(2004) 10 NCDRC CK 0066

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

KRISHNA MURARI DUBEY		APPELLANT
	Vs	
New India Assurance Company Ltd.		RESPONDENT

Date of Decision: Oct. 27, 2004

Citation: 2005 1 CPC 635 : 2005 1 CPJ 320

Hon'ble Judges: Rachna , Roop Singh , R.N.Prasad J.

Final Decision: Appeal dismissed

Judgement

1. THIS is an appeal under Section 15 of the Consumer Protection Act, 1986 (hereinafter called the "Act") against the judgment and order dated 20.10.1995 passed by District Consumer Forum, Mirzapur in Complaint Case No. 142 of 1993.

2. INITIALLY a complaint was filed with the allegations that a Mini Bus No. UBG 8959 which was insured with the opposite party, pertaining to the complainant, had met with an accident. When after investigation the compensation was not paid, complaint was filed.

The opposite party in the written statement contended that the driver of the vehicle in question was not having a valid driving licence at the time of the accident. The District Forum dismissed the complaint. Aggrieved the complainant has come in this appeal. We have heard Mr. R.K. Gupta, Counsel for appellant and Mr. M.S. Kotwal, Counsel for the respondent and have perused the record very carefully.

The fact involved in the case is that on 23.1.1992 when the vehicle was proceeding to Kotarnath, a boy on the road was crushed due to which people of the area got hold of the

vehicle and was destroyed in fire. Consequently, claim petition was filed. In the instant case it is clear from the records available that the driver of the vehicle was not having valid licence to drive the vehicle and was proceeding with the journey with a forged document is without evidence. The contention of Mr. R.K. Gupta has been that since the vehicle was not in use at the time when the vehicle in question was got damaged by the mob by igniting fire. As soon as the bus in question was attacked, the travellers fled the scene and it was destroyed in the fire. After giving our considered opinion we are not impressed with this obviously for the reason that the journey of the ill-fated vehicle commenced by a person having a false, forged and fictitious driving licence which was clearly indicative that he was not competent to drive the vehicle. The vehicle was definitely in use when the incident occurred.

3. THE question as to whether in such situation, the Insurance Company can be asked to indemnify the loss occasioned to the vehicle in question. In the case of National Insurance Company Ltd. v. Santro Devi and Others, I (1998) ACC 600 (SC)=1998, ACJ, 116, the Hon''ble Supreme Court has held as under:

"THE Insurance Company cannot refuse to meet its liability qua third party for any act or omission bona fidely or otherwise committed by the insured or its liability inasmuch as third party, for whose benefit the insurance has been provided, is not a privity to any breach as being not in control of the act or conduct of the insured or its employee or insurer. Thus, the Insurance Company cannot refuse to meet its liability qua third party."

The liability of payment of compensation in view of the ruling referred above comes only when it is fastened qua the third party for any act committed by the insured. Here it is a case in which the insured himself is responsible for the ill-fate of the vehicle and consequent death resulting in damage to the vehicle. Thus the argument of Mr. Gupta fails. We are also otherwise satisfied that the impugned judgment and order need no interference. During the course of arguments, Mr. Gupta stated that any lapse committed by the driver cannot deny right of the owner and it cannot be taken away. Since it is presumed that driver of the vehicle was not in possession of a valid driving licence, roving inquiry in this connection by the owner of the vehicle is not possible. This argument is immaterial. We are only concerned with the facts and figures of the present case. This part of the argument of Mr. Gupta also fails. Thus the judgment and order of the learned District Forum are to be maintained and the appeal is liable to be dismissed. ORDER The appeal is dismissed and the judgment and order of the learned District Forum are confirmed. There will be no order as to the costs. Appeal dismissed.