(2005) 09 NCDRC CK 0054

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE COMPANY LTD — APPELLANT

Vs

Dinesh Kumar Agarwalla — RESPONDENT

Date of Decision : 10-09-2005

Acts Referred:

Citation : 2005 4 CPJ 440

Hon'ble Judges : BASANTI DEVI , SUBASH MAHTAB J.

Judgement

1. BEING aggrieved against the order dated 16.9.2000 passed by the District Forum, Mayurbhanj in C.D. Case No. 30 of 2000, the opposite party, the United India Insurance Company Limited represented by its Branch Manager, Branch Office, at Vivekananda Marg, Balasore, has filed this appeal against the Complainant.

2. THE case in brief is that, Dinesh Kumar Agrawalla, the complainant/ respondent has insured his truck bearing registration No. OR -11 -8652 with the opposite party/appellant vide policy No. 034006/31/21/737/98. Said truck loaded with rice while was moving on N.H. No. 5, near Sukhupada Bangru Bridge, met with an accident on 18.4.1999. The cabin, dash board and body of the truck was totally damaged. Sri Parthasarathy Roy an empanelled Surveyor of the appellant has assessed the loss at Rs. 1,98,000. Therefore, the complainant/ respondent claimed damage of Rs. 1,98,000 from the appellant. But the appellant repudiated the claim on the ground that the driver of the truck was not having valid licence when he was driving the truck, Driver P.K. Mohanty was a temporary driver. After knowing this, the respondent filed valid driving licence No. 1952/93 of the said driver produced by him before the appellant. Still then, the appellant refused to settle the claim. Therefore, he filed the aforesaid C.D. case for the deficiency of service by the appellant. On the other hand, the case of the appellant is that though the aforesaid truck belonging to the respondent has been insured as aforesaid with the appellant and it met with an accident on the said date, yet at the time of accident the driver Pradeep Kumar Mohanty had no valid driving licence to drive a heavy vehicle i.e. a truck. As per his driving

licence No. 135/85 -86 issued by L.A., Mayurbhanj, he was not authorized to drive heavy transport vehicle. The accident was reported at the Kuliana P.S. where S.D.E. No. 357 dated 18.4.1999 was registered. Though police did not properly enquire into the case yet he seized the aforesaid driving licence which was with the said driver when the accident took place. The respondent had also reported to the appellant in respect to the accident. The respondent, who is the owner of the said truck knowing that the driver Pradeep Kumar Mohanty had no effective/valid driving licence in view of D/L. No. 135 of 85 -86 MBJ only valid up to 25.9.1996, had engaged him to drive the truck for trade and business purpose. Therefore, due to incompetency of said driver there was accident. The respondent with full knowledge that D/L No. 135 of 85 -86 is a fake one, had allowed said Pradeep to drive the said vehicle. Taking into consideration the said driving licence on the strength of which the said driver was driving the commercial vehicle and driving licence verification report, the appellant has turned down the claim of the respondent. Though the owner of the said truck (the respondent) has produced before the appellant another driving licence viz. D/L. No. 1952/93 L.A. Lohardoga (Bihar) valid upto 22.9.1999 in favour of said driver, it was neither seized nor verified by the Kuliana Police. The holding of a second licence by a driver is prohibited under Section 6 of the M.V. Act. In view of this, the appellant had repudiated the claim of the respondent. Thus, the appellant had claimed for dismissal of the C.D. case, it having not caused deficiency in service to the respondent.

3. AFTER going through the dispute between the parties, the District Forum, Mayurbhanj vide aforesaid orders, directed the opposite party/appellant to settle the claim of the complainant/respondent at Rs. 1,98,000 and to pay compensation of Rs. 10,000 and cost of litigation Rs. 500.

