STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND, DEHRADUN

Date of Admission : 02.01.2017
Date of Final Hearing : 21.11.2024
Date of Pronouncement : 29.11.2024

First Appeal No. 254 / 2016

National Insurance Company Ltd.
Divisional Manager,
Divisional Office at Tikonia, Haldwani, Nainital
Through National Insurance Company's Authorised Signatory
Regional Office Rajpur Road, Dehradun
(Through: Sh. Deepak Ahluwalia, Advocate)
…..Appellant

VERSUS

Smt. Parwati Devi W/o Late Sh. Leeladhar
Village Peerumdara, Ramnagar, District Nainital
…..None for Respondent

Coram:
Mr. M.K. Singhal, Member (Judicial)
Mr. C.M. Singh, Member

ORDER

(Per: Mr. M.K. Singhal, Member (Judicial):

This appeal under Section 15 of the Consumer Protection Act, 1986 has been directed against judgment and order dated 04.11.2016 passed by the learned District Consumer Disputes Redressal Forum, Nainital (hereinafter to be referred as the District Commission) in consumer complaint No. 21 of 2015 styled as Smt. Parwati Devi vs. Divisional Manager, National Insurance Co. Ltd., wherein and whereby the complaint was allowed by the District Commission.

2. The facts giving rise to the present appeal, in brief, are as such that the deceased (complainant's son) who was allegedly driving the vehicle in question was as per records holding a learner's license only, hence the deceased committed a material violation of the insurance policy's terms and conditions. As per Motor Vehicles Act, it is imperative that when the person holds a learner's license, rules stipulate that in front and rear of the said vehicle the word 'L' in red letters should be affixed or hung and also in the absence of a trainer accompanying the deceased, who was only holding a learner's license, when the alleged accident occurred, there was express violation of policy's terms and conditions. Hence, the appellant is not liable to pay any amount. The driving license of the deceased, who was allegedly driving the vehicle in question, when alleged accident took place was not holding a valid and effective driving license to drive independently the vehicle in question. The District Commission has wrongly concluded that the complainant – respondent is entitled to the claim amount. Because the ratio of the decision of Hon'ble Himachal Pradesh High Court is clearly distinguishable to the facts in the present matter. Since, relevantly in the present matter, the deceased driving the vehicle in question when alleged accident occurred, was not holding a valid and effective driving license to drive it independently on a public road, as also there was no person accompanying the deceased, who held a valid and effective driving license, when the alleged accident occurred. It is the express violation of the Motor Vehicles Rules, hence the appellant cannot be called upon to satisfy the claim and the impugned judgment is against law. The District Commission has wrongly been swayed by the Hon'ble Himachal Pradesh High Court's decision, which is not applicable to own claim damages. In a catena of judgments of superior courts has clearly held that policy's terms and conditions should be strictly construed in the manner in which the same is contained. In the present case, since the insurance policy's terms and conditions requires immediate information and also pertinently intimation

before cremation and in any case it expressly stipulates in any case before one month of death. So the appeal deserves to be allowed and the impugned judgment and order passed by the District Commission, Nainital is liable to be set aside.

3. The complainant has filed a consumer complaint before the District Commission alleging that complainant's unmarried son was the owner of the motorcycle registration No. UK04-L-3023 which was insured with the opposite party – Insurance Company including personal accident of Rs. One Lac vide policy No. 351007311621544578 valid from 05.10.2011 to 04.10.2012. The complainant's son met with an accident on 17.11.2011 and died due to severe injuries caused in the said accident and the vehicle in question was also damaged in the said. Information in this regard to the opposite party was sent on 19.03.2012 in writing. All the necessary documents have been provided to the insurance company by the complainant and the insurance company as well as its employees have assured the complainant, but they have not paid the amount of personal accident. Then, after serving a legal notice, a complaint has been filed before the District Commission, Nainital.

4. The opposite party – Insurance Company has submitted its written statement before the District Commission stating that the complainant has not provided within a month any information regarding accident. It has come to the notice of answering opposite party through legal notice which was received on 04.07.2013 that the insured vehicle was damaged in an accident, 19 months ago. But with the legal notice necessary documents, such as Registration Certificate, Driving License, Post-Mortem Report and FIR were not enclosed. In addition to this, complainant has not filed the claim form. So being premature, complaint should be dismissed. The vehicle in question alongwith personal accident for Rs. One Lac was

insured and at the time of said accident, the driver (complainant's son) of the vehicle should have valid and effective driving license. But during an investigation, it has come to the knowledge of the answering opposite party that at the time of said accident, the complainant's son (deceased) was having only a learner's license and it is a breach of terms and conditions of the insurance policy. Hence, the complainant is not liable to get any claim and the complaint is liable to be dismissed.

5. The District Commission after hearing both the parties and after taking into consideration the entire pleadings, facts and material placed on record, passed the impugned judgment and order on dated 04.11.2016 whereby the complaint was allowed directing the opposite party to pay Rs. 1,00,000/- for personal accident alongwith interest @ 7% per annum on the said amount from the date of filing of the complaint case till the date of actual payment as well as Rs. 3,000/- as costs of litigation to the complainant within a period of one month.

6. On having been aggrieved by the aforesaid judgment and order of the District Commission, the opposite party – Insurance Company has preferred the present appeal as appellant.

7. Learned counsel Sh. Deepak Ahluwalia for the appellant has appeared. None has appeared on behalf of the respondent, hence an ex-parte proceeding was drawn against her on 06.11.2024.

8. Heard learned counsel for the appellant and perused the record available before us. Appellant has also filed the written arguments.

9. The main argument of the appellant is that at the time of accident, the deceased (complainant's son) who was driving the vehicle in question

was not having a valid and effective driving license, so the personal accident claim cannot be given being violation of terms and conditions of the insurance policy. In the impugned judgment and order, the District Commission has quoted a case law of Hon'ble High Court, Himachal Pradesh in the case of **Oriental Insurance Co. Ltd. Vs. Sh. Krishan Dev and Others, 2015 (3) T.A.C. 237 (H.P.).**

10. Learned counsel for the appellant has cited following case laws, which are as under:

1. **National Insurance Co. Ltd. vs. Laxmi Narain Dhut, III (2007) CPJ 13 (SC)**

2. **National Insurance Co. Ltd. & Anr., Vs. Alam Ali, IV (2014) CPJ 573 (NC)**

11. In the case of **National Insurance Co. Ltd. vs. Laxmi Narain Dhut** (supra), the Hon'ble Supreme Court of India has held in para No. 34 that the inevitable conclusion therefore is that the decision in **Swaran Singh's** case (supra) has no application to own damage cases. The decision in **Swaran Singh's** case (supra) has no application to cases other than third party risks.

12. In the case of **National Insurance Co. Ltd. & Anr., Vs. Alam Ali (supra)** the Hon'ble Apex Court has held that the driving license and learner's license cannot be treated at par and further observed that a person shall not drive motor vehicle in any public place unless he holds effective driving license.

13. Perusing the above cited judgment of Hon'ble Apex Courts, it is crystal clear that in personal accident insurance case, the case cited by the District Commission is not applicable because the complaint which was

filed before the District Commission was for personal accident claim. Hence, with due regard to the above decision, it is clear that the District Commission has committed an error. Hence, the impugned judgment and order passed by the District Commission, Nainital is liable to be set aside.

14. Section 3 of the Central Motor Vehicle Rules, 1989 provides that "The provisions of sub-section (1) of Section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as—

> (a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;
>
> (b) such person is accompanied by an instructor holding an effective driving License to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle;
>
> and
>
> (c) there is painted, in the front and the rear or the vehicle or on a plate or card affixed to the front and the rear, the letter "L" in red on a white background."

15. In the instance case, the deceased - driver (complainant's son) was holding a learner's license, as is proved by 'Learner's Licence' (paper No. 17/9 of the District Commission's record) and in this paper, it is also mentioned that in the last "The attention of the holder of this license is drawn to rule (3) of CMV Rules, 1989 which prohibited him from driving any motor vehicle unless he has besides him a person duly licensed to drive

the vehicle and in every case, the vehicle carries "L" plates both in the front and in the rear of the vehicle."

16. So this is the condition of Central Motor Vehicles Rules, 1989 and in the instant case, the driver was not having another license holder person with him to guide or instruct him to drive safely. So it is clear that he had violated the Central Motor Vehicles Rules, 1989 and it is a breach of policy terms and conditions.

17. In case of breach of terms and conditions of insurance policy, no award can be granted. So the learned District Commission has committed perversity in allowing the complaint case, while the driver of the vehicle in question was not holding a valid and effective driving license at the time of accident of insured vehicle. Therefore, the complainant cannot claim in the condition of breach of terms and conditions of the insurance policy.

18. Hence, on the basis of the above discussion, the appeal deserves to be allowed and the impugned judgment and order is liable to be set aside.

19. Accordingly, the appeal is allowed. Impugned judgment and order dated 04.11.2016 passed by the District Commission, Nainital is set aside. The consumer complaint shall stand dismissed. No order as to costs of the appeal.

20. Statutory amount, if any, deposited by the appellant be returned to the appellant.

21. A copy of this Order be provided to all the party free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the

party. A copy of this Order be sent to the concerned District Commission for record and necessary information.

22. File be consigned to record room along with a copy of this Order.

(Mr. M.K. Singhal)
Member (Judicial)

(Mr. C.M. Singh)
Member

Pronounced on: 29.11.2024