(2014) 02 NCDRC CK 0094

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

NEW INDIA ASSURANCE COMPANY LTD.		APPELLANT
	Vs	
Birbal Singh Jhakhar		RESPONDENT

Date of Decision: Feb. 6, 2014

Citation: 2014 0 NCDRC 77 : 2014 1 CPJ 597

Hon'ble Judges: AJIT BHARIHOKE , SURESH CHANDRA J.

Final Decision: Revision Petition is allowed

Judgement

1. THIS revision is directed against the order of the State Commission Rajasthan Jaipur dated 17.04.2012 whereby the State Commission accepted the appeal preferred by the respondent complainant and allowed the complaint.

2. BRIEFLY put facts relevant for the disposal of this revision petition are that motor vehicle no. RJ 23 T 0765 belonging to Sunil Jhakhar son of the respondent complainant was insured with the petitioner company. On 26.01.2009 at about 12.00 in the night, aforesaid vehicle was hit by a bus on road from Bhadhadar to Sikar. As a consequence, Sunil Jhakhar as also the passengers, namely, Mukesh, Sachin, Prakash, Parmeshwar and Dharmender suffered fatal injuries and the vehicle was damaged. The petitioner company was intimated. A surveyor was appointed who assessed the damage caused to the vehicle at Rs.1,94,950/ -. The insurance claim preferred by the respondent complainant, however, was repudiated by the petitioner company on the ground that at the time of incident, insured vehicle was being plied without a route permit and fitness certificate. This led to the filing of the consumer complaint.

District Forum Sikar on consideration of the pleadings and the evidence came to the conclusion that the petitioner was justified in repudiating the claim because the insured had violated the terms and conditions of the insurance policy and dismissed the complaint.

3. BEING aggrieved of the order of the District Forum, the respondent preferred an appeal. The State Commission allowed the appeal and directed the petitioner to pay to the respondent a sum of Rs.1,94,950/ - minus Rs.500/ - as excess clause. Respondent was also directed to pay 9% interest on the awarded amount from the date of filing of the complaint before the District Forum besides a compensation of Rs.25000/ - and litigation cost of Rs.10,000/ - was awarded.

4. LEARNED counsel for the petitioner has contended that the impugned order is based upon the incorrect appreciation of law and fact. It is argued that the State Commission while accepting the appeal against the dismissal of complaint has failed to appreciate that at the time of accident the vehicle in question was being plied without a valid permit and fitness certificate which is not only the violation of terms and conditions of the insurance policy but also provisions of the Motor Vehicle Act. It is contended that in view of the aforesaid fundamental breach of condition of insurance contract, the petitioner was justified in repudiating the insurance claim.

Learned Shri J.M.Bari, Advocate on the contrary has argued in support of the impugned order. It is argued that although the vehicle was being plied without permit and fitness certificate, it is of no consequence because it cannot be termed as a breach which is fundamental to the accident particularly when it is established on record that the accident was not caused because of any fault of driver in question but due to the fault of the driver of the truck which dashed into the insured vehicle. In the alternative, learned counsel for the respondent submitted that even if it is assumed for the sake of argument that the insured violated the terms and conditions of the insurance policy, then also, the petitioner is under obligation to settle the claim on non -standard basis. In support of his contention, learned counsel for the respondent has relied upon the judgment of the Supreme Court in the matter of National Insurance Co. Ltd. Vs. Nitin Khandelwal in Appeal No. (Civil) 3409 of 2008 decided on 08.05.2008, Amalendu Sahoo Vs. Oriental Insurance Co.

Ltd. in Civil Appeal No. 2703 of 2010 decided on 25.03.2010 as also judgment in the matter of G.Kothainachiar Vs. United India Insurance Co. Ltd. IV (2007) CPJ 347 (NC).

5. BEFORE adverting to the submissions made on behalf of the parties, it would be useful to have a look at the law on the subject. In the matter of National Insurance Company Ltd. Vs. Nitin Khandelwal (supra), the insurance claim filed by the insured in relation to theft of his vehicle was repudiated on the ground that the vehicle was being plied in violation of the terms and conditions of the insurance policy as a taxi. In the said case, Hon ''ble Supreme Court held thus :

''''In the case in hand, the vehicle has been snatched or stolen. In the case of theft of vehicle breach of condition is not germane. The appellant insurance company is liable to indemnify the owner of the vehicle when the insurer has obtained comprehensive policy for the loss caused to the insurer. The respondent submitted that even assuming that there was a breach of condition of the insurance policy, the appellant insurance company ought to have settled the claim on non -standard basis. The insurance company cannot repudiate the claim in toto in case of loss of vehicle due to theft '''' .

Following the aforesaid judgment, in the case of Amalendu Sahoo vs. Oriental Insurance Co. Ltd., the Supreme Court held thus:

''''In the instant case the entire stand of the insurance company is that claimant has used the vehicle for hire and in the course of that there has been an accident. Following the aforesaid guidelines, this Court is of the opinion that the insurance company cannot repudiate the claim in toto'''' .