4. WE have heard both sides and perused the materials on record. The appellant has challenged the aforesaid orders mainly on the ground that as Section 6 of the Motor Vehicles Act in short M.V. Act, prohibits holding of more than one driving licence by a driver, the appellant is justified in turning down the claim of the complainant/respondent inasmuch as the respondent had engaged such disqualified person as a driver knowing fully well about his disqualification. On the other hand, it is the specific plea of the respondent that he had engaged said Pradeep Kumar Mohanty as a temporary driver. But when he came to know that the licence No. 135 of 85 -86 produced by him during inquiry was found false and fraudulent, he obtained from the driver valid driving licence No. 1952/93 valid up to 22.9.1999 and produced the same before the appellant. Therefore, as there is no violation of the term of insurance, appellant should not have repudiated his insurance claim.

5. THE appellant nowhere has established that driving licence No. 135 of 85 -86 is a false and fraudulent one and licence No. 1952 of 1993 is manufactured later on to justify the claim of the respondent. However, facts remain from the case of both parties that when the accident took place the said driver was having the

said two driving licences. the xerox copy of later licence Annexure -4 (licence No. 1952 of 93) shows that said driver was authorized till 22.9.1999 to drive both light and heavy motor vehicles. Assuming in the worst case, the earlier driving licence No. 135 of 85 -86 is a false and fraudulent one, the crux of the point before us as to whether in the present background of the case, the respondent is entitled to get his claim settled by the appellant. In this respect we would like to rely upon a decision reported in I (2003) ACC 611 (SC)=2003 AIR SC 1695, United India Insurance Co. Ltd. v. Lehru and Others. It has been held in this decision that unless a driver has effective driving licence, he cannot drive any motor vehicles in the public place in view of Section 3 of the M.V. Act. That, if the owner of the motor vehicle allows a person to drive a vehicle without licence, the owner is liable to be punished either with imprisonment or with fine. The owner cannot be punished, if the driver drives the vehicle without licence without taking permission of the owner. But this state of affair would not absolve the Insurance Company unless there is breach by the insured. The Honble Apex Court has also held that, before allowing a driver to drive his vehicle when the owner of the vehicle from the face of the driving licence produced by the driver, is satisfied that it is genuine, and would engage him as a driver taking a test of the driver and found him satisfied, there would be no breach of Section 149(2)(a)(ii) of the M.V. Act. More particularly, this is because the owner is not expected to know whether said driving licence is issued by a competent authority. Therefore, the Insurance Company should not expect that the owner of the vehicle should verify the genuineness of the drivers licence from the R.T.Os., which are spread all over the country. In this end of the view, the Honble Apex Court decided that if ultimately, the driving licence is found fake still then the Insurance Company would not be absolved from liability unless it proves that the owner had engaged such driver knowing fully well that his licence is fake.

6. BUT in the instant case the appellant has not established that said driver was permanently driving the said truck of the respondent and the respondent without being satisfied about the genuineness of the driving licence No. 135 of 85 -86 produced by the driver or in absence of any effective licence of the driver to his knowledge had engaged said Pradeep Mohanty to drive his truck on the date the accident took place. Appellant has also not proved this driving licence and the subsequent licence is fake, or false or fraudulent though he turned down the claim of the respondent for the above reason. In a decision reported in 2004 (I) OLR at Page 521 it has been held by our Honble High Court that if a person does not possesses an effective driving licence as on the date of accident, he may be prosecuted under Section 141 of the M.V. Act, but on the ground of not having an effective licence by the driver, the insurer cannot be absolved from liability. It is also held that even absence of an endorsement in the driving licence to drive transport vehicle does not amount to breach of policy condition and the insurer is not absolved from its liability to pay compensation amount. The appellant does not dispute the quantum of damage of the truck as claimed by the respondent due to the accident on 18.4.1999 and the assessment of damage amounting to

Rs. 1,98,000 by the Surveyor of its own panel as is claimed by the respondent. It also does not disprove the claim of compensation of the respondent. In view of the decisions as discussed above, the appellant cannot be absolved of his liability to give compensation for the accident made by the said truck driven by Pradeep Mohanty. In this end of the view, we do not want to interfere with the aforesaid orders passed by the District Forum.

7. IN the result, the appeal is dismissed on contest without cost. Appeal dismissed.

