Charanjit Singh Vs Branch Manager, National Insurance Co. Ltd.

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: March 9, 2004

Citation: 2004 2 CPR 446 : 2004 3 CLT 570 : 2004 4 CPJ 251

Hon'ble Judges: V.K.Agrawal , Veena Misra , R.S.Awasthis J.

Final Decision: Appeal allowed

Judgement

1. THIS appeal under Section 15 of the Consumer Protection Act, 1986 is directed against the order dated 19.1.2000 in Complaint No.

149/1999 by the District Consumer Disputes Redressal, Forum, Durg (hereinafter called the "District Forum" for short), dismissing the complaint

of the complainant/appellant.

2. UNDISPUTED relevant facts stated in brief are : that the complainant/appellant is the owner of Truck No. MBT 9122. It was duly insured by

the complainant/appellant with respondent No. 1 for the period from 11.3.1997 to 10.3.1998. It is further not in dispute that the said truck met

with an accident on 22.4.1997 at Bordih Dam in Mahamaya Mines. It was also not in dispute in this appeal that 22 labourers were travelling by the

said truck at the time of accident. The complainant had intimated about the incident to the respondent/insurer as well as to the police. A Claim

Case No. 38/1997 in the Motor Accident Claims Tribunal was also filed. It was held by the Claims Tribunal that there was breach of terms of

policy by the complainant/appellant, hence in the said claim case, though the complainant truck owner and driver were held liable, but the

respondent/insurer was exonerated from the liability to pay the amount of compensation, It is also not in dispute that the respondent/insurer

repudiated the claim of the complainant/appellant on 13.11.1998 on the ground that at the time of accident, passengers were being carried in the

insured vehicle.

The complainant in his complaint raised the grievance about the repudiation of the claim as above by the respondent/insurer. According to him, he

suffered a loss of Rs. 35,000/- on account of damage caused to the truck. It was also averred that the truck of the complainant was carrying

labourers as per usual practice as there was no other vehicle for the transportation of the labourers and that no fare was recovered from them.

The complaint was resisted by the respondent/insurer. According to written version filed by the respondent, since the truck was carrying

passengers, there was breach of terms of policy by the complainant/appellant. It was also averred that in Claim Case No. 38/1997 filed by L.Rs.

of one of the deceased, the respondent/insurer has been exonerated from liability on the ground that there was breach of terms of policy by the

owner. The respondents, therefore, averred that this complaint by the owner was not competent.

3. LEARNED District Forum held that the truck of the complainant was carrying passengers presumably after payment of fare. It was further

observed that since there was breach of terms of policy by the complainant''s driver, therefore, the repudiation of the claim by the respondent was

bona fide and there was no deficiency on the part of the respondent/insurer. The complaint was accordingly dismissed.

Learned Counsel for the complainant/appellant has assailed the impugned order. It was submitted that even if the labourers were travelling by the

truck at the time of accident, the same would not constitute fundamental breach of the terms and conditions of policy. Relying upon the

pronouncement of the Supreme Court in B.V. Nagaraju v. Oriental Insurance Co., II (1996) CPJ 28 (SC)=I (1997) ACC 123 (SC)=1997 (1)

MP Weekly Note; Note No. 68, it was submitted that since there was no fundamental breach of the policy condition, the complainant/appellant

was entitled to be reimbursed for the damage caused to the truck under the insurance policy issued by the respondents.

4. AS against the above, the learned Counsel for the respondents supported the impugned order. It was submitted that in Claim Case No.

38/1997 instituted by the L.Rs. of one of the deceased passengers who died in the accident, it was held by the Claims Tribunal that the

complainant had committed breach of policy conditions. In view of the said finding the complainant/appellant could not competently file this

complaint. It was further submitted that as there was breach of terms of policy by the complainant, the repudiation of the claim of the complainant

by the respondent was justified as has been held by the learned District Forum. It was, therefore, submitted that there was no justification for

interference in the impugned order.

As noticed earlier, it is not in dispute that the complainant/appellant, the owner of truck No. MBT 9122, had obtained insurance policy from the

respondents, which enured for the period from 11.3.1997 to 10.3.1998. It is also not in dispute that the said truck met with an accident on

22.4.1997 i.e., during the currency of the said policy and got damaged. It is also now not in dispute that 22 labourers were travelling by the said

truck at the time of accident.

The main question that arises for consideration, therefore, is : as to whether in view of the aforesaid admitted facts, the complainant/appellant is

entitled to recover from the respondent/insurer the loss caused on account of damage to the truck in the accident?

5. AS noticed earlier, the claim of the complainant was repudiated by letter dated 13.11.1998 on the ground that there was breach of limitation ''of

use as per Exclusion Clause No. 03'' of the policy according to which the insurer did not cover the risk if the vehicle was used for carrying

passengers. Undisputedly, at the time of accident 22 passengers were carried in the vehicle. It was stated in the letter of repudiation dated

13.11.1998 that since the said truck was carrying 22 passengers at the time of accident which was violation of Motor Vehicles Act and policy

conditions, hence claim was repudiated.

6. IT is clear that as per provisions of the Motor Vehicles Act, passengers could not be permitted to travel in the goods vehicle. However, it may

be mentioned that the breach as above would not constitute fundamental breach. There is no reason to hold that the accident was caused or

resulted due to the labourers travelling in the truck. IT is not very material to consider, as to whether the said passengers had actually paid fare or

not?

It may be noticed in the above context that in the case of B.V. Nagaraju (supra), wherein there was a collision between two vehicles, the liability

was denied by the insurer on the ground that the appellant goods vehicle was used for the purpose of carrying passengers and, therefore, it was

contended therein that the appellant was disentitled to claim compensation. In the said case, considering the exclusion clause, it was observed that :

Notwithstanding the general ability of contracting parties to agree to exclusion clauses which operate to define obligations there exists a rule,

usually referred to as the main purpose rule, which may limit the application of wide exclusion clause defining a promiser''s contractual obligations.

Relying upon the earlier pronouncement of the Supreme Court in Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan & Ors., I (1987) ACC

413 (SC)=1987 (2) SCC 654; the Supreme Court in the case of B.V. Nagaraju, expressed the view that the exclusion clause of the policy must

be read down so as to serve the main purpose of the policy, that is : to indemnify the damage caused to the vehicle. Accordingly, damage was

awarded to the owner in that case.

It may further be noticed that the Supreme Court in a recent decision in National Insurance Co. Ltd. v. Swaran Singh & Others, I (2004) SLT

345=I (2004) ACC 1 (SC)=2004 ACJ 1. While considering the breach on the part of the insured with respect to the vehicle being driven by a

person not holding a valid licence has held that the insurer would not be allowed to avoid its liability to the insured unless the said breach or breach

under the condition of the driving licence is fundamental and is found to have contributed to the cause of the accident. It was further observed that

the Tribunals in interpreting the policy conditions would apply the rule of main purpose and the concept of fundamental breach to allow defences

available to the insurer under Section 149(2) of the Motor Vehicles Act.

7. AS noticed earlier, in the present case, the labourers travelling by the ill-fated truck does not appear to have caused contributed to the accident

and, therefore, such a breach cannot be treated as fundamental breach.

In view of the above, it appears that the complainant/appellant is entitled to get the reimbursement of the damage caused to the truck owned by

him, notwithstanding that the respondent/insurers were exonerated from liability in Claim Case No. 38/1997 filed on behalf of the L.Rs. of one of

the deceased. The remedy available in the consumer Forum is independent and in addition to other remedies. The pronouncement in the accident

case by the Motor Vehicle Claims Tribunal would not operate as res judicata in the present case against the complainant/appellant.

8. IT is not disputed that the Surveyor was appointed by the respondents to assess the damage caused to the truck in the accident. The said

Surveyor A.K. Sen, in his report has assessed the damage to the truck to the tune of Rs. 20,894/-. In our opinion, the said amount deserves to be

awarded as compensation, with interest thereon from the date of complaint.

Accordingly, this appeal is allowed. The impugned order is set aside. It is directed that the respondent/insurer shall pay to the

complainant/appellant Rs. 20,894/- with interest thereon @ 10% per annum from the date of complaint till payment. The cost of this litigation

quantified at Rs. 2,000/- shall also be payable by the respondents/insurer to the complainant/appellant. Appeal allowed.