

Rubi(Chandra) Dutta vs M/S United India Insurance Co.Ltd on 18 March, 2011

Equivalent citations: 2011 AIR SCW 2311, 2011 (11) SCC 269, 2011 (3) AIR BOM R 513, 2011 (3) AIR JHAR R 557, 2011 (2) AIR KANT HCR 759, (2011) 3 GUJ LR 2303, (2011) 2 UC 1426, (2011) 3 PUN LR 79, (2013) 2 CPR 14, (2011) 2 RECCIVR 591, (2011) 1 WLC(SC)CVL 794, (2011) 3 MAD LW 240, 2011 AAC 1677 (SC), (2011) 3 JCR 276 (SC), (2011) 4 CGLJ 14, (2011) 2 CAL HN 82, AIR 2011 SC (CIV) 1016, (2011) 2 CIVILCOURTC 302, (2011) 7 MAD LJ 818, (2011) 4 TAC 894, (2011) 3 SCALE 654, (2011) 101 ALLINDCAS 224 (SC), (2011) ACJ 2310, (2011) 86 ALL LR 734, (2011) 3 ALL WC 2908, (2011) 2 CPJ 19, 2011 (2) KLT SN 28 (SC)

Author: Deepak Verma

Bench: Deepak Verma, Dalveer Bhandari

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2588 OF 2011

[Arising out of SLP(C) No.19246 of 2009]

Mrs. Rubi (Chandra) Dutta

....Appellant

Versus

M/s. United India Insurance Co. Ltd.Respondent

J U D G M E N T

Deepak Verma, J.

1. Leave granted.

2. Insured is before us challenging the correctness, legality and propriety of the order passed by National Consumer Disputes Redressal Commission, New Delhi (in short 'National Commission') in Revision Petition No. 2899 of 2008 on 18.12.2008 titled M/s. United India Insurance Company Ltd. Vs. Rubi (Chandra) Dutta.

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3. Facts lie in narrow compass:

Appellant is the owner of bus bearing Registration No. WB-57/6715. Appellant had taken an Insurance Policy Cover from Respondent Insurance Company with respect to the bus, for the period between 13.1.2003 to 12.1.2004 and had paid the insurance premium for the same, acknowledging which, the Respondent had issued the receipt in her favour.

On the intervening night of 4/5.07.2003 on National Highway No. 34 while the said Bus was proceeding to Hilli from Puri, it dashed against a Neem tree and turned turtle. The bus was massively damaged on impact and then slid into a roadside ditch. Thus, not only the body of bus but its internal systems also suffered extensive damage. The passengers travelling therein were also injured.

4. F.I.R. was lodged with the local Police Station and after investigation, the police commenced a case bearing No.226/2003 under various sections of C.A. @ SLP(C)No.19246 of 2009 Contd.

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Indian Penal Code. In the meanwhile, the Appellant had promptly informed the Respondent Insurance Company about the said accident and the consequent damage caused to the bus. Accordingly, she then requested for assessment of loss sustained including cost of repairs. The Respondent duly appointed Mr. Sujit Kumar Sarkar as Surveyor, who submitted his preliminary report on 21.07.2003 assessing the total loss at Rs. 2,90,000/-. Following the receipt of this report,

the Respondent then appointed Mr. Surya Dutt to prepare a detailed Final Report dated 31.12.2003 and as per his investigation, the total amount of damages was computed to be Rs. 2,72,517.90/-.

5. According to Appellant, the amount assessed by both Surveyors was far less than the actual amount spent by her in getting the said bus roadworthy.

According to her, she had spent a sum of Rs.

1,95,000/- simply for getting the body of the bus rebuilt by Hara Gouri Technical and Engineering C.A. @ SLP(C)No.19246 of 2009 Contd.

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Works. Thereafter, the mechanical parts were repaired after spending a further sum of Rs.3,38,782/- by Bhandari Motors Pvt. Ltd., Sukchar. The Appellant submitted all the bills and receipts showing payments and requested Respondent to pay the total sum of Rs.

5,33,782/- but the Respondent failed to pay the said amount despite repeated demands. Respondent, in fact, repudiated the Appellant's Claim.

6. Thus, the Appellant was constrained to file a complaint under Section 12 of the Consumer Protection Act, 1986 (in short 'the Act') before District Consumer Disputes Redressal Forum, Berhampore, Murshidabad, being Consumer Protection Case No. 202/2005.

7. On notice being issued to the Respondent, it filed written statement denying all material allegations of the Appellant. It submitted that Appellant has claimed exorbitant amount towards cost of repairing and in fact no such payments were made C.A. @ SLP(C)No.19246 of 2009 Contd.

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to either of the two workshops. The receipts produced by Appellant have been fabricated only with an intention to claim an unreasonably large amount from the Respondent.

8. Apart from the above, it also took a plea that at the time of accident, the bus was being driven by a person who was not holding a valid driving licence. It further took a plea that on enquiry and investigation, it was revealed that driving license bearing No. CD-676/96 was not, in fact, issued by the Licensing Authority, Murshidabad in favour of Sirajul Haque, the then Driver of the Bus. Thus, the duplicate licence presented by Appellant was obviously fake and fabricated. Under the circumstances, Appellant was not entitled to claim any amount from the Respondent. However, it was not disputed that at the relevant point of time the vehicle in question was insured with the Respondent Company.

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9. Thus, the bone of contention before the District Forum was whether at the relevant point of time, Sirajul Haque, driver of the bus was holding a valid driving licence or not. Respondent placed reliance on the deposition made by an employee of R.T.A., Murshidabad before the Claims Tribunal in Case No. 115/2004 that the driver of the said bus was not holding a licence and no driving licence OD-

676/96 was issued in his favour. To controvert the said averment, Appellant had filed Xerox copy of the original license issued in favour of Sirajul Haque before that Tribunal.

10. During the course of hearing on the suggestion being made by the learned Counsel for the parties, the District Forum issued a direction that an authorized officer of the R.T.A., Murshidabad be asked to appear before the Forum with relevant register and documents to establish whether the said C.A. @ SLP(C)No.19246 of 2009 Contd.

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driver of the bus in question was holding driving licence bearing No. OD-676/96 or not.

11. Pursuant to the said request the RTO appeared in this case and his evidence was also recorded. He deposed that in the original register it was noticed that application of Sirajul Haque bearing Serial No. 676 was missing and from the register it was noticed that a duplicate driving licence was issued in favour of Sirajul Haque by the said Licensing Authority on 31.5.2005. Since the original application of the Sirajul Haque was not available, he had been asked to submit an affidavit and Xerox copy of the original driving licence, which he did. Only after going through the same a duplicate driving licence was issued in his favour. After issuance of duplicate license in favour of Sirajul Haque, an entry was made in the Miscellaneous Register maintained in this regard, after charging Rs. 100/- for issuance of duplicate licence from him on 25.5.2005. All this was C.A. @ SLP(C)No.19246 of 2009 Contd.

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categorically admitted by the said witness, Mr. Lawrence Sitling.

12. Considering the matter from all angles the District Forum was pleased to allow the complaint of the Appellant and directed the Respondent to pay to the Appellant a total sum of Rs. 4,00,000/- together with an interest at the rate of 9%, if the payment was not made within two months from the date of the said order.

13. This order was subject matter of challenge before the State Consumer Disputes Redressal Commission, West Bengal in an appeal filed under Section 15 of the Act. The State Commission also perused the matter in due detail and agreed with the findings that at the relevant point of time bus was being driven by a person holding a valid driving licence. However, it came to the conclusion that

Appellant would be entitled to a sum of Rs.

2,72,517/- only, which was assessed as damages by the C.A. @ SLP(C)No.19246 of 2009 Contd.

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Surveyor. The amount was ordered to be paid within six weeks failing which it will carry interest at the rate of 9% per annum till the amount is paid in full.

Thus, the finding of the District Forum were confirmed by the State Commission except that the amount was reduced as mentioned above.

14. Against the aforesaid orders of District Forum and State Commission, Respondent preferred a Revision Petition under Section 21(b) of the Act, before the National Consumer Disputes Redressal Commission (for short, 'National Commission'). National Commission after considering the matter came to the conclusion that the driver of the bus at the relevant point of time was not holding a valid driving licence.

Accordingly, it allowed the plea of the Respondent and thereby set aside and quashed the orders passed by District Forum and State Commission. Hence this Appeal.

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15. We have heard learned Counsel Shri Sanjay Kumar Ghosh for Appellant and Shri P.R. Sikka for Respondent at length and perused the record.

16. In the appeal the sole ground to be examined by us is whether at the relevant point of time Sirajul Haque was having a valid driving licence or not. We have once again critically gone through the evidence produced by the parties, and the statements made by the authorized officer of the RTO and other material documents filed by the parties. In the light of the admission of the witness, who had appeared with the relevant records from the office of RTO, we have absolutely no doubt in our mind that at the relevant point of time Sirajul Haque was having a valid driving licence. The reasoning behind our opinion is explained hereunder.

