

A. Nazar

Vs

New India Assurance Co. Ltd.

Civil Appeal No. 9878 of 1995

(Kuldip Singh, Faizanuddin JJ)

23.01.1996

ORDER

1. The appellant filed a complaint before the National Consumer Disputes Redressal Commission, Madras (State Commission) against the respondent-Insurance Company. The complainant was the owner of the truck which met with an accident on October 14, (sic) and suffered extensive damage. The truck was insured with the respondent for a sum of Rs 1,00,000. The respondent repudiated its liability under the policy on the ground that at the time of the accident, the vehicle was carrying passengers in violation of the terms of the policy. The complainant admitted that some rose plants were being carried in the truck and three occupants - owners of the rose plants were travelling in the truck. The case of the appellant was that no fare was charged from the persons travelling in the truck. The State Commission accepted the plea of the complainant that the three passengers in the truck were taken along with their rose plants and had not paid any fare. On that finding, the State Commission allowed the complaint and directed the Insurance Company to pay the balance amount of Rs 77,500 with interest at 12% from the date of accident till payment. The State Commission also awarded Rs 1000 as cost.

2. It is not disputed by learned counsel for the respondent that in case the truck was carrying persons who had not paid any fare, then the liability is covered under the policy. The National Commission reversed the finding of the State Commission on the following reasoning :

"Though the respondent-complainant had denied that the vehicle was being run in contravention of the policy of insurance, the State Commission has held that at least three persons owning the rose plants were travelling in that lorry. Whether they had paid any fare for the same or not, remains a moot question and there has been no finding thereon by the State Commission. Even if it is assumed that they had paid no fare for this journey, there is no doubt that the lorry driver was carrying passengers during his journey who could not be carried in this vehicle as per the terms of the policy. It is in this context that we have to examine whether there has been any deficiency of service on the part of the Insurance Company. Since there has been a violation of the terms of the insurance policy by the respondent-insured it is immaterial whether it is major or minor. It cannot be held that the appellant-Insurance Company has been guilty of deficiency in service while repudiating its liability in terms of the insurance policy."

We are of the view that the National Commission fell into patent error. The National Commission was not even aware of the clause in the insurance policy which permitted the carrying of passengers, without payment of fare.

3. We allow the appeal, set aside the order of the National Commission and restore that of the State Commission with costs. We quantify the costs at Rs 5000.