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United India Insurance Co. Ltd. Vs Trilok Kaushik

None

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Nov. 9, 2010

Citation: 2010 0 NCDRC 219 : 2010 4 CPJ 321 : 2010 4 CPR 145

Hon'ble Judges: R.K.Batta , Vinay Kumar J.

Advocate: K.L.Nandwani , Rajesh Gupta , Sumit R.Sharma

Judgement

1. THIS is the case of a motor vehicle accident that took place, during the operation of the insurance policy, way back in 1987. The surveyor

appointed by the Insurance Co. assessed the loss at Rs.2.5 lakhs, according to the Complainant and Rs. 60,000/-, according to the OP/Insurance

Co. However, the OP closed the case as one of "no claim", for violation of policy conditions. A complaint was made to the District Forum, Solan.

The District Forum allowed the complaint. The OP/ United India Insurance Company, was directed on 11.8.1992 to consider the claim. However,

five weeks later, on 18.9.1992, a letter was sent by the OP/Insurance Co. rejecting the claim. The matter was again brought before the District

Forum in 1999. The DF ordered the OP/Insurance Co. to indemnify the Complainant to the extent of Rs.1.7 lakhs.

2. THE appeal No. 83/2005 against the above order, was dismissed by the State Consumer Disputes Redressal Commission, Simla. Hence, the

present Revision Petition before the National Commission. THE order of the State Commissioned is assailed in this Revision Petition substantially

on three grounds " a. THE consumer complaint was filed before the District Forum, Solan in 1992 nearly 6 years after the truck accident of 1987.

THErefore, the complaint is time barred. THE Revision Petition also claims that the Company had already repudiated the insurance claim in 1992

and therefore, the complaint of 1998, filed 6 years thereafter, is time barred. b. THE vehicle in question was being plied without having a valid

permit, fitness certificate etc. at the time of the accident. c. THE quantum of relief awarded is disproportionately high in comparison to the

recommendation of the surveyor.

We have examined the records filed before this Commission and heard the counsels for the two parties. Counsel for the RP/United India Insurance

Co. argued that the claim was repudiated as all the three essential documents were found to be invalid. This argument was countered by the

Counsel for the Respondent/Complainant with the argument that all these were accepted as valid when the policy was issued by the RP in 1986.

Therefore, the RP cannot make them a ground for repudiation.

On the first ground, we find that the averments of the RP/Insurance Co. before the District and State, forums in the Revision Petition itself and

other records of the case, go against its plea. In so far as the time period between the accident in 1987 and claim before the District Forum in

1999 (wrongly mentioned in the RP as 1998) is concerned, it needs to be noted that the District Forum, Simla had issued directions on 11.8.1992

itself. The Complainant was directed to submit the relevant documents to OP/Insurance Co. and the latter was directed to consider the claim,

within time limits given by the DF. By their own averment, the RP repudiated the claim on 7.9.1992 and communicated it to the Complainant

through their Advocate on 18.9.1992. Hence, the question of any delay between 1987 and 1992 does not arise. The cause of action would not

arise when the claim was awaiting a decision in the Co.

3. COMING next to the time between 1992 and 1999, we find that the District Forum has observed in its order of 13.1.2005 that Complainant

had produced documentary evidence to show that he had sent the necessary documents in relation to the claim to the Divisional Manager, United

India Insurance Co. on 26.8.1992. In the appeal before the State Commission, the Insurance Co. could not produce any evidence to substantiate

its claim that the repudiation of the claim was communicated to the Respondent/Complainant. Therefore, the State Commission rightly rejected the

letter of repudiation and held that for that reason there is no question of the complaint being time barred.

It may be mentioned here that initially the complainant had approached District Forum since his claim had not been decided. The Insurance

Company had stated in the reply that the claim of the complainant could not be decided since the complainant had not furnished relevant

documents like driving licence, registration certificate and fitness certificate etc. By order dated 11.08.1992, the District Forum directed the

complainant to supply the requisite documents to the Insurance Company and Insurance Company was directed to decide the claim within 90 days

of the receipt of the documents. The complainant sent permit of the vehicle as also fitness certificate and information relating to payment of road

tax. The Insurance Company repudiated the claim of the complainant on the ground that the complainant did not have valid permit and fitness

certificate on the date of the accident and had also not paid the road taxes.

4. THE plea of the Revision Petitioner that that the vehicle did not have valid documents at the time of the accident, was rejected by the District

Forum as untenable and held to be a deficiency in service. In this connection, the District Forum has observed that it was incumbent upon the

Insurance Company to have ensured that the vehicle being insured was carrying valid fitness certificate and was having route permit and was validly

registered at the time when the vehicle was insured. Admittedly, the complainant possessed the said documents, which were valid when the

Insurance of the vehicle was done on 28.8.1986. THE accident had taken place on 08.04.1987. THE permit of the vehicle in question had expired

on 12.01.1987 and the fitness certificate of the vehicle was only upto 18.10.1986. It was incumbent on the insured to have obtained a valid permit

and fitness certificate after the expiry of the said documents in order to fix the responsibility on the Insurance Company. THE fact that the vehicle

did not have valid permit and fitness certificate on the date of the accident amounts to fundamental breach not only of policy conditions, but also

breach of law. Section 42 of the Motor Vehicle Act, 1939 deals with necessity of permits, which reads as under:-

42. Necessity for permits. (1) No owner of, a transport vehicle shall, use or permit the use of the vehicle in any public place or not such vehicle is

actually carrying any passenger or goods)] in accordance with the conditions of a permit granted or countersigned by a Regional or State

Transport Authority 4 [or the Commission] authorizing the use of the vehicle in that place in the manner in which the vehicle is being used.

From the above, it is clear that no transport vehicle can be used at any public place without a valid permit. In other words, a transport vehicle

without a valid permit cannot be plied on the road and for violation of the said provision, there is penal liability under Section 123 of the Motor

Vehicle Act.

Section 38 of the Motor Vehicle Act, deals with certificate of the fitness of the transport vehicles which reads as under:-

38. Certificate of fitness of transport vehicles. (1) Subject to the provisions of section 39, a transport vehicle shall not be deemed to be validly

registered for the purposes of section 22, unless it carries a certificate of fitness in Form H as set forth in the First Schedule, issued by the

prescribed authority, to the effect that the vehicle complies for the time being with all the requirements of Chapter V and the rules made thereunder.

Where the prescribed authority refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.

5. FROM the above, it is clear that a transport vehicle shall not be deemed to be validly registered for the purpose of Section 22 of the Motor

Vehicle Act, unless it carries a certificate of fitness.