(2005) 09 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

Wg Cdr Bharpur Singh Bandesha — APPELLANT

Vs

ORIENTAL INSURANCE COMPANY LTD — RESPONDENT

Date of Decision : 20-09-2005

Acts Referred:

Citation : 2005 4 CPJ 384

Hon'ble Judges : K.C.GUPTA , S.P.Kapoor , DEVINDERJIT DHATT J.

Judgement

1. THIS appeal has been directed by the complainant against order dated 21.9.2004 passed by the Consumer Disputes Redressal Forum -I, U.T. Chandigarh, whereby the Forum dismissed his complaint.

2. BRIEFLY stated the facts are that the appellant is registered owner of car No. PB -A7258, which was insured with respondent vide cover note No. 749272 which was valid for the period 9.8.2002 to 8.8.2003. It was next averred that the appellant while travelling in the said Maruti car, from his native village near Nakodar to Jalandhar along with his parents and wife, met with an accident on 20.2.2003. The car suddenly slipped and dashed againt a tree on the road and was damaged. The wife of the complainant Mrs. Mandeep Bandesha died in the accident and his parents suffered severe injuries and were hospitalized in the military hospital, Jalandhar. It was further averred that the appellant was a retired Wing Commnader and was driving the car himself at the time of accident. He was having experience of driving for about 40 years and had driving licence which was not renewed at the time of accident, but was renewed later on.

3. IT was further averred that the appellant informed the Insurance Company about the accident and a surveyor was appointed for the assessment of loss to the vehicle but subsequently, respondent rejected his claim vide letter dated 10.4.2003.

4. IT was next averred that he made another representation to the respondent dated 5.5.2003 which was rejected by the respondent vide letter dated 30.5.2003. So, alleging deficiency in service on the part of respondent the

appellant filed complaint claiming Rs. 48,698 as repair charges, besides compensation to the tune of Rs. 25,000 and costs of Rs. 5,500. Respondent appeared and filed reply. It admitted that the car of the appellant was insured with it vide cover not dated 1.8.2002 and it met with an accident. The respondent repudiated the claim of the appellant on the ground that the appellant was not holding valid driving licence at the time of accident as the same expired on 25.3.2002 and had been got renewed after a gap of one year, on 6.3.2003. It further stated that the appellant was driving Maruti car at the time of accident in violation of the terms and conditions of the policy, so, he was not entitled to any compensation.

5. PARTIES led evidence by way of affidavits.

6. AFTER hearing Counsel for the parties and after going through the record, the District Forum -I vide order dated 21.9.2004 dismissed the complaint by holding that at the time of accident on 20.2.2003 the appellant was not holding a valid and effective driving licence, and as such there was no deficiency in service on the part of the respondent. Aggrieved by the said order, complainant has filed the present appeal. Along with the memorandum of appeal, an application for condonation of delay was also filed as there was delay of seven months. The delay was condoned vide order dated 13.5.2005 subject to payment of Rs. 200 as costs.

7. WE have heard the Counsel for the appellant Mr. D.P.S. Randhawa, Counsel for respondent Ms. Shagun Kathuria, proxy for Mrs. Veena Ashwani Talwar, Advocate and carefully gone through the file.

8. IT is an admitted fact that the appellant is registered owner of his Maruti Car No. PB 65 -A -7258. It is further an admitted fact that his car was insured with the Oriental Insurance Company Ltd. (respondent) for the period 9.8.2002 to 8.8.2003, vide Cover Note No. 749272 dated 1.8.2002. It is further an admitted fact that the appellant met with an accident while travelling in the said car along with his family from his native village near Nakodar to Jalandhar, on 20.2.2003. It is also an admitted fact that the appellant was having driving licence which was valid from 26.3.1997 to 25.3.2002. The said licence was renewed from 6.3.2003 to 5.3.2008, meaning thereby that the said driving licence was not renewed for about one year w.e.f. 26.3.2002 to 5.3.2003. There is no evidence on file that the appellant was ever disqualified from obtaining or holding driving licence. The appellant has asserted in his complaint that he was retired Wing Commander and had been holder of valid driving licence for the last forty years but at the time of accident the driving licence was not got renewed. The matter was considered by the Honble Supreme Court in National Insurance Company Ltd. v. Swaran Singh and Others,I (2004) ACC 1 (SC)=AIR 2004 SC 1531, where, in para 105, it has been observed as under : ''The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in Sub section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence,

fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle by duly licensed driver or one who was not disqualified to drive at the relevant time.''

9. THEREFORE , according to these observations the insurer is required to prove that the driver was disqualified to drive at the relevant time or the insured had failed to exercise reasonable care in the matter of fulfilling conditions of the policy regarding use of the vehicle or that he was guilty of negligence. Certianly, these acts have not been proved in the present case. It has further been observed in para 12 part (ii), as under : ''Thus, once a person has been duly licensed but has not renewed his licence, the same would not come within the purview of Section 149 and thus would not constitute a statutory defence available to the insurer in terms thereof. Only in the event of lapse of five years from the date of expiry of the licence, such statutory defence may be raised.''

10. THEREFORE , if the driver had been issued valid driving licence, he continues to hold that licence although expired, if he is not disqualified from holding that licence or had not been renewed within a period of five years. Counsel for respondent company contended that the authority of the Honble Supreme Court, National Insurance Co. Ltd. v. Swaran Singh and Others (supra), is not applicable to the facts of the present case as it related to third party risk. In our opinion, it relates to both insured as well as third party.

11. DRIVING licence is defined in Section 2(10) of the Motor Vehicles Act, 1988 and it does not make nay reference to the period of its validity. Section 14 mentions about the period during which a driving licence can be said to be effective. On the expiry of the said period, though, it ceases to be effective, it does not cease to exist, because the holder of the licence has an option, in terms of Section 15 to renew it even after expiry of its effectiveness. Even after the period of expiry, to get it renewed, one need not apply for fresh licence. He needs to apply only for its renewal. On such renewal it regains its effectiveness. However, if a period of five years has elapsed after driving licence had ceased to be effective, then Licensing Authority may refuse to renew the driving licence, as provided under Section 15(proviso), Motor Vehicle Act, 1988. But in the instant case this proviso is not applicable as the appellant had got it renewed after about one year of its expiry.

12. SECTIONS 3, 14 and 15 of the Motor Vehicle Act, if read together convey an idea that the person continues to be duly licensed, subject to his obligation to get the licence renewed, after the period of its effectiveness. Section 3 of Motor Vehicles Act talks about effective, valid driving licence but the policy does not stipulate a condition that one should have an effective driving licence to drive the vehicle.

13. IN the Oriental Insurance Company v. Paulose, I (2004) ACC 693=2004 ACJ 457, High Court of Kerala considered a short question. ''Is an insurer absolved of the liability to indemnify the insured merely because the drivers license had not been renewed on the date of accident''? The facts in the above mentioned case were that an accident occurred on 23.5.1997. The Insurance policy was subsisting on the said date. The rider of the scooter having Registration No. KL 7 -A 9171 was having a driving licence. Its validity period expired on 30.11.1996. He renewed it later, on 18.6.1997. As on the date of accident, he did not have a valid driving licence, therefore, it was contended on behalf of the Insurance Company that it was not liable to indemnify the owner and since, he was not possessing valid driving licence, so, there was breach of the terms and conditons of the policy. On the other hand, it was contended on behalf of the insured that even if the period of driving licence had expired prior to the date of accident and the driver was not disqualified from holding driving licence then Insurance Company was not absolved from its liability to pay compensation. The Full Bench of the High Court after observing various aspects accepted the arguments of the insured and held that a liberal construction had to be given and even if a licence had expired on the date of acciddent but was renewed later on, it would fulfil the mandate of the statute, and as such the insurer was liable.

14. THEREFORE , in view of the discussion abvoe, it is held that the insurer (respondent) is liable to pay compensation to the appellant, even if, on the date of accident driving licence had expired but was renewed later on, after a period of one year from the date of accident as he was not disqualified from holding the licence and was still having valid driving licence and had forty years experience of driving vehicle, although, the period of driving licence had expired, which was renewed later on, on 6.3.2003. The appellant has claimed Rs. 48,698 for the repair of the vehicle vide bills, whose copies are C -7, C -8 and C -9. It is further stated in para 5 of the complaint that he had referred the matter to the Insurance Company, who had appointed a Surveyor and the Surveyor took a sum of Rs. 625 for the job. It is admitted by the respondent that the Surveyor was appointed. However, report of the Surveyor has not been placed on record. However, a perusal of photocopies of the bills for Defence Autos C -7, C -8 and C -9, shows that the appellant had spent Rs. 45,558 on the repair of his vehicle. There is no allegation that he had spent any other amount as repair charges. The amount claimed by the appellant as repair charges has not been specifically denied but it is denied on account of the fact that the appellant was not having valid driving licence. In such circumstances the amount is deemed to have been indirectly accepted by the insurer as repair charges of the vehicle.

15. CONSEQUENTLY the appeal is accepted with costs and the impugned order is set aside. The appellant is awarded a sum of Rs. 45,558 as repair charges along with interest @ 6% p.a. from the date of complaint till its payment, and costs of Rs. 1,000. However, the appellant is not allowed any compensation as well contested dispute was raised on behalf of the Insurance Company regarding validity of the driving licence which the appellant possessed at the time of

accident. Copies of the order be communicated to the parties, free of charge. Appeal allowed.

