

(2012) 10 NCDRC CK 0018

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

NARESH KUMAR

APPELLANT

Vs

RELIANCE GENERAL
INSURANCE CO. LTD

RESPONDENT

Date of Decision: Oct. 10, 2012

Citation: 2012 0 NCDRC 634 : 2012 4 CPJ 493

Hon'ble Judges: J.M.Malik , Vinay Kumar J.

Advocate: Naresh K.Chahar

Judgement

1. THIS is a case of an insured vehicle that met with an accident on 5.5.2008. The surveyor appointed by the Insurance Company to look into the

claim of the Complainant, assessed the loss at Rs.1.54 lacs, as against estimate of repair of Rs.2.94 lacs given by the Complainant. The District

Forum allowed the complaint and directed the OP/Reliance General Insurance Co. Ltd. to pay the amount of Rs.1.54 lacs, as assessed by the

surveyor, with interest and cost. The order of the District Forum was set aside by the Haryana State Consumer Disputes Redressal Commission,

which allowed the appeal of the Insurance Company and dismissed the complaint.

2. THIS revisions petition has been filed by Complainant, Mr Naresh Kumar against the order of the State Commission. We have carefully

perused the records and have heard Mr. Naresh K. Chahar, Advocate on behalf of the revision petitioner.

As seen from its Written Response before the District Forum, the OP/present respondent sought to justify non-acceptance of the claim of the

Complainant on the ground:-

Because vehicle is registered for goods carrying only and seating capacity of vehicle is 1+1=2. But 20 passengers were travelling in vehicle at the

time of accident. So the insured veh. was used for other purpose than that of which it is authorized by registration authority section 66 (3) (1) M V

ACT 1988. Its volition of terms and condition of RELIANCE COMMERCIAL VEHICLES PACKAGE Policy PARA NO-9.

The District Forum rejected the above plea of the Insurance Company and allowed the claim, as already mentioned. While doing so it placed

reliance on the decision of Hon "ble Supreme Court of India in B.V. Nagaraju Vs. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, (1996)

4 SCC 647. However, we find that the facts of the present case are very different. In the case before the Apex Court, under the terms of the

insurance policy, the insured vehicle was entitled to carry six workmen, excluding the driver. At the time of the accident the vehicle was found to be

carrying nine persons. On this ground, the claim was disallowed by the Insurance Company. The District Forum and the State Commission

allowed the claim, but the National Commission took a contrary view, relying strictly upon the terms of the policy, which permitted only six persons

and not nine. It was in this context, that Hon "ble Supreme Court had held that:-

It is plain from the terms of the Insurance Policy that the insured vehicle was entitled to carry 6 workmen, excluding the driver. If those 6

workmen when travelling in the vehicle, are assumed not to have increased any risk from the point of view of the Insurance Company on occurring

of an accident, how could those added persons be said to have contributed to the causing of it is the poser, keeping apart the load it was carrying.

In the present case the driver of the vehicle was not responsible for the accident. Merely by lifting a person or two, or even three, by the driver of

the cleaner of the vehicle, without the knowledge of the owner, cannot be said to be such a fundamental breach that the owner should, in all events,

be denied indemnification. The misuse of the vehicle was somewhat irregular though, but not so fundamental in nature so as to put an end to the

contract, unless some factors existed which, by themselves, had gone to contribute to the causing of the accident.

3. FACTS in the present case are very different. As observed by the State Commission:-

Though it is an undisputed fact that vehicle involved was meant for carrying goods. Even otherwise, OP No.1-appellant placed on the file copy of

registration certificate of the vehicle wherein the class of vehicle has been classified as LTV MAX PIC UP with sitting capacity of 1+1. OP No.1

has also established from the FIR placed on the file, vide which the incident took place and reported to the police, that 20 persons were travelling

in the said vehicle, thus, when goods carrying vehicle was being used for carrying passengers, it is certainly in violation of the terms of policy.

In arriving at the above conclusion, the State Commission has relied upon the decision of the Hon "ble Supreme Court in Suraj Mal Ram Niwas

Oil Mills (P) Ltd. Versus United India Insurance Co. Ltd and another, 2011 CTJ 11 (Supreme Court) (CP), in which it was held that:-

Before embarking on an examination of the correctness of the grounds of repudiation of the policy, it would be apposite to examine the nature of a

contract of insurance. It is trite that in a contract of insurance, the rights and obligations are governed by the terms of the said contract., Therefore,

the terms of a contract of insurance have to be strictly construed, and no exception can be made on the ground of equity.

4. THE main ground urged in the revision petition is that the question whether the vehicle was carrying passengers or goods, has no connection

with accident, as the loss was occasioned by negligence of the driver of the tanker and not by the passengers sitting in the vehicle of the

complainant. This contention is completely extraneous to the pleadings of the petitioner before the District Forum. Secondly, the issue for decision

was not apportionment of liability for causing the accident but whether carrying of 20 persons amounted to violation of terms of the policy, when

the vehicle was permitted to carry only two.

In the result, we hold that the revision petitioner has completely failed to make out any case against the impugned order. In our view, the impugned

order of Haryana State Consumer Disputes Redressal Commission in FA No.368 of 2010 does not suffer from any illegality, irregularity, or

jurisdictional error, which could warrant intervention of this Commission in exercise of powers under Section 21 (b) of the Consumer Protection

Act, 1986. The revision petition is consequently dismissed for want of merit. The parties shall bear their own costs.