(1992) 06 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD.-/O.P. APPELLANT

Vs

Mahaveer oil Industries RESPONDENT

Date of Decision : 10-06-1992

Acts Referred:

Citation : 1993 2 CPJ 728

Hon'ble Judges : S.K.Mal Lodha , Damodar Thanvi J.

Final Decision : Appeal dismissed

Judgement

1. BEING dissatisfied with the order dated 3.4.91 passed by the District Forum, Jaipur in Complaint Case No. 819/90, the opposite party (insurer) has filed this appeal under Sec. 15 of the Consumer Protection Act, 1986 ("the Act" herein). The District Forum by the impugned order directed the opposite party-insurer to make payment of Rs. 69,000/- together with interest from 2.2.90 @ 12% p.a. and incase the amount is not paid within one month the opposite party insurer was made liable to pay interest @ 18% p.a. A sum of Rs. 1,000/- was awarded as costs. Facts leading to this appeal are these :

2. THE complainant-insured is a registered owner of vehicle No. RNG 2116. He got his vehicle insured under a comprehensive scheme and paid the premium under different heads. Policy No. 31/11/125589 which was valid froml3.10,89 to 12.10.90was issued. It is said that on 2.12.89 the vehicle after being filled with vegetables left Niwai for Delhi. When it reached 3 km. south of Shahpura, from the opposite side another truck PAC8975 which was coming from Delhi dashed against the complainant''s vehicle. As a result of which the complainant''s vehicle was completely damaged. THE complainant informed the opposite party on 2.12.89 without delay about the accident and requested for spot survey. THE insurer sent the Surveyor who saw the vehicle and the photogrphs were taken. THEreafter the damaged vehicle was brought from the place of accident to Jaipur Transport Nagar. THE insured filled the claim form. Alongwith the claim form he submitted replacement, repair, destroyed and other articles estimate and in writing requested for the appointment of the final surveyor. THE insurer sent the

final surveyor. According to the complainant he suffered loss to the tune of Rs. 85,000/-. THE insurer and its surveyor in Dec. 89 told him to pay Rs. 69,000/- in lumbsum. On account of financial stringency the complainant accepted to take Rs. 69,000/- instead of Rs. 85,000/-. He got the vehicle completely repaired and showed it to the insurer. THE insurer through its surveyor got reinvestigation of the vehicle. THE complainant has alleged that he borrowed money and he was required to pay interest @ 1.50% per month. THE amount was not paid to the complainant despite several visits. He, therefore, filed the complaint dated 30.1.90 praying that a sum of Rs. 85,000/- and from the date of the accident i.e. 2.12.89 until realisation interest @ 18% may be awarded. A sum of Rs. 5,000/- was claimed as special compensation. Costs and expenses amounting to Rs. 2,500/- of the complaint were also claimed. Shri Vishnu Prasad partner of the insured submitted affidavit in support of the complaint. THE complainant submitted private and confidential motor (spot/final) survey report dated 2.7.90. The insurer contested the complaint on various grounds. Certain preliminary objections were raised. One of the objection that was taken was that the claim amount cannot be paid as the claim does not fall within the terms and conditions of the policy. It, therefore, informed vide letter dated 28.3.90 that claim has been repudiated. An objection was taken that at the relevant time the vehicle was driven by a person who did not possess driving license of medium transport vehicle. The truck RNG2116 is medium transport vehicle. There is a condition in the policy that vehicle should be driven by a person holding valid and legal licence. It was submitted that in such vehicles passengers are not permitted to sit. There is strict prohibition, however, at the time of the accident there were nine persons sitting in it. The policy was for goods vehicle in which only six labourers could sit and thus the complainant violated the terms of the policy. The gist of the preliminary objections is that detailed investigation of the claim filed by the complainant was done by the insurer and it was thereafter that the claim was repudiated. On merits it was pleaded that policy was issued by the Tonik Branch of the insurer. The fact of accident and the appointment of the spot surveyor was admitted. As stated above claim was repudiated on 283.90. Other facts mentioned about the harassment of the complainant were denied. Thereafter, Vishnu Prasad partner of the complainant submitted his affidavit dated 31.1.91. Shri Gajanand Gupta has submitted his affidavit and photostat copies of the two letters dated 10.3.90 and 9.5.90. The District Forum heard the arguments on 11.3.91. On that day a photo copy of the survey report was produced. It passed the order dated 3.4.91 as stated above.

We heard Mr.Girish Parek, Advocate for the appellant and Mr. Jagdish Narayan Sharma, Advocate for the respondent and considered the record as well as the order under appeal. Learned Counsel appearing for the appellant has raised the following contentions before us : - 1. That there was no deficiency in service so far as opposite party-appellant is concerned; 2. That the claim was repudiated by letter dated 28.3.90 after thorough investigation and, therefore, the Redressal Forum, namely, the State Commission has no jurisdiction to adjudicate the claim forming the subject matter of the complaint; 3. That if both the above contentions are not accepted, the complaisant is not entitled to a sum exceeding Rs. 69,000/- as he consented before the surveyor to accept the amount.

3. REGARDING contention No. 1 and 2 : Both the contentions are interconnected with each other and, therefore, they are dealt together. The letter of repudiation dated 28.3,90 which was sent to the complainant is as follows : - "Upon scrutiny of your aforesaid claim, the Competent Authority has repudiated the claim on the following grounds : 1. There was permit violation. 2. There is suppression of material information in claim form. You have falsely declared the number of passengers being carried as six. 3. The drivers was not having a valid driving licence."

