

**(1997) 01 NCDRC CK 0059**

**In the National Consumer Disputes Redressal Commission**

United India Insurance Company Ltd.

APPELLANT

Vs

JOSHY ASTHAPANOSE

RESPONDENT

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**Date of Decision :** 14-01-1997

**Acts Referred:**

**Citation :** 1997 3 CPJ 580

**Hon'ble Judges :** P.K.Shamsuddin , K.Balakrishnan Nair , K.M.Latha J.

**Final Decision :** Appeal dismissed

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**Judgement**

1. THIS appeal is directed against the order passed by the District Forum, Emakulam, in opposite party No. 163/1996. The opposite party is the appellant:

2. SHORTLY stated, the allegations in the complaint are as follows: The goods vehicle belonging to the complainant and bearing registration No. KL7/G. 2545 was insured with the opposite party and the vehicle met with an accident on 11.3.1995, at Cherthala. A claim was preferred but that was repudiated as per Ext. A 2 letter dated 18.10.1995, stating that the driver was under the influence of intoxicating liquor and pointing out that as per condition No. 2 (c) of the policy Ext. B 1 the company shall not be liable to make any payment in respect of accidental loss or damage suffered whilst the driver is under the influence of intoxicating liquor. The District Forum found that there is no evidence to show that the driver was under the influence of Alcohol and in that view made a direction to the opposite party to consider the claim on merits.

Feeling aggrieved by the said order this appeal has been preferred.

3. LEARNED Counsel for the appellant vehemently contended that Ext. P 3 FIR contained the statement that the driver had consumed alcoholic drinks and in the FIR Section 185 (A) of the Motor Vehicles Act is also included. The District Forum found that the said charge was dropped in Ext. B 7 charge sheet since no certificate was obtained that the blood sample contained alcohol. Apart from this, the person who gave Ext. B 2 statement filed an affidavit before the Forum that he put signature on a blank paper due to the threat of the police. The District

Forum found that even otherwise the statements only go to show that the driver was having smell of alcohol. The accident had taken place as a result of skidding while overtaking an autorickshaw and that does not indicate that the driver had lost control as a result of the influence of alcohol. On the other hand it shows only rash and negligent on the part of the driver. Alongwith the appeal learned Counsel for the appellant has produced certain documents. As indicated above, learned Counsel heavily relied on a statement made by one Abdullakutty before the Police. What is stated therein is the driver got out of the lorry, he drove near Cherthala market and when he came back and felt that the driver had consumed alcohol. Learned Counsel also pressed in service Exts. R4 and R 5 two other case diary statements which state that there was smelling of alcohol and the driver took the vehicle after consuming alcohol. In Ext. R 5 also what is stated is there was smell of alcohol when the driver was lifted. Ext. R 6 is a requisition made by Dr. Subbadra of the private hospital stating that she was sending the blood sample collected from the driver for analysis for estimation of alcohol. However the blood was not analysed and no report was also obtained. The District Forum was right in holding that these materials are not sufficient to hold that the complainant was under the influence of alcohol. In this context, reference may be made to the decision of the Supreme Court in Bachy Bhai Hassanali Karyani v. State of Maharashtra, 1971 ACJ 1165 SC. That was a case where the appellant was convicted for rash and negligent driving and sentenced, to 18 months rigorous imprisonment. The evidence indicated that the breath of driver was smelling of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupils were dilated. No urine test of the appellant was carried out and although the blood of the appellant was sent for chemical analysis no report of the analysis was produced by the prosecution. On the above facts the Supreme Court held that the evidence was not sufficient to hold that the driver was under the influence of alcohol.

4. IT is also contended that the Insurance Company has acted on valid materials and therefore it cannot be contended that they are guilty of deficiency in service and in the circumstances the District Forum ought have relegated the parties to a Civil Court. We do not think that the District Forum went wrong in entertaining the complaint. The foregoing discussion would show that there is no merit in the appeal and it is accordingly dismissed. Appeal dismissed.