UNITED INDIA INSURANCE CO. LTD. Vs SURINDER KUMAR S/O SH. DHARAM CHAND

2340 of 2013

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Sept. 23, 2016

Acts Referred:

Motor Vehicles Act, 1988, Section 39, Section 39, Section 56, Section 56 - Necessity for registration - Certificate of fitness of transport vehicles

Citation: 2016 4 CPR 40

Hon'ble Judges: B.C. Gupta

Advocate: Suman Bagga

Final Decision: Pettion Allowed

Judgement

1. This revision petition has been filed against the impugned order dated 8.2.2013, passed by the State Consumer Disputes Redressal

Commission, U.T. Chandigarh (hereinafter referred as the "State Commission") in First Appeal No.481/2008, Surinder Kumar vs. United India

Insurance Company Ltd., vide which, while allowing the appeal, the order passed by the District Consumer Disputes Redressal Forum, Ludhiana

on 3.4.2008, dismissing the consumer complaint filed by the present respondent, was set aside.

2. The facts of the case are that the complainant/respondent Surinder Kumar is the owner of a truck, bearing registration no. HR 17A 6024, model

2004 which was insured with the petitioner/OP insurance company, vide policy no.200601/31/04/062/4, valid from 27.3.2005 to 26.3.2006. The

said vehicle is stated to have met with an accident during the currency of the insurance policy, for which a claim was lodged with the OP insurance

company. As stated in the consumer complaint, the claim was not settled despite the complainant having provided the relevant information to the

insurance company. The complainant stated that he had spent more than Rs.2 lakhs for repair of the vehicle and hence, the insurance company should be directed to reimburse the amount claimed by the complainant and to pay Rs.50,000/- as compensation for mental agony etc. and

Rs.11,000/- as cost of litigation.

3. The complaint was resisted by the OP insurance company by filing a written statement before the District Forum in which they stated that the

accident took place on 5.2.2006, but the fitness certificate for the vehicle had already expired on 11.4.2005. The surveyor has also brought out in

his report that the fitness certificate was upto 11.4.2005 only. The insurance company had asked the complainant to explain the cutting on the

fitness date in the registration certificate of the vehicle, but he could not give a proper reply to their letters. The insurance company stated that the

claim was not payable in the absence of the fitness certificate.

4. The District Forum after taking into account the averments of the parties concluded that the claim of the complainant had been rightly and legally

repudiated by the insurance company, because the fitness certificate was valid upto 11.4.2005 only. The District Forum also relied upon section

56 of the Motor Vehicles Act, 1988, observing that ""a transport vehicle shall not be deemed to be validly registered, unless it carries a certificate

of fitness"". Being aggrieved against the said order of the District Forum, the complainant challenged the same by way of an appeal before the State

Commission, which was allowed vide impugned order dated 8.5.2013. The State Commission directed that a compensation of Rs.1.5 lakhs

should be paid to the complainant. Being aggrieved against this order, the insurance company is before this Commission by way of the present

revision petition.

5. The notice of the petition was sent to the respondent who put in appearance through counsel and also filed his reply. However, there was no

appearance of the respondent or his counsel on 2.3.2016 and afterwards.

6. During arguments before me, the learned counsel for the insurance company reiterated that the claim had been rightly repudiated by them,

because the certificate of fitness for the vehicle had already expired on 11.4.2005, whereas the accident took place on 5.2.2006.

7. The complainant/respondent stated in his written reply that they did not try to forge the validity of the fitness certificate. Referring to the cutting

on the certificate, the complainant stated that the same had been done by his driver without his knowledge. Further, the complainant stated that he

was under the impression that the fitness certificate was valid for two years in the State of Haryana as well, as was the practice in the Punjab State.

The complainant further stated that the State Commission had rightly relied upon an order passed by this Commission in G. Kothainachiar vs.

United India Insurance Company IV (2007) CPJ 31 (NC), and allowed his appeal saying that the claim was payable, if there was no breach of

terms and conditions of the policy.

8. In reply, the learned counsel for the insurance company has drawn attention to the orders passed by this Commission in Oriental Insurance

Company Ltd. vs. B.A. Nagesh, 2010 STPL (CL) 1564 NC and United Insurance Company Ltd. vs. B. Ugandar, 2010 STPL (CL) 1370 NC,

in which it had been clearly stated by this Commission that it was necessary to have fitness certificate impliedly for safety of passengers or goods.

In the said cases, reference has also been given to the decision of this Commission in G. Kothainachiar vs. United India Insurance Company

(supra), as well.

9. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me.

10. Considering the facts and circumstances on record, it is clearly made out that on the date of accident, the said commercial vehicle did not have

a certificate of fitness, because the said certificate had expired on 11.4.2005, whereas the accident took place on 5.2.2006. The District Forum

while passing their order have rightly relied upon Section 56 of the Motor Vehicles Act, 1988, which says that a transport vehicle shall be deemed

to be not validly registered, unless it carries a certificate of fitness. The State Commission has relied upon an order passed by this Commission in

G. Kothainachiar vs. United India Insurance Company (supra) , saying that the insurance company cannot repudiate the claim when there is no

breach of terms of the policy, although there may be breach of the provisions of Motor Vehicles Act, 1988. This contention is, however, not valid

in view of the order passed by the Hon''ble Supreme Court in Narinder Singh vs. New India Assurance Company Ltd. (2014) 9 SCC 324 , in

which it has been clearly held that if the vehicle is not validly registered as per the provisions of the Motor Vehicles Act, 1988, it amounted to a

fundamental breach of terms and conditions of the policy and the claim is not payable. As laid down in Section 56 of the said Act regarding

certificate of fitness of transport vehicles, it is clearly stated that a vehicle shall not be deemed to be validly registered for the purpose of Section

39, unless it carries a certificate of fitness as per the prescribed proforma. It is made out, therefore, that the District Forum rightly dismissed the

complaint of the respondent and the view taken by the State Commission is not in accordance with law and hence, the order of the State

Commission deserves to be set aside.

11. Further, in the two cases stated by learned counsel for the insurance company i.e., Oriental Insurance Company Ltd. vs. B.A. Nagesh (supra)

and United Insurance Company Ltd. vs. B. Ugandar (supra), it was held that a transport vehicle was required to have a fitness certificate,

otherwise the claim was not payable for violation of the statutory requirements laid down in the Motor Vehicles Act.

12. Based on the discussion above, this revision petition is allowed and the order passed by the State Commission is set aside. The order passed

byte District Forum decided on 3.4.2008 is restored and the consumer complaint stand dismissed accordingly.