It is thus, clear that the claim was repudiated by the insurer on three grounds; (i) there was permit violation, (ii) there was suppression of material information in the claim form as the complainant has falsely declared the number of passengers being carried as six; and (iii) the driver was not having a valid driving licence. After the receipt of the letter of repudiation the Complainant sent a letter dated 9.5.90 explaining/ meeting the three reasons given by the insurer for repudiating the claim. Shri Vishnu Prasad partner of the complainant submitted his affidavit dated 31.1.91. In support of the version as stated above Shri Gajanand Gupta authorized officer and Manager on behalf of the insurer filed his affidavit in support of the pleas taken in the version of the case. The photostat copies of the letter of repudiation and letter dated 9.5.90 were submitted by the insurer. The District Forum has discussed and recorded findings in respect of the three grounds given by the insurers for repudiating the claim of the complainant. The District Forum on the basis of the authorities referred to in the impugned order came to the conclusion that it is not of much consequence that whether there were six persons or nine persons sitting at the time of the accident, for the complaint does not relate to the claim of the persons who have died or who may have died while sitting in the truck at the time of the accident. The complaint relates to the claim for damages to the truck and so the violation of the contract with regard to the number of the passengers is not of much avail. As regards the ground that the driver was not having a licence to drive medium transport vehicle the District Forum was of the opinion that the driver at the relevant time was having licence to driver heavy vehicle. The District Forum has also opined that the accident had not taken place on account of the negligence of the driver but the vehicle coming from the opposite direction dashed and so damage was caused. The other reason given by the District Forum is that if a person has a licence to drive heavy vehicle then it will be considered that he has efficiency to drive medium transport vehicle. In this connection he has referred to Sec. 7(7) of the Motor Vehicles Act, 1939 and Sec. 10(2) of Motor Vehicles Act, 1988. As the driver at the relevant time was having the licence to drive heavy vehicle it was not necessary for him to obtain a licence for medium transport vehicle and on this ground there was no justification for the Insurance Company to reject the claim. The District Forum has stated that only the vegetables were to be transported and the owners of the vegetables were sitting in it and in the absence of any other evidence by the opposite parties it cannot be said that some unauthorized persons were sitting in it. With regard to the number of the persons the District Forum has observed in para 13 of the order as under : - "(13). ANYATHA DHIADI 6 MAZDOORO KI BAATEN BHI MAN LI JATI HAI TO JAISA KI VIPAKSH KI AUR SE APNE JAWAB MAI PRAKAT KIYA GAYA HAI TO PHIR SAMNE PARIWADI KA DINANK 9/5/ 90 KE PATER KE ANUSAR BHI VAHA PAR APNA MAZDOOR AVEM CHALAK KE ALAWA KHALASE KO CHHOD KAR ANYA KISI BHI VEYAKTI KO ANADHIKRIT ROOP SE AISA MAL VAHAK KE ROOP MAI, YATRI KE ROOP MAI YATRA NAHI KARANA KA PARMTT NAHI HONE SE BHI PARIWADI KE DAVE KO NERADHAR NAHI MANNE KA ADHIKAR HAI"

The grounds mentioned for repudiating the claim by the insurers do not bear scrutiny and it cannot be said that they have thoroughly investigated the claim. It is wrong on the part of the learned Counsel for the appellant to contend that as the claim of the insured was thoroughly investigated and thereafter it was repudiated. The State Commission should not adjudicate the claim.

4. RE. Contention No. 3 : Mr Jagjeet Makkar has submitted his final report on 2.2.90. Cause and nature of accident as stated in the final report is as widen-- "As stated in the claim form the Vehicle was going to Delhi, with load of fresh vegetables from Niwai, Near Shahpura, there is two way road track, but the T.P. truck PAC 8975 instead of going to its L/ S track came on the same track and dashed head on with the sub vehicle and the sub vehicle over turned on its left side."

After discussing, be has dealt with the Schedule of assessment giving details "on cash loss basis." The net liability of the insurers assessed is Rs. 64,849/- whereas on total loss basis the liability assessed of the insurers is Rs. 86,000/-. The surveyor has written as under in the report : "However the insured was insisting for total loss and after much discussions with the insured in presence of the DM. he was persuaded for settlement on cash loss basis and has ultimately given his consent for Rs. 69,000/- only on cash loss basis, subject to policy terms and conditions."

REgistration certificate and route permit were checked by the Surveyor and they were found in order. A photo copy of the driving licence was also produced. It was checked. The District Forum has mentioned in the impugned order that registration certificate, fitness and route permit were checked and the vehicle was inspected. The weight of the vegetables which were carried was not in excess of the insured weight. There is no reason to disbelieve the statement made in the survey report that the complainant-respondent agreed to accept a sum of Rs. 69,000/- on cash loss basis. The District Forum was, therefore, right in coming to the conclusion that the insurers should have indemnified the insured atleast to the tune of Rs. 69,000/-. It ordered that the opposite party insurer-should pay Rs. 69,000/- With interest @ 12% from 2.2.90 provided the payment is made within one month from the date of the order of the District Forum and on failure to make the payment within one month from the date of the order, it was directed that the complainant will be entitled to recover interest @ 18% p.a. until the date of realizations. No illegality or irregularity was shown to us in regard to these directions. We, therefore, affirm the order of the District Forum by which it directed the insurer to pay Rs. 69,000/- to the complainant-insured together with interest @ 12% from 2.2.90 until the expiry of the period of one month from the date of the order failing which complainant-respondent was entitled to interest @ 18% p,a. Learned Counsel for the appellant did not agitate before us that a sum of Rs. 1,000/- awarded as costs of the complaint to the complainant was wrong. No valid exception can be taken to the direction for the payment of costs amounting to Rs. 1,000/- as costs of the complaint. Having perused the order of the District Forum in the light of the material on record we are unable to take a view different from the one taken by it. The order under appeal is therefore affirmed. There is no force in this appeal It is, therefore, dismissed. The parties are left to bear their own costs of the appeal Appeal dismissed.