

(1994) 01 NCDRC CK 0045

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

MOBARAK GAZI

APPELLANT

Vs

NEW INDIA
ASSURANCE CO. LTD.

RESPONDENT

Date of Decision: Jan. 17, 1994

Citation: 1994 2 CPJ 204

Hon'ble Judges: Jyotirmoyee Nag , Sunil Kanti Kar , S.Dutta J.

Final Decision: Complaint allowed

Judgement

1. THE complaint case is that he took on lease the permit from one B. Das for plying the Vehicle No. WBS 5008 and had been plying on the route from Howrah to Dihibhursut against valid permit. THE said vehicle was duly insured under comprehensive policy with the Opposite Party Nos. 1 and 2 and a certificate of insurance policy bearing No. 3151010006431 issued in the name of the complainant/petitioner who is the owner of Vehicle No. WBS 5008. THE said insurance policy was valid and legal.

2. THE further case of the petitioner/complainant is that the said Vehicle No. WBS 5008 met with an accident near Manikpur on 3.5.1988 at about 8.15 a.m. THE said accident was duly registered with Jagatbalavpur Police Station at Howrah. In the said accident some persons were dead and some were injured and also it caused total loss of the Vehicle No. WBS 5008.

The Opposite Party Nos. 1 and 2 appointed a surveyor M/s. B. Ghosh and Co. who after carrying a survey without knowledge and notice of the complainant/petitioner submitted a report showing the damages caused to the captioned Vehicle No. WBS

5008 amounting to Rs. 49,850/- including body materials after deduction of depreciation and including body mechanic, labour apart cost of the same as mentioned in the said report made Annexure "F" to the petition of complaint. The petitioner also appointed surveyor who also reported the total loss of the vehicle and after deduction of depreciation etc. recommended the total loss worth of Rs. 84,000/- but the petitioner for practical verification of the matter obtained quotation for the repair of captioned vehicle from M/s. Sarama Body Builders who quoted Rs. 1,58,815/- for body building including labour charges and repairing of the vehicle apart from the value of the spare parts required for the repairing purpose of the vehicle and such quotation for spare parts worth Rs. 24,255/- was received from Ram Sankar Gupta. Thus over all repairing cost required for the vehicle was aggregated to Rs. 1,83,070/-. The petitioner/complainant lodged its claim on 9.5.1988 through its financier, Opposite Party No. 3 but the Opposite Party Nos. 1 & 2 did not consider the claim. On the other hand they repudiated the claim of the petitioner on 8.5.1992 inter alia on two grounds that the vehicle was being plied without any stage carriage permit issued in favour of the complainant for user for this captioned vehicle and secondly that the permit allows the permit holders to carry passenger as per registration certificate only to the extent of 39 heads including driver but the captioned vehicle was found to have carried out more than 100 passengers in violation of Rule 91(8) of the Bengal Motor Vehicles Rules, 1948. It was also alleged in the said letter dated 8.5.1992 of repudiation that in answer to question No. 10(c) of the claim form, it was stated that there were only 38 passengers in the vehicle at the time of accident.

The Opposite Party Nos. 1 and 2 filed written statements inter-alia repeating the allegations of letter dated 8.5.1992 of repudiation issued by the Opposite Party Nos. 1 and 2. It was further alleged by the Opposite Party Nos. 1 and 2 amongst others that the permit issued by the concerned authority was not in the name of the insured who is the owner of the Vehicle No. WBS 5008 and denied that the said route permit was taken on lease from B. Das. It is further allegation of the Opposite Party Nos. 1 and 2 that they paid Rs. 4,69,460/- to the victims who died in the said Motor accident and the complainant is liable to compensate that loss of Rs. 4,69,460/-. It was alleged that stage carriage permit was not valid at the time of accident as the permit holder was not the owner of the stage carriage. It is the allegation of the Opposite Party Nos. 1 and 2 that the holder of the permit was B. Das was not disclosed at the time of taking insurance policy from the Opposite Party Nos. 1 and 2. It was denied by the Opposite Party Nos. 1 and 2 that there was any deficiency in service on their part as the validity of the contract of insurance being in dispute the Id. State Commission has no jurisdiction to issue any order under the Consumer Protection Act. It is alleged that the holder of permit Sri B. Das was entitled to ply vehicle No. WBS 5008 on the said route and not the complainant. It is contended that the complainant had paid premium for 3rd party insurance at the rate of Rs. 444/- per head for 37 passengers and Rs. 32/- was paid for covering legal

liability of the driver and the conductors and inspite of the said fact the complainant carried passengers more than the permissible limits as stipulated in the registration certificate. It was further alleged that the driving license of the driver was not valid at the time of accident and also contended that the taxes were not paid on account of the insured vehicle.

