

(2005) 04 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE COMPANY LTD.

APPELLANT

Vs

BALRAJ SINGH

RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:

Citation : 2005 0 NCDRC 30 : 2005 2 CPC 177 : 2005 2 CPR 27 : 2006 1 CPJ 146

Hon'ble Judges : K.S.GUPTA , B.K.TAIMNI J.

Advocate : ANU MEHTA

Judgement

1. THIS revision is directed against the order dated 19.3.1998 of Consumer Disputes Redressal Commission Haryana, Chandigarh, dismissing appeal against order dated 20.11.1996 to a District Forum whereby petitioner/opposite party was directed to pay amount of Rs. 90,560 with interest @ 15% p.a. from 1.5.1996 to the respondent/complainant,

2. FACTS giving rise to this revision lie in a narrow compass. Vehicle bearing registration No. HR-26A-5568 owned by the respondent was insured with the petitioner for a period of one year. During the currency of policy the vehicle met with an accident on 10.5.1995 and was damaged. On being informed of accident, the petitioner appointed Ajay Kumar as preliminary Surveyor. S.K. Bakshi and Company" was "appointed as final Surveyor. They gave their report on 12.9.1995 assessing the damage to the vehicle to the tune of Rs. 90,096*which amount was reduced to Rs. 88,137. On claim not being settled, the respondent filed complaint which was contested by the petitioner mainly on the grounds that vehicle was not having fitness certificate on the date of accident and petitioner had submitted two bills for purchase of one spare part indicating different amounts. Petitioner filed review application for recalling aforesaid said order dated 19.3.1998, which was dismissed by the State Commission by the order dated 30.9.1998 holding that it did not have power of review under Consumer Protection Act, 1986 (for short the Act). Dissatisfied with State Commission's orders, the petitioner filed present revision petition which was dismissed by this

Commission by the order dated 14.12.1998. Against that order the petitioner filed SLP(Civil) No. 5571 of 1999 which was disposed of by the Supreme Court by the order dated 23.4.1999 observing that petitioner may move this Commission to point out that order of State Commission declining to review was also the subject matter of dispute before it. Thereafter, present revision petition has been revived. Controversy between the parties mainly centres around the question whether there was a subsisting fitness certificate of the vehicle on the date of accident, i.e., 10.5.1995. In support of the plea taken in written version that respondent despite demand did not produce fitness certificate of the vehicle, the petitioner filed latter sent to the respondent on 6.3.1995 (copy at page 17), 27.12.1995 (copy at page 16), 11.3.1996 (copy at page 18) and 17.5.1996 (copy at page 19). Bare reading of these letters would show that one of the documents demanded from the respondent was the fitness certificate of the vehicle. Aforesaid order of District Forum would show that at the stage of argument a fitness certificate for the period from 28.7.1994 to 27.7.1995 was produced by the respondent and the petitioner denied having received the copy thereof. Copies of memo of appeal and application for recalling aforesaid order dated 19.3.1998 filed by the petitioner would indicate that non-production of fitness certificate of vehicle was also the ground for setting aside the " District Forum"s order dated 20.11.1996 and recalling State Commission"s order dated 19.3.1998. As may be seen from State Commission"s order, it did not at all consider the plea of petitioner in regard to non-production of fitness certificate by the respondent. Along with application seeking recall of order dated 19.3.1998, the petitioner had filed a letter dated 31.12.1996 addressed to. the Motor Vehicles Inspector, Gurgaon, by the Investigator appointed by the petitioner-Insurance Company and copy of that letter also bearing the endorsement of Motor Vehicles Inspector (WM), Faridabad, dated 9.1.1997 is placed at page 35. Endorsement dated 9.1.1997 would show that as per record maintained by vehicle in question was not having fitness certificate from 27.7.1994JO 23.7.JL995. To be noted that non-possession of fitness certificate of vehicle on date of accident was in violation of Section 56 of the Motor Vehicles Act and constituted breach of conditions of the policy. In order to ascertain which one of the said two documents is genuine, the case deserves to be remanded to the District Forum. Before recording finding regarding genuineness/falsity of two documents the District Forum will afford opportunity to both the parties to lead additional evidence in the matter.

3. ACCORDINGLY , while allowing revision, the orders passed by Fora below are set aside and case remanded to the District Forum for complaint being decided afresh on merit in the light of observations made in preceding para.

4. PARTIES will appear before the concerned District Forum for direction on 5th July, 2005.