In the matter of G.Kothainachiar Vs. United India Insurance Co. Ltd., the three members Bench of this Commission after analysing the law laid down by the Supreme Court in the matters of Oriental Insurance Co. Ltd. Vs. Sony Cheriyan II (1999) CPJ 13 (SC), New India Assurance Co. Ltd., Shimla Vs. Kamla & Ors.(2001) 4 SCC 342, Jitendra Kumar Vs. Oriental Insurance Co. Ltd. (2003) 6 SCC 420, National Insurance Co. ltd. Vs. Swaran Singh (2004) 3 SCC 297, National Insurance Company Ltd., Chandigarh Vs. Nicolletta Rohtagi & Ors. (2002) 7 SCC 456, B.V. Nagaraju V. Oriental Insurance Co. Ltd., Divisional Officer, Hasan (1996) 4 SCC 647, held thus:

''''From the settled law quoted above, it is apparent that the Insurance Company can repudiate the claim of the insured in case where there is a breach of the policy condition / conditions; and, the breach is fundamental or material so as to vitiate the insurance contract'''' .

6. IN the context of the above noted settled legal position, we now proceed to analyse the facts of the case. Section 66 (1) of the Motor Vehicles Act, 1988 deals with ""'Necessity for permits"'", which reads thus:

""'Necessity for permits. (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used"'".

From the above, it is clear that no transport vehicle can be used on any public place without a valid permit. In other words, a transport vehicle without a valid permit cannot be plied on the road. For the violation of the said provision, there is a penal liability provided under section 192 (A) of the Motor Vehicle Act, 1988.

7. IT is undisputed that at the time of incident, the vehicle in question was being plied on a public road from Bhadhadar to Sikar. On perusal of the Policy Schedule-cum-Insurance Certificate, we find that at the bottom left corner, the insurance also provides ""'Limitations as to Use"'", which reads thus:

""'The Policy covers use only under a permit within the meaning of the Motor Vehicles Act, 1988 or such a carriage falling under sub -section (3) of Section 66 of the Motor Vehicles Act, 1988. The policy does not cover use for (a) organised racing, (b) Pace making, (c) Reliability trails, (d) Speed Testing, (e) use whilst drawing a trailer except the towing (other than for reward) of any one disabled mechanically propelled vehicle"'".

8. ON bare reading of the above, it is clear that under the insurance contract between the parties, the insurance cover extended to the insured is subject to the use of the vehicle only under a permit within the meaning of Motor Vehicle Act, 1988. It is well settled that insurance contract is a species of commercial transaction

and it must be construed like any other contract as per its own terms and conditions. Hon ''ble Supreme Court in the matter of Vikram Greentech (I) Ltd. and Anr. Vs. New India Assurance Co. Ltd. being Civil Appeal No. 2080 of 2002 decided on 01.04.2009 while dealing with the question about the construction of an insurance contract has held thus :

''''An insurance contract, is a species of commercial transactions and must be construed like any other contract to its own terms and by itself. In a contract of insurance, there is requirement of uberimma fides i.e. good faith on the part of the insured. Except that, in other respects, there is no difference between a contract of insurance and any other contract. The four essentials of a contract of insurance are, (i) the definition of the risk, (ii) the duration of the risk, (iii) the premium and (iv) the amount of insurance. Since upon issuance of insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the insurance policy, its terms have to be strictly construed to determine the extent of liability of the insurer. The endeavour of the court must always be to interpret the words in which the contract is expressed by the parties. The court while construing the terms of policy is not expected to venture into extra liberalism that may result in re -writing the contract or substituting the terms which were not intended by the parties. The insured cannot claim anything more than what is covered by the insurance policy. [General Assurance Society Ltd. Vs. Chandumull Jain and another, Oriental Insurance Co. Ltd. Vs. Sony Cheriyan and United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal]. Document like proposal form is a commercial document and being an integral part of policy, reference to proposal form may not only be appropriate but rather essential. However, the surveyors '' report cannot be taken aid of nor can it furnish the basis for construction of a policy. Such outside aid for construction of insurance policy is impermissible.''''

From the above judgment, it is clear that an insurance contract is like any other commercial contract and it must be construed strictly as per its terms and conditions. Admittedly, in this case, at the time of incident, vehicle was being plied on a public place without a permit. Therefore, in view of the above noted clause relating to Limitation as to Use, the insurance cover is not available to the insured. It is contended on behalf of the respondent complainant that the above noted Limitation as to Use clause is immaterial for the reason that the vehicle in question was comprehensively insured and it was hit by a bus coming from the opposite direction without there being any fault on the part of the driver of the vehicle in question. The aforesaid argument is of no avail to the respondent complainant because the vehicle was being plied in violation of a ''''Limitation as to Use'''' clause which is fundamental breach of insurance contract. Thus, it is clear case of violation of material terms and conditions of insurance contract having direct bearing on the extension of insurance cover. Therefore, the petitioner insurance company was justified in repudiating the claim.

In view of the discussion above, we are of the opinion that impugned order is passed ignoring the basic condition of the insurance policy. As such, it cannot be sustained. Revision petition is allowed, impugned order of the State Commission is set aside and complaint filed by the respondent complainant is dismissed. Parties to bear their own costs.