

Hon'ble Judges : M.S.Parikh , M.K.Joshi J.

Final Decision : Appeal partly allowed

Judgement

1. BY way of this appeal the original opponent United India Insurance Company has challenged order dated 15.1.2003 rendered by the learned Consumer Disputes Redressal Forum, Sabarkantha in Complaint No. 158 of 1998, directing the said company to pay to the complainant Rs. 3,35,000/- with interest @ 9% p.a., compensation in the sum of Rs. 5,000/- on the head of mental agony and cost in the sum of Rs. 2,000/-. We have heard the learned Advocates for the parties. We have gone through the impugned order.

2. THE complainant''s insured vehicle was destroyed by fire on 16.2.1997 during the period of insurance while it was proceeding with dry paddy grass carried in the vehicle. THE opponent Insurance Company repudiated the claim on the ground that the vehicle in question was carrying approximately 1200 bundles of dry paddy grass which raised the height of the vehicle from the permissible height and that resulted into the grass touching the live wires of Gujarat Electricity Board which were at the height of 15 feet from the ground level. THE learned Forum negatived the repudiation on the ground that on the one hand there was no condition in the policy which would prohibit height of the vehicle being increased beyond a particular level resulting into loss exonerating the Insurance Company from the liability and on the other hand the opponent Insurance Company failed to establish the fact that fire was caused on account of fault/negligence on the part of the complainant or the complainant''s driver in allowing the height of the vehicle to exceed particular limit and that resulted into

the accident in question. It has first to be verified if there is any provision of law limiting height of the motor vehicle. Reference may be made to Rule 93(4) read with Rule 29 of Appendix-II of the Central Motor Vehicles Rules, 1989. The relevant Sub-rule (4) would read as under: "(4) The overall height of a motor vehicle measured from the surface on which the vehicle rests- (i) in the case of a vehicle other than a double-decked motor vehicle, shall not exceed 3.8 metres; (ii) xxx xxx xxx (iii) in the case of a laden trailer carrying ISO Series 1 Freight Container, shall not exceed 4.2 metres."

Sub-rule (8) indicates that no motor vehicle shall be loaded in such a manner that the load or any part thereof extends-xxxx a height beyond the limits specified in Sub-rule (4).- Rule 29 deals with ''Projection of loads'' which says that ''no person shall drive in any public place any motor vehicle which is loaded in a manner likely to cause danger to any person in such a manner that the load or any part thereof or anything extends laterally beyond the side of the body or to the front or to rear or in height beyond the permissible limit.'' Reconciling the aforesaid provision of law reference has been made to Condition No. 2 of policy of insurance in question. It reads Company shall be liable to make payment in respect of- (a) consequential loss, depreciation, wear and tear, mechanical or electrical break-down failures or breakages nor for damages caused by overloading or strain of the motor vehicle nor for loss of or damage to accessories by burglary house-breaking or theft unless such Motor Vehicle is stolen at the same time." It has, therefore, been submitted that the vehicle in question was overloaded in the sense it exceeded the permissible height according to the aforesaid rules. In our considered opinion, although there is no meaning of overloading available in the policy of insurance in question, it would clearly appear that the meaning has got to be gathered from the provisions of the Motor Vehicles Act read with Rules. As stated above, Sub-rule (8) of Rule 93 would clearly provide for loading a vehicle in following terms: "No motor vehicle shall be loaded in such manner that the load or any part thereof extends- (i) xxxx (ii) xxxx (iii) xxxx (iv) to a height beyond the limits specified in Sub-rule (4)."

It, therefore, clearly appears that there is a condition in the policy which deals with overloading of vehicles and if that be the direct cause of the accident, entitlement for loss would depend upon the nature of the breach of such condition.

In the present case, two facts are required to be established by the opponent Insurance Company. In the first place it has to establish that the vehicle in question was overloaded in the sense that the height of the vehicle was beyond the permissible height at the time of the accident. In the second place, the opponent Insurance Company has to establish that the wires of Gujarat Electricity Board were at the permissible height of 15 feet and not below that and that the wires were not hanging below that height. It has simultaneously to be established that the wires did not touch any extraneous substance which gives sparks falling in the paddy grass carried in the vehicle in question. In the present case the opponent Insurance Company has relied upon the certificate issued by the Gujarat Electricity Board that the wires were at the height of 15 feet. The Panchnama would indicate that it was approximately 15 feet high when the Panchnama was drawn. The nature of the accident would indicate that the truck (vehicle in question) had already passed by the place where the wires were hanging at the height of around 15 feet. It was only thereafter that attention of the driver was drawn by the villagers about the paddy grass carried in the vehicle in question having caught fire. It was, therefore, presumed by the driver that the sparks might have been caused from overhead wires of the Gujarat Electricity Board and they might have come in contact with paddy grass resulting into fire having occurred. Thus, even the driver had presumed that the paddy grass must have caught fire on account of sparks from the wires in question. Thus, there are several intervening factors which have not been clearly established from the side of the opponent Insurance Company so as to bring home the proximate cause of the accident being the height of the vehicle having been increased beyond the permissible height. That having not been done, the complainant would clearly be entitled to the indemnity insurance amount surveyed by the Surveyor of the opponent Insurance Company. The learned Forum has awarded that very amount. We have no reason to disagree with the finding of the learned Forum. Besides, the complainant clearly approached the learned Forum with a case of 1100 bundles of paddy grass, whereas according to the opponent Insurance Company there were 1200 bundles of paddy grass carried in the vehicle in question. What is important is height of the vehicle from the ground level going beyond the permissible limit. In absence of any evidence to establish that fact, the submission that the accident occurred on account of alleged breach on the part of the complainant cannot be accepted.

3. WITH regard to compensation and cost, we called upon the complainant''s learned Advocate to make submissions. It is not the case of the complainant that there was any mala fide on the part of the opponent Insurance Company in repudiating the claim. Repudiation of the claim had arisen on account of the claim which partly arose from the facts alleged by the complainant. Bearing in mind such peculiar circumstances of the present case, the complainant would clearly be not entitled to compensation and cost awarded by the learned Forum. That part of the impugned order will merit reversal. Following order is, therefore, passed. ORDER Impugned order dated 15.1.2003 rendered by the learned Consumer Disputes Redressal Forum, Sabarkantha in Complaint No. 158 of 1998 is hereby maintained except with regard to order for compensation and cost which order will stand set aside. This appeal is accordingly partly allowed, with no order as to costs. It is not in dispute that there was hypothecation of the vehicle in question with Gujarat State Co-op. Agricultural and Rural Development Bank Limited, Bayad branch. The opponent Insurance Company will deposit the amount as per the modified order with the said bank within 8 weeks from today and if the loan is paid up and no amount has remained outstanding, the bank will

pay that amount to the complainant. The amount of Rs. 25,000/- stated to have been deposited by the opponent Insurance Company in this Commission be verified and paid back to the Insurance Company by A/c payee cheque, with interest, if any. Appeal partly allowed.