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2003 2 UC 1098 : 2003 3 CPJ 304

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

New India Assurance Co. Ltd.	APPELLANT
Vs	
DAUD SIDDIQUI	RESPONDENT

Date of Decision: July 16, 2003

Citation: 2003 2 UC 1098 : 2003 3 CPJ 304

Hon'ble Judges: K.D.Shahi , Surendra Kumar , Luxmi Singh J.

Final Decision: Appeal dismissed

Judgement

1. THIS is Insurance Company"s appeal against the order dated 21.7.2000 passed by District Forum, Almora, whereby the O.D. claim of the complainant for recovery of Rs. 60,000/- was allowed.

2. THE brief facts of the case are that the complainant was the owner of Maruti van which was insured. During the insurance period, it met with an accident on 20.2.1999. One Shri Jogaram died in the accident. F.I.R. was lodged with the Police Station. THE driver of the Maruti van was Shri Rajendra Singh. THE vehicle was totally damaged. THE complainant lodged a claim before the Insurance Company. THE Insurance Company repudiated it. THErefore, the complaint was filed. It is alleged in the Written Statement that there were 12 persons in the vehicle at the time of accident. While according to the complainant, there were only 5 persons. It was further alleged that there is no proper permit etc.

During the course of hearing before the Forum, the papers of the vehicle were produced and the learned Forum found that the papers were in order. The question was regarding the driving licence. It is said that the driver was not having a licence for driving in the hilly

area. A copy of the driving licence was produced as well and there is a specific endorsement in the licence in the year 1998 itself that the driver was authorised to drive in the hilly areas as well. His licence was renewed upto 2001.

Only question is that how many persons were sitting in the vehicle. According to the Insurance Company, there were 12 persons out of whom three were small children. These three small children can very well sit in the lap as well. Now there were only 9 persons and in the Maruti van, 9 persons can sit comfortably. We do not mean to say that 9 passengers were authorised to sit but this comfortable sitting has been said only to judge that sitting of extra passengers could not have, in any way, contributed to the cause of accident. However, the Insurance Company has taken different plea at different times regarding this sitting of passengers. In the Written Statement, it is said that there were 12 persons sitting in the vehicle, while in the Claims Tribunal when the Insurance Company was cross-examined as a witness and a co-passenger, then the suggestion was that there were 8 passengers in the vehicle. There is a ruling of the Hon''ble Supreme Court reported in II (1996) CPJ 18 (SC), B.V. Nagaraju v. M/s. Oriental Insurance Co. Ltd., where some extra passengers were sitting in the goods vehicle. It was held that extra passengers could not have, in any way, contributed in the accident. The learned Counsel for the Insurance Company argued that the vehicle in the ruling was a goods vehicle whereas this is a passenger vehicle. The principle of law is the same, it may be a passenger vehicle or goods vehicle and it has been held in this ruling that in such cases, Exclusion Clause, if any, is to be read down. The notifications of the Insurance Company as well as the view of the National Commission is that in such cases, the claim should be allowed on non-standard basis. On facts also the main traveller Bishan Singh whose entire family was there has been cross-examined at length and he has specifically stated that he was injured and was hospitalised for 10 days. He has specifically stated that his entire family including one outsider was sitting in the vehicle. He has stated that he, his wife, his elder son, two small children were sitting in the vehicle. The vehicle was insured for a sum of Rs. 1 lac and a claim of only Rs. 60,000/- has been allowed which appears to be appropriate and proper after due deductions for non-standard claims. It is true that the finding of the learned Forum is not correct that the main points of dispute were to be seen by the Motor Accident Tribunal. We have given the finding on those points as well. On merits, we do not find any infirmity in this judgment. The appeal has got no force and is to be dismissed. ORDER The appeal is, hereby, dismissed. Cost of this appeal shall be easy. Appeal dismissed.