

(2012) 04 NCDRC CK 0045

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Satpal S]ingh

RESPONDENT

Date of Decision: April 26, 2012

Citation: 2012 0 NCDRC 146 : 2012 2 CPJ 537

Hon'ble Judges: Vineeta Rai , Ashok Bhan J.

Advocate: P.K.SETH

Judgement

1. PETITIONER Insurance Company which was the Opposite Party before the District Forum has filed this Revision Petition against the order and judgment dated 12.07.07 passed by the State Consumer Disputes Redressal Commission, Delhi (in short, the State Commission) in appeal No.674/05 whereby the State Commission has partly allowed the appeal filed by the PETITIONER and directed it to refund the amount of loss assessed by the surveyor to the Respondent along with Rs.10,000/- as cost of litigation. Rest of the order of the District Forum was set aside. FACTS:-

Complainant/Respondent obtained an insurance policy from the PETITIONER for his truck bearing registration No.HR 38D 2472 by paying the premium. PETITIONER issued cover note no.421520 dated 11.4.02 to the Respondent valid for 11.4.02 to 10.4.03. During the subsistence of the policy, the said truck met with an accident on 02.05.02 on Sohna Road, Near Gurgaon. On receiving intimation, PETITIONER appointed a Surveyor to assess the loss. Respondent submitted all the bills and other documents to the Surveyor for passing of the claim. Surveyor submitted his report assessing the loss at Rs.1,58,600/- as against the claim of Rs.2,73,000/- submitted by the Respondent on repair basis. The salvage value was assessed by the Surveyor at Rs.12,000/-. However, the PETITIONER did not settle the claim of the Respondent despite various reminders and legal notices. Respondent, being aggrieved, filed the complaint before the District Forum. PETITIONER, on being served, put in appearance and filed its written statement resisting the complaint mainly on the grounds; that the vehicle was not having a fitness certificate on the

date of accident; that the vehicle was being used in violation of the terms and conditions of the policy by loading the goods for commercial purpose without having a fitness certificate; that the Insurance Company was not liable to indemnify the insured and that the complaint was liable to be dismissed.

2. DISTRICT Forum after taking into consideration the pleadings and the evidence led by the parties came to the conclusion that it was the duty of the Insurance Company to verify the fitness certificate of the vehicle before issuing the cover note and that the vehicle was not loaded with the goods at the time of accident. Accordingly, complaint was allowed and the Petitioner was directed to pay a sum of Rs.1,58,600/- as assessed by the Surveyor along with costs and compensation of Rs.50,000/- to the Respondent within a period of 30 days failing which the amount shall carry interest @ 9% from the date of order till realization.

Petitioner, being aggrieved, filed the appeal before the State Commission. State Commission after due appreciation of the material available on record and the evidence adduced by the parties held that the Respondent was also guilty of contributory negligence in not disclosing about the fitness certificate though it was the duty of the Petitioner to verify that the vehicle was in order and to also insist to the Respondent to produce the fitness certificate. State Commission partly allowed the appeal by maintaining the direction to refund the amount of loss assessed by the Surveyor to the Respondent and awarding Rs.10,000/- as costs of litigation. Rest of the order of the District Forum was set aside.

Dis-satisfied with the order passed by the State Commission, Petitioner has filed the present Revision Petition. Respondent is not present despite service and ordered to be proceeded ex-parte. In the present case, policy was issued on 11.04.02 for the period from 11.4.02 to 10.04.03. The truck met with an accident on 2.05.02. Petitioner resisted the complaint of the Respondent on the ground that the fitness certificate had expired on 04.04.02 before issuance of the policy. State Commission has held that the Petitioner should have insisted on production of the fitness certificate before issuance of the policy. Ld. Counsel appearing for the Petitioner contends that production of fitness certificate is not a condition precedent for issuance of policy. Assuming the submission of the counsel for the Petitioner to be correct, question still arises as to whether the Petitioner was able to prove that on the date of accident the vehicle did not have the fitness certificate. The fitness certificate had expired on 4.4.02. Between 4.4.02 and 2.05.02 when the accident took place, the Respondent could have obtained the fitness certificate. Fitness Certificate has relevance to the date on which the accident took place. There is

nothing on record to show that the vehicle did not have the fitness certificate on 2.05.02 when the accident took place. Since the Petitioner had failed to prove that the vehicle did not have the fitness certificate as on the date of accident, we do not find any merit in the Revision Petition and dismiss the same with no order as to costs.