3. IN a petition of rejoinder, the complainant/petitioner denied all material allegations of the Opposite Parties Nos. 1 & 2 and contended that the vehicle was insured after looking to all relevant papers at the time of taking insurance policy at the first instance and thereafter it was renewed year to year after looking to all papers and other documents related to the captioned vehicle No. WBS 5008. It was contended that the registration certificate of the vehicle although it was issued in name of B. Das but the name of the complainant was duly endorsed in the registration certificate by the registered authority of Motor Vehicle Department. It is further contended that the stage carriage permit was valid at the material time of accident and it also contained the name of the complainant in the said permit.

The complainant/petitioner denied that the driving licence of the driver at the material time was not valid. The complainant/petitioner contended that at the material time of accident number of passengers inside the bus did not exceed the numbers as specified in the registration certificate but some passengers who forcibly rode on the roof of the bus were beyond control of the bus driver and conductor. In any case from the statement submitted by the Opposite Party Nos. 1 and 2 with their written statement where it has been shown total number of 55 persons met with the accident in the said motor vehicle out of which 27 heads were paid compensation and the cases of 22 persons were dismissed and 6 cases were still pending before the Motor Accident Claims Tribunal, Howrah thus total affected persons being only 33 persons. The petitioner/complainant submitted affidavit of two eye witnesses who affirmed that the passenger inside the bus were not more than 37-38 in numbers but some passengers were on the roof of the bus.

4. THE complainant/petitioner alleged that as the vehicle fell down in a ditch all the passengers including the pedestrians on the road also met with the accident so the number of persons who met with the accident is not the determinant factor in

deciding the actual number of passengers inside the bus. It was further contended by the complainant/petitioner that as per Motor Vehicles Rules certain passengers are allowed to journey by standing inside.

The complainant further contended that the taxes of the captioned vehicle were fully paid at the time of accident and there was a valid tax token. In the premises the complainant prayed for award of compensation as per prayer of the complaint petition. DECISION

On perusal of the materials on record it appears that the registration certificate dated 5.7.1984 being Annexure "A" to the petition of complaint issued in name of B. Das bears the name of complainant effective from 22.2.1988 by way of transfer. So the contention of the Opposite Party Nos. 1 and 2 that the registration certificate of B.Das is used by the complainant is not correct. From the insurance policy itself bearing No. 3151010006431 being Annexure "B" to the petition of complaint in respect of vehicle No. WBS 5008 issued in name of complainant is valid from 2.5.1988 to 1.5.1989. The tax taken being Annexure "C" to the petition of complaint is also valid from 1.5.1988 to 31.7.1988 and the fitness certificate being Annexure "C" to the petition of complaint was valid from 5.6.1986 to 4.6.1987. The police report and other proceedings being Annexure "D" to the petition of complaint shows that the vehicle met with an accident on 3.5.1988. It also appears that the temporary permit bearing No. 31/Dihubursut dated 8.3.1988 being Annexure "A" to the petition of complaint issued in name of B. Das was valid from 8.3.1988 to 4.7.1988 and the name of the complainant is duly endorsed in the said temporary route permit. The driving license being Annexure "I" to the petition of complaint issued in name of Babun Kairy renewed up to 19.10.1990 valid and legal.

5. THEREFORE, we are of opinion that all documents in relation to the captioned vehicle are quite in order and valid.

6. THE dispute about the carrying of 100 passengers by the Opposite Party Nos. 1 and 2 is not substantiated by cogent documents that there were really 100 passengers in the vehicle at the time of accident. On the other hand the supporting affidavit by two eye witnesses are cogent proof to the effect that inside the vehicle there were not more than 38 passengers at the time of accident although some

passengers might have ridden on the roof of captioned vehicle and the said matter was beyond control of the driver and conductors of the bus. It has become fashion in the village side that even when there is vacant accommodation inside the bus, some passengers desire to ride over the roof for getting fresh air and it happens particularly in the summer season and the accident taking place on 3.5.1988 was during hot season.

During arguments, the Id. Advocate appearing on behalf of the Opposite Party Nos. 1 and 2 contended that under the Motor Vehicles Act there is a Motor Accident Claims Tribunal and matter for adjudication of compensation for captioned damaged vehicle ought to have been filed before the Motor Accident Claims Tribunal. We think that the Id. Advocate has completely misconceived the provision of law because the Motor Accident Claims Tribunal is meant for settlement of the third party claims but it does not settle the claims between the insured and the insurer. Further the contentions of the Opposite Party Nos. 1 and 2 that as they have paid Rs. 4,69,460/- on account of the 3rd party claim, the petitioner/complainant is liable to compensate the said amount to the insurer. We think that contention is also baseless because in a comprehensive policy covering risk for the 3rd parties it is the duty of the insurer to compensate the loss sustained by the 3rd party on account of the Motor Accident Claim. So the aforesaid contentions are insubstantial in nature and are rejected.

It appears from the certain correspondences between the insured and insurer that the Opposite Party Nos. 1 and 2 wanted to settle the claim of the complainant/petitioner by paying Rs. 49,850/- plus the cost of the spare parts which amounted to Rs. 24,255/- aggregating to Rs. 74,105/- as per survey report from B. Ghosh and Co. appointed by the insurer Opposite Party No. 1 but subsequently the insurer retreated from their stand point and repudiated the claim of the complainant. The complainant also submitted his surveyor's report dated 3.6.1988 surveyed by S.C. Mukhopadhyay a licensed surveyor who recommended for Rs. 84,000/- for repairing of the damaged vehicle plus cost of spares but the quotation of the repairer M/s. Sarama Body Builders speaks of very high amount of Rs. 1,58,015/- for repairing of the captioned vehicle which was in total loss. The complainant referred to certain decisions reported in 1992 (1) CPR 334, 1992 (1) CPR 431, 1992 (1) CPR 439, 1992 (1) CPR 575 and 1992 (1) CPR 809, II (1991) CPJ 516 (NC), I (1991) CPJ 335 (NC), II (1991) CPJ 189 (NC), and I (1991) CPJ 3 (NC) decided by National Commission fully support the case of the complainant/petitioner.

7. WE observe from the said decisions that mere unilateral rejection of a claim of a insurer does not create any jurisdictional bar and also observe that where there is any delay and /or inactivity for finalizing the insurance claim, the same would tantamount to deficiency in service and in all cases the National Commission awarded 18% interest on claim amount after expiry of reasonable time in addition to other compensation. The ratio of decision in the case of Oriental Insurance Company Ltd. v. Suresh Arjun Karamde reported in 1992 (1) CPR 431 is that while settling the claim based on Motor Insurance Policy, the insurance company is liable to pay to the insured in the event of total loss, the market value of the vehicle on the date of its total loss not the actual amount stated in the policy as the value of the vehicle estimated by the insured. The decision in the said case supports that the insured ought to have paid the full repairing cost of the vehicle as per market quotation, or the market value of the vehicle.

But as per mutual discussion between the insured and the insurer there was an amicable settlement for payment of Rs. 49,850/- plus the cost of the spare parts worth Rs. 24,255/- aggregating to Rs. 74,105/- as per survey report of the insurer. We accept the said amicable settlement and accordingly award that the insurer the Opposite Party Nos. 1 and 2 would pay Rs. 74,105/- together with interest of 18% on the said amount effective from January, 1989 until payment. We also direct to pay the said sum of Rs. 74,105/- together with interest of 18% p.a. from January, 1989 within one month from the date of communication of this order. Considering the facts and circumstances of the case we do not award any cost towards this proceeding. Complaint allowed.