

(1997) 12 NCDRC CK 0008

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Tej Kumar

APPELLANT

Vs

NEW INDIA ASSURANCE
COMPANY

RESPONDENT

Date of Decision: Dec. 1, 1997

Citation: 1998 2 CPJ 322

Hon'ble Judges: Saroj Rajwade , N.K.Vaidyas J.

Final Decision: Appeal dismissed

Judgement

1. THIS is an appeal against the order dated 13.11.1995 passed by District Consumer Disputes Redressal Forum, Ratlam in their Case No. 70/94, wherein the Forum has dismissed the complaint of the appellant stating that the repudiation of his claim by the Insurance Company was done in good faith as the driver of the truck Mr. Moolchand was not holding a valid licence.

2. HEARD the arguments of both the parties and perused the records of the case.

The claim of the complainant has been repudiated by the Insurance Company on following grounds:

(i) The driver or the vehicle Mr. Moolchand was not holding a valid and effective driving licence at the time of accident. (ii) That the truck was carrying a load of 15.75 tones against its capacity of 10 tones.

In its order dated 12.7.1995 passed in Appeal No. 530/94 this Commission has in this case issued directions to the Forum as under:

"The Redressal Forum in such a case has to ascertain from the material placed on record whether the repudiation is arbitrary or unreasonable. It is found that the insurer has acted in good faith, not arbitrarily, but after due application of mind to all the relevant material then it has to be held that the allegation of negligence and deficiency in service made by the complainant is not substantiated and the complainant has to seek redress from a Civil Court".

3. SINCE the Forum has itself not accepted the charge of excessive loading, the only points for consideration before us are as under :

- (i) Who was driving the vehicle at the time of accident-Moolchand or Mohansingh?
- (ii) Whosoever he was-was he holding a valid and effective driving licence to drive heavy goods vehicle at the time of accident?

The complainant pleads that it was Mohansingh, who was driving and not Moolchand. Whereas the Insurance Company has tried to prove that it was Moolchand who was driving and there was nobody else on the truck. According to the complainant, Mohansingh was driving and Moolchand cleaner (Assistant) was sleeping after consuming alcohol. In support of this contention, the complainant has submitted following documents:

- (1) Affidavit of Moolchand. (2) Affidavit of Mohansingh. (3) Affidavit of the complainant himself. (4) A carbon copy of report submitted by Mohansingh at Police Station, Namli.

4. BESIDES contention as above, in his affidavit Moolchand has further stated that since he was under the effect of alcohol second day also, he wrongly stated before the police next day that he himself was driving the vehicle. Similarly the complainant has further stated in his affidavit that in his claim form he mentioned the name of Moolchand as driver, by mistake.

Whereas the Insurance Company has submitted following documents to prove that it was Moolchand who was driving and not Mohansingh.

- (i) Claim form submitted by the complainant himself which mentions the name of Moolchand as driver, stating further that he was not intoxicated. In this form in para

8 it is repeated that driver Moolchand was injured. The column where name of other persons travelling or witnesses present are to be written has been left blank and a straight line has been drawn. This form is dated 29.11.1993. So many entries indicating that Moolchand was driving and nobody else was there, can't be by sheer mistake, more so, when the claim form was filled after one week.

(ii) Surveyor's report dated 26.12.1993, wherein the Surveyor Shri Amit Lama has in para 9 stated as under : "As stated by insured that on day and time of mishap subject truck was driven by Shri Moolchand. Driver was injured."

(iii) Copy of statement recorded by police on 22.12.1992, wherein Moolchand gave statement of more than ten lines and all the details of home address, truck number, cause of accident, time and place of accident etc. are correct. Then his subsequent statement in his affidavit that he gave his name as driver to the police under effect of alcohol appears to be doubtful. In his statement before the police it has been further stated that there was nobody else in the truck except himself.

(iv) Investigation report of Superintendent Police, Ratlam which states that at the time of accident, driver was Moolchand s/o Ramlal, who was injured and treated in Civil Hospital, Ratlam, brought by another truck driver Nazir Ahmed.

(v) Medical report that driver Moolchand brought by Nazir Ahmed at 4.00 a.m. on 22.12.1993 was admitted in male surgical ward and his breath was smelling of alcohol. (vi) Investigator Gugalia's report which besides giving other reports further opines as to how the police report lodged by Mohansingh appear to be false and date appears as tampered from 13.2.1994 to 23.12.1993.

As such we do not find any reason to disagree with the finding of the Forum that from the records as before us it was Moolchand who was driving the vehicle and not Mohansingh.

5. LAST point is whether Moolchand had a valid and effective driving licence to drive a heavy goods vehicle. The driving licence furnished earlier before the insurer and the Forum, issued by L.A., Mandsaur was for light motor vehicle at the time of accident. He was allowed to drive heavy motor vehicles w.e.f. 16.2.1994. Accident had occurred on 21/22 December, 1993.

6. ON 13.11.1995 the complainant filed a photocopy of driving licence issued by RTO, Kanpur and written arguments. The District Forum did not consider this new licence in the order because the claim had been repudiated on the basis of the licence filed earlier by complainant issued by L.A., Mandsaur. No where it was ever pleaded that Moolchand had a licence to drive HGV. Moolchand's permanent address as recorded in licence issued by L.A., Mandsaur is "Hat Ki Chauki Ratlam", whereas the permanent address as given in photocopy of licence produced on 13.11.1995 is "111 A/9, GT Road, Kanpur". This Moolchand therefore according to permanent address, is a different person.

Even if it is presumed that he is the same person, what was the necessity of holding two licences from two different RTO's during the same period and how could permanent address be different during the same period. If he already had licence for HGV from 17.10.1997, what was the necessity of obtaining an endt. to drive HGV afresh w.e.f. 16.2.1994 on this licence issued by L.A., Mandsaur, why was this licence issued by RTO, Kanpur not produced for almost a period of three years from the date of accident or during the course of proceedings before the Forum for more than a year. It is really beyond comprehension that if he had already obtained one licence from RTO, Kanpur on 9.10.1986, why did he obtain another licence afresh on 8.2.1987 from Mandsaur, why did he not obtain end to drive HGV on this very licence submitted on 13.11.1995 could not have been accepted as genuine without verification and also could not have been taken into consideration by the Forum after the evidence stage was closed. Moreover as per directions of this Commission the District Forum had to ascertain only this much whether insurer had acted in good faith, not arbitrarily, but after due application of mind to all the relevant material before him. Hence no new evidence or document, not submitted before insurer could be taken into consideration, to decide whether repudiation was in good faith and not arbitrary.

As such, the Forum rightly held that at the time of accident, the driver Moolchand did not hold a valid licence to drive a Heavy Goods Vehicle.

7. AS per citation of the Hon"ble National Commission in (1986-1996 CONSUMER 2672), repudiation on the ground that the driver of the vehicle at the time of accident was not having a valid licence to drive HGV nor ever held such a valid licence, was in good faith and after due application of mind to all relevant material.

As such we uphold the order of the District Forum and dismiss the appeal. Appeal dismissed.