17. No doubt, it is true that the original application of Sirajul Haque bearing No. 676/96 was missing in the Register of Driving Licences but on C.A. @ SLP(C)No.19246 of 2009 Contd.

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the strength of other available documents, he was issued a duplicate licence by the same RTO, a fact admitted by the Court witness. After having gone through the copy of the duplicate licence we are further reassured that the same was duly issued following normal procedure by the Licensing

Authority.

18. Apart from the above, we have also seen the preliminary report of Surveyor Mr. Sujit Kumar Sarkar who has mentioned that Sirajul Haque was having a driving licence bearing No. 676/96 issued by Licensing Authority, Murshidabad. Similar is the report of another Surveyor Mr. Surya Dutt who has mentioned in the report that at the time of driving the bus, driver was having a valid driving licence.

On close scrutiny of the Copy of the Duplicate Licence issued by Licensing Authority, Murshidabad we also observed a noting which categorically states C.A. @ SLP(C)No.19246 of 2009 Contd.

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that the said duplicate license was issued only after "verification from the original."

19. The Government of West Bengal has promulgated the Motor Vehicles Procedure Manual in which there is a chapter that deals with the procedure to be followed for obtaining a duplicate driving licence.

According to the stated requirements, under this Manual, a driver is required to submit an affidavit that his driving licence has been lost and has not been seized in any case and in case he possesses photocopy of the original licence then the same may also be submitted alongwith the prescribed application form duly filled in. After verification, thereof, a duplicate driving licence may be issued in favour of the applicant. Deposition of Mr. Lawrence Sitling states that the same procedure had been adopted by head office at the time of issuance of duplicate license.

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20. In view of the aforesaid admission made by him, there remains no doubt that the said duplicate licence was issued by the said office in his favour after checking the previous credentials of the driver. Even if the original application was not available but since the duplicate licence was issued by the same licensing Authority, Murshidabad, it cannot be challenged that the original licence was fake, forged, manufactured or engineered document.

This unequivocal admission made by the said witness of RTO fully establishes this fact.

21. The cumulative effect of the aforesaid facts would clearly establish that at the relevant point of time driver Sirajul Haque was holding a valid driving licence to drive the bus.

22. Unfortunately, all these facts have not been carefully dealt with by the National Commission and still it went on to upset and quash the concurrent findings of the two lower fora.

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23. Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21(b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums.

The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed.

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It was not a case where such a view could have been taken, by setting aside the concurrent findings of two fora.

24. Obviously, it goes without saying that at the time of giving employment to Sirajul Haque, the owner of the bus must have examined the licence issued to him and after satisfaction thereof, he must have been given employment. Nothing more was required to have been done by the Appellant. After all, at the time of giving employment to a driver, owner is required to be satisfied with regard to correctness and genuineness of the licence he was holding. After taking the test, if the owner is satisfied with the driving skills of the driver then, obviously, he may be given an appointment.

25. In the light of the aforesaid discussion, we are of the considered opinion that the impugned order passed by National Commission cannot be sustained in law. It is necessary to point out that against the C.A. @ SLP(C)No.19246 of 2009 Contd.

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order of State Commission, whereby the amount of Rs.

2,72,517/- was awarded, no further Revision was preferred by the Appellant. Thus, in any case the compensation awarded to the Appellant cannot be enhanced beyond what has been pegged down by the State Commission.

26. It is correct that the Act does not contain any provision for grant of interest, but on account of catena of cases of this Court that interest can still be awarded, taking recourse to Section 34 of the Code of Civil Procedure, to do complete justice between the parties. We accordingly do so. This principle is based upon justice, equity and good conscience, which would certainly authorize us to grant interest, otherwise, the very purpose of awarding compensation to the Appellant would be defeated. We accordingly deem it fit to award C.A. @ SLP(C)No.19246 of 2009 Contd.

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interest at the rate of 9% per annum on the aforesaid amount from the date of filing the complaint till it is actually paid.

27. The order of National Commission is set aside and quashed. We accordingly, hold that Respondent is liable to pay the aforesaid amount of Rs. 2,72,517/-

to the Appellant together with interest at the rate of 9% per annum, from the date of filing of the application till it is actually paid. Appeal thus, stands allowed to the aforesaid extent. Respondent to bear the cost of the litigation throughout.

28. Counsels' fee Rs. 10,000/-.

.....J. [DALVEER BHANDARI]J. [DEEPAK VERMA] March 18, 2011 New Delhi.