

CASE NO.:
Appeal (civil) 4647 of 2003

PETITIONER:
Jitendra Kumar

RESPONDENT:
Vs.
Oriental Insurance Co. Ltd. & Anr.

DATE OF JUDGMENT: 17/07/2003

BENCH:
N.Santosh Hegde & B.P.Singh

JUDGMENT:

J U D G M E N T

(Arising out of SLP Â© No.21910 of 2001)

SANTOSH HEGDE, J.

Leave granted.

Heard learned counsel for the parties.

The appellant in this appeal is challenging the decision of the National Consumer Disputes Redressal Commission, New Delhi (National Commission) whereby the National Commission dismissed his revision petition filed against the judgment and order of the State Consumer Disputes Redressal Commission, Bihar (State Commission) which in turn had allowed the appeal filed by the respondent-Insurance Company before it. While allowing the said appeal, the State Commission set aside an order of the District Consumer Redressal Forum, Jehanabad (District Forum) whereby the District Forum had allowed a claim of the appellant and directed the respondent-Insurance Company to pay a sum of Rs.80,000/- as damages suffered by the appellant due to the loss of his motor vehicle and further directed the payment of Rs.5,000/- as compensation and Rs.1,000/- as cost of the litigation.

Brief facts giving rise to this appeal are as follows:

The appellant was the owner of the Maruti Van bearing Registration No.BR-2/5667 which was insured with the respondent-Insurance Company. It is the case of the appellant that on 25.4.1996 at about 9.30 p.m. while returning from Gaya to Jehanabad the vehicle in question caught fire due to mechanical reasons and due to the said fire the said vehicle was burnt beyond repair. An intimation of this accidental fire was made to the respondent-Insurance Company on 14.5.1996. With the said intimation, the appellant also lodged a claim with the respondent for payment of damages. The Insurance Company as per its letter dated 10th of December, 1996 repudiated the said claim of the appellant solely on the ground that the driver did not have a valid licence at the time of the incident in question. The District Forum after hearing the parties came to the conclusion that the accidental fire due to which the appellant's vehicle got damaged was not caused due to any act of the appellant's driver but was due to mechanical fault, therefore, it held the contention of the Insurance Company that the appellant's driver did not hold a valid licence could not be a ground to repudiate the claim, accordingly, ordered

the payment of damage, compensation and cost as stated herein above.

In an appeal filed by the Insurance Company, the State Commission reversed the said judgment holding that the driver of the vehicle did not have a valid driving licence and his original licence was a fake which was inadvertently renewed by the District Transport Officer, therefore, following the judgment of the National Commission reported in 1996 (1) CPR 81 (NC) (Raj Kumar and Anr. vs. New India Assurance Company & Ors.) held that the Insurance Company was justified in repudiating the claim of the appellant.

A revision petition filed by the appellant against the said judgment of the National Commission came to be dismissed by the National Commission by the impugned order wherein the National Commission placed reliance on a judgment of this Court in the case of New India Assurance Company Ltd., Shimla vs. Kamla & Ors. (2001 4 SCC 342).

As stated, it is against the above judgment of the National Commission the appellant is before us.

Learned counsel for the appellant contended that the National Commission and the State Commission erred in coming to the conclusion that holding of valid driving licence was a condition precedent to claim any damage from the Insurance Company even when the accident in question has occurred due to no fault/or act of the driver. He submitted that the judgment of this Court in the case of New India Assurance Company (supra) has no application to the facts of this case.

We have heard learned counsel for the respondents who has supported the orders of the State Commission as well as that of the National Commission. So far as the facts of this case are concerned, there is hardly any dispute, therefore, we can safely proceed on the basis that the vehicle in question was damaged due to a mechanical fault and no fault of the driver. For the purpose of argument, we may also proceed on the basis that the driver of the car did not have a valid driving licence. Question then is : can the Insurance Company repudiate a claim made by the owner of the vehicle which is duly insured with the Company, solely on the ground the driver of the vehicle who had nothing to do with the accident did not hold a valid licence ? Answer to this question, in our opinion, should be in the negative. Section 149 of the Motor Vehicles Act, 1988 on which reliance was placed by the State Commission, in our opinion, does not come to the aid of the Insurance Company in repudiating a claim where driver of the vehicle had not contributed in any manner to the accident. Section 149(2)(a)(ii) of the Motor Vehicles Act empowers the Insurance Company to repudiate a claim wherein the vehicle in question is damaged due to an accident to which driver of the vehicle who does not hold a valid driving licence is responsible in any manner. It does not empower the Insurance Company to repudiate a claim for damages which has occurred due to acts to which the driver has not, in any manner, contributed i.e. damages incurred due to reasons other than the act of the driver.

We notice that in the impugned order National Commission has placed reliance on the judgment of this Court in the case of New India Assurance Company (supra) which, in our opinion, has no bearing on this aspect of the case in hand. This Court in the said case held that the fake driving licence when renewed genuinely, does not acquire the validity of a genuine licence. There can be no dispute on this proposition of law. But then the judgment of this Court in the case of New India Assurance Company (supra) does not go to the extent of laying down a law which empowers the

Insurance Company to repudiate any and every claim of the insured (appellant) merely because he had engaged a driver who did not have a valid licence. In the instant case, it is the case of the parties that fire in question which caused damage to the vehicle occurred due to mechanical failure and not due to any fault or act, or omission of the driver. Therefore, in our considered opinion Insurance Company could not have repudiated the claim of the appellant.

For the reasons stated above, this appeal succeeds, the impugned judgments of the National Commission and the State Commission are set aside and that of the District Forum is restored.

The appeal is allowed with costs.

JUDIS