

(2004) 03 NCDRC CK 0102

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

National Insurance Co. Ltd.

APPELLANT

Vs

G. VELUSAMY

RESPONDENT

Date of Decision: March 5, 2004

Citation: 2004 2 CPJ 284 : 2004 2 CPR 537 : 2004 3 CLT 127

Hon'ble Judges: A.Raman , R.Vanaroja J.

Final Decision: Appeal partly allowed

Judgement

1. THE complainant's case is that the complainant owned an Ambassador Car bearing Regn. No. TN 67 Y 4474. He was hiring out the same and making living. On 27.12.1997 when the vehicle was driven by the driver, a lorry driven rashly and negligently dashed against the same and thus the Ambassador car was damaged. A crime has also been registered in Crime No. 607/1997. On the date of accident, there was a valid insurance cover by the opposite party. When the complainant made a claim, it was not responded to by the opposite party, though a Surveyor appointed by the opposite party came and inspected and promised to make the payment of Rs. 92,636/-. THE complainant is a consumer. THE action of the opposite party in repudiating the claim amounts to deficiency in service. THE complainant, therefore, prays for recovery of a sum of Rs. 92,630/- being the cost of repair of the vehicle along with a sum of Rs. 50,000/- as compensation for mental agony and hardship.

2. THE opposite party contended that the driver who drove the vehicle at the time of the accident did not possess an effective and valid licence to drive. In view of the conditions of the policy that driver of the vehicle should have an effective and valid

licence and since there was no effective and valid licence in favour of the driver on that day, the opposite parties are not liable to make good the loss sustained. THEREfore, it was rightly repudiated by the opposite party. THERE was no deficiency in service on the part of the opposite party. THE opposite party is not liable to pay any compensation.

The District Forum by its order dated 27.9.1999 directed the opposite party to pay a sum of Rs. 92,630/- along with a sum of Rs. 20,000/- as compensation for mental agony and damages.

Hence this appeal by the opposite party.

3. THERE is no dispute about the accident or the date of accident or about the fact that extensive damages were caused to the vehicle. The short point for determination is whether the driver of the vehicle had valid and effective driving licence on the date of the accident. The vehicle was driven by one Godwin Jagadeesh Kumar. The driver had a licence to drive light motor vehicle which was valid from 4.6.1991 to 30.6.2008. From the very allegations made in the complaint, it is clear that the complainant was using the Ambassador car as a source of livelihood by hiring out the same. In other words, he was running the vehicle as a tourist taxi. The driver had licence no doubt to drive a light motor vehicle. But, he did not have the necessary badge to drive a tourist vehicle or the taxi as the case may be. In such circumstances, it has to be seen whether liability can be fastened upon the opposite party.

The policy has been marked as Ex. R1. The relevant clause in the policy is as follows :

"Person or class of Persons entitled to drive. Any person including the insured provided that the person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such licence. Provided also that a person holding an effective learner"s licence may also drive the vehicle when not used of transport of passenger at the time of the accident and such a person satisfies the requirement of Rule No. 3 of the Central Motor Vehicle Rules 1989."

4. THE Central Motor Vehicle Rules, 1989 only specifies certain qualifications and conditions. THE important condition is that he must have a driver"s licence with at least two years" experience. THE other conditions only relate to knowledge of mechanism and maintenance of the tourist vehicle; knowledge of the topography of the route or area or region in which the tourist vehicle is proposed to be used; working knowledge of English and Hindi or any language of the region where he works and about wearing of white uniform of particular description. THEREfore, a reading of the conditions would only show that as they stand there cannot be any prohibition for the driver of the vehicle to drive the car. In other words, there was no prohibition contained in the rules nor there is any condition which imposes any bar upon the driver in such cases to drive the tourist vehicle. THEREfore, mere failure to have badge if at all is only an irregularity and it is not a material fact as to invalidate the action.

In the decision reported in 1998-2 Law Weekly page 161 it was held by the Madras High Court that "when a person is having a driving licence, the Court should not lightly brush aside the same, on the allegation that the vehicle, which was driven by him, was not intended for the purpose. One thing is clear, that the driver was having a licence to drive a light motor vehicle and motor cycles. It is not a case where the person is not having any licence at all." The Supreme Court has held in AIR 1996 Supreme Court 2054 if more number of passengers was carried than the number permitted in terms of insurance policy, it is only an irregularity and not a fundamental breach so as to afford to the insurer to eschew liability altogether. Therefore, unless the breach is fundamental but only irregularity it cannot be resisted by the Insurance Company. In a case where the driver had only a licence to drive light motor vehicle but was found to drive a truck which was involved in an accident and when it was shown that the unladen weight of the truck was less than 7,500 kgs, the High Court of Karnataka held in the decision reported in 1997 ACJ 170 that the Insurance Company will be liable. Thus, this is a case where the driver had an effective driving licence. Further, he was not disqualified from holding or obtaining such a licence. If at all what was required was not a separate or special licence but a badge and may be an endorsement. Merely, the failure to have a badge or an endorsement cannot absolve the Insurance Company of their liability.

Now coming to the question of damages the complainant has produced a quotation from a dealer of Ambassador car which shows that a sum of Rs. 63,861/- will be required or has been spent for repair of the vehicle. As against it, the opposite party though admits that a survey was carried out, have not produced the full report of the Surveyor. In Ex. R6, it is mentioned that in the final survey reports it is noted as follows " "Driver particulars column" Badge No. is not mentioned. Insured vehicle is a T. Taxi; to drive the vehicle the driver should have badge and so, this particular needs verification. It mentions after setting out the items 63 to 76 that in the final report 50% depreciation of the parts." Thus, the report filed is quite incomplete and we are unable to understand what was the figure arrived at by them. Therefore, in

the absence of evidence from the opposite party we have to accept the estimate submitted by the complainant. Of course, the complainant has also produced workshop labour bill amounting to Rs. 28,775/-. It is not known how this claim can be permitted because as per the terms and conditions of the policy the actual value of spares and the value of repairs can alone be taken into consideration. We are unable to accept the claim of the complainant for payment of Rs. 22,000/-.

5. THEREFORE, we hold that there is deficiency in service and that the opposite party is liable to pay a sum of Rs. 63,861/- as damages and compensation to the complainant. The lower Forum has awarded a sum of Rs. 20,000/- towards mental agony. This claim we are not prepared to accept. There has been an accident resulting in damages to the vehicle for which neither the complainant nor the opposite party are responsible. Of course the fact remains that the claim was not settled with the result the complainant had to shell out from his pocket the repair charges. To that extent, therefore, some hardship could have been caused to the complainant. But, there is no basis to award a sum of Rs. 20,000/- on that account. In the circumstances, we would determine the compensation payable under this head at Rs. 3,000/-. THEREFORE, we hold that the complainant will be entitled in all a sum of Rs. 66,861/-.

6. IN the result, this appeal is allowed in part; the order of the Lower Forum is modified. There will be a direction to the opposite party to pay a sum of Rs. 66,861/- within two months from the date of this order. IN the circumstances, the parties are directed to bear their own cost throughout. Appeal partly allowed.