

(2015) 03 NCDRC CK 0121

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

NEW INDIA
ASSURANCE CO LTD

APPELLANT

Vs

Ashminder Pal Singh

RESPONDENT

Date of Decision: March 25, 2015

Citation: 2015 2 CPJ 758

Hon'ble Judges: K.S.CHAUDHARI J.

Final Decision: Appeal allowed

Judgement

1. THIS appeal has been filed by the appellant against the order dated 27.3.2009 passed by the learned State Consumer Disputes Redressal Commission, Delhi (in short, "the State Commission") in Consumer Complaint No. C -47/2002 Shri Ashminder Pal Singh Vs. The New India Assurance Co. Ltd. by which, while allowing complaint, OP was directed to pay Rs.7,00,000/- as assessed by surveyor and Rs.50,000/- for mental agony, etc.

2. BRIEF facts of the case are that complainant/respondent owner of Car No. DL -3C -Q -9127 obtained Comprehensive Insurance Policy from OP/appellant on 28.10.2000 for Rs.8,26,000/- for a period of one year from 23.10.2000 to 27.10.2001. In early hours of 23.12.2000, complainant while driving car met with an accident intimation of which was given to OP on 26.12.2000 and claim was lodged for total loss of the car. Surveyor assessed loss of Rs.7,00,000/- and complainant was willing to accept aforesaid amount, but OP did not make payment and on the basis of investigator's report, OP repudiated claim vide letter dated 8.5.2001 on the ground that complainant's breath smelt of alcohol. It was further submitted that

complainant approached Insurance Ombudsman but complaint was rejected on 3.12.2001. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP resisted complaint and submitted that as per MLCs of the complainant and his friend Rahul Arora they were heavily intoxicated at the time of accident, so, claim was rightly repudiated. It was further submitted that complaint was barred by limitation and prayed for dismissal of complaint. Learned State Commission after hearing both the parties, allowed complaint as mentioned above.

3. HEARD learned Counsel for the parties and perused record.

Learned Counsel for the appellant submitted that inspite of proof of the fact that complainant was under intoxication at the time of accident, learned State commission committed error in allowing complaint fully and committed mistake in not deducting even salvage value, hence, appeal be allowed and impugned order be set aside. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law; hence, appeal be dismissed.

4. PERUSAL of record clearly reveals that complaint was filed within prescribed period from date of repudiation of the claim and learned State Commission rightly observed that complaint was within limitation.

5. LEARNED Counsel for the appellant submitted that as per MLC report of complainant it was observed that "Breath smells of alcohol". Admittedly, no percentage of alcohol in complainant's blood was examined.

6. AS per exclusion clause of policy, OP was not liable to pay compensation only if complainant was under the influence of intoxicating liquor or drugs. Section 185 of M.V. Act provides fine as well punishment for driving vehicle by a drunken person if in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser. In the absence of any test by a breath analyser, it cannot be presumed only on the basis of smell of alcohol in complainant's breath that he was under the influence of intoxication of liquor.

7. LEARNED State Commission rightly observed as under:

"There is vast difference between taking liquor and being under its influence. Whenever a person is under the influence of intoxicant or liquor or drug his reasoning and reflexes and other skills should be undermined to an extent that the accident or damage should be the direct result of the influence. Had there been no such distinction nothing prevented the insurance companies from mentioning in the policy that if the driver had taken liquor, the policy holder would be disentitled for the claim. But it is not so because there is difference between taking or smelling alcohol may be within permissible limits that does not affect reasoning or reflexes of the person than being under the influence of intoxication. Any person who may take a drink or two will smell alcohol but that person cannot be termed as being under the influence of alcohol. MLC of AIIMS only mentions breath smells of alcohol. There is no medical report to show that the driver was under the influence of alcohol or had consumed alcohol more than the permissible limit as there are several other medical parameters to find out as to whether the person is under the influence of liquor or not which none of the report shows as to what was quantity and the conduct and how he was behaving etc. Unless reasoning power of a person is undermined to such an extent that he does not know what he is doing he cannot be held under the influence of liquor".

8. LEARNED Counsel for the petitioner has not cited any judgment in which it was held that merely on the basis of smell of liquor in breathing, driver of the vehicle can be held to be under influence of intoxicating liquor. On the contrary, learned Counsel for the respondent has placed reliance on judgment of this Commission in National Insurance Co. Ltd. Vs. Vinod Kumar, 2008 1 CPJ 494 in which it was

observed as under:

"Learned Counsel for the petitioner has pointed out that the respondent -Vinod Kumar -Insured who was driving the insured vehicle in question at the relevant time when the vehicle met with an accident was under the influence of alcohol. In this connection, he has referred to the discharge paper dated 31st May, 1999 issued by the St. Stephen's Hospital, Delhi which reads "alleged alcohol intake". Assuming that this is correct record of the hospital, we are at a loss to understand as to who alleged that the respondent Vinod Kumar had taken alcohol. The said discharge slip does not record any symptoms which would be commensurate to that of a person under the influence of alcohol or other intoxicant. Though it is claimed that a police report was made immediately after the accident but it has not been filed on record. Under the circumstances, it is not possible for us to hold that the respondent was in fact under the influence of any intoxication of alcohol or any other drug what to talk of holding that the respondent was heavily drunk or that he was not in a fit condition to drive the vehicle in question due to the influence of intoxicant. Therefore, we do not see any infirmity or illegality or jurisdictional error in the order passed by the State Commission requiring interference by this Commission. Revision Petition being devoid of any merits is as such dismissed".

This Commission in R.P. No. 3243 of 2007 National Insurance Co. Ltd. Soma Devi & Ors. in which it was observed as under:

"Both the post -mortem report and the investigators report merely state that the deceased had consumed alcohol without giving any details about the actual amount of alcohol consumed or the type of intoxicants consumed. Even if the post -mortem report stating that the deceased had consumed alcohol is accepted, this is not adequate proof that he was intoxicated, in the absence of any evidence regarding the quantity of alcohol consumed. Consumption of liquor is not a test for application of exclusionary clause of the policy, what is contemplated in the exclusionary clause of the policy is something more than merely consumption of liquor. Driver may not be under influence of intoxication of liquor at the time of accident. In the present case appellant has not provided any evidence of proof that respondent was under influence of intoxication at the time of accident and learned State Commission rightly allowed complaint.

9. AS far quantum of compensation is concerned, learned Counsel for the appellant submitted that as per surveyor's report market value of the damaged car was assessed by surveyor as Rs.7,00,000/- as agreed by the complainant. Surveyor further mentioned in the report that rack value of the accidental car was

Rs.2,00,000/- and on this basis he recommended claim of Rs.5,00,000/- on "not on salvage" basis. Learned State Commission allowed Rs.7,00,000/- as assessed by the surveyor whereas surveyor assessed only Rs.5,00,000/- on "not on salvage" basis and thus, it becomes clear that learned State Commission committed error in allowing compensation of Rs.7,00,000/- instead of Rs.5,00,000/- and to this extent appeal is to be allowed.

10. CONSEQUENTLY , appeal filed by the appellant is partly allowed and order dated 27.3.2009 passed by learned State Commission in Consumer Complaint No. C -47/2002 Shri Ashminder Pal Singh Vs. The New India Assurance Co. Ltd. is modified and Rs.5,00,000/- is substituted in place of Rs.7,00,000/- as awarded by State Commission and rest of the order is upheld. Parties to bear their own costs.