

**BEFORE THE PRESIDENT, DISTRICT CONSUMER DISPUTES
REDRESSAL FORUM :: TINSUKIA :: ASSAM**

District: Tinsukia

Present: **Sri P.J. Saikia,**
President,
District Consumer Disputes
Redressal Forum, Tinsukia

Sri K.K. Das,
Member,
District Consumer Disputes
Redressal Forum, Tinsukia

Consumer Case No. 5 of 2016

Ms. Rabiya Begum,
W/o Md. Sayd,
R/o New Court Road, A.T. Road, Hijuguri,
P.S. & Dist: Tinsukia (Assam)
(Represented by her appointed Attorney Md. Sayd).....Complainant

- Versus -

1. The Oriental Insurance Co. Ltd.,
North Lakhimpur Branch, Old R.M.S. Road,
Opposite Green View Hotel, Lakhimpur,
P.O. & P.S. North Lakhimpur,
Dist: Lakhimpur (Assam)
2. The Divisional Manager,
The Oriental Insurance Co. Ltd.,
Divisional Office at Itanagar, Naharlagun,
Arunachal Pradesh.
3. The Regional Manager,
The Oriental Insurance Co. Ltd.,
Regional office at Ulubari, Guwahati.....Opposite Parties

Appearance:

Sri A.K. Choubey,
Advocate.....For the Complainant
Sri A.C. Borah,
Advocate.....For the O.Ps.

Date of Argument : 11.01.2018

Date of Judgment : 25.01.2018

J U D G M E N T

CASE OF THE COMPLAINANT

1. The complainant is the owner of an oil tanker bearing registration No.AS-23-AC-5806. It has a national permit and was authorized to run the vehicle throughout India. The vehicle was insured with the O.P. Oriental Insurance Co. Ltd.
2. On 3.12.2012, the said tanker was loaded with sulphuric acid at Progressive Fertichem (P) Ltd., Guwahati, Assam. The said sulphuric acid was to be unloaded at M/s Babul Battery Service, N.H. 37, Nursury Tiniali, Guwahati.
3. The driver of the said truck was competent to drive hazardous goods because he had undergone a course of training in driving of LPG/hazardous goods carrying vehicles at Drivers' and Conductors' Training School, Betkuchi, Guwahati. To that effect, the driver was given a certificate bearing Sl. No.1073/112/ HZD dated 18.7.12.
4. On 4.12.12, the vehicle No.AS-23-AC-5806 was going to M/s Babul Battery Service at Guwahati and in the mid night at about 12.10 A.M., the vehicle met with an accident. In fact, it had hit an auto rickshaw. Because of the accident, the vehicle capsized on the road. The driver Bishnu Deb died on the spot. The entire contents of sulphuric acid spilled over the road and the truck was completely damaged. The police at Khetri Police Station registered a case being Khetri P.S. Case No.169/12 u/s.279/304(A)/427 of the I.P.C.
5. On 5.12.12, the complainant informed the insurance company about the said fact. The insurance company deputed a surveyor, named P. Adhikari to assess the damage caused to the complainant. The damaged vehicle was also examined by Motor Vehicle Inspector Sri S.N. Gogoi.
6. The complainant laid a claim of Rs.9,45,000/- with the insurance company. The insurance company wanted the hazardous goods carrying certificate of the driver Bishnu Deb. The complainant informed the insurance

company that for carrying sulphuric acid, no special licence as claimed by the insurance company is required. The complainant stated that sulphuric acid was not a hazardous goods according to the rules of the Office of the Chief Controller of Explosives. Finally, after a long deliberation, the insurance company repudiated the claim of the complainant.

7. It may be mentioned that the surveyor of the insurance company had sent a report on 12.3.13 to the insurance company stating that the complainant would be entitled to Rs.9,43,500/- as compensation, subject to the terms of the policy. Thereafter, the surveyor P. Adhikari again sent a report on 12.8.13 to the insurance company stating that the complainant will be entitled to Rs.6,68,500, because the value of wreck of the tanker was estimated as Rs.2,75,000/- and the said value was to be deducted from Rs.9,43,500/-. The insurance company primarily repudiated the claim of the complainant on the ground that there was a breach of clause in the agreement and to that effect it was mentioned that the licence of the driver was not endorsed for carrying hazardous goods.

CASE OF THE INSURANCE COMPANY

8. The insurance company in its written statement has admitted everything, but stated that there was no endorsement in the driving licence of the driver pertaining to his ability to carry hazardous goods and therefore, there was a breach of agreement and for that matter, the insurance company has expressed inability to honour the claim of the complainant.

9. Upon the pleadings of the parties, the following issues were framed in this case.

- (i) Whether lack of endorsement in the driving licence of Bishnu Deb for carrying hazardous goods is sufficient to repudiate the claim of the complainant?
- (ii) Whether the complainant is entitled to compensation, as claimed?

10. In this case, the complainant examined two witnesses and the insurance company examined one witness. I have carefully gone through the evidence available in the record. I shall take up the issues for discussion in their given order.

Issue No.(i)

11. In the instant case, it is an admitted fact that the surveyor P. Adhikari recommended to the insurance company that the complainant would be entitled to receive compensation of Rs.9,43,500/-. The only plea of the insurance company is that the licence of the driver was not endorsed for carrying hazardous goods.

12. The complainant examined a person, called Rafikul Islam. He is an officer of the office of the Principal, Drivers' and Conductors' Training School, Betkuchi, Guwahati. This witness has produced some documents. Ext.22 is the register containing names and particulars of the persons, who were given certificate for undertaking training in driving of vehicles containing hazardous goods. Ext.22(1) is the relevant entry pertaining to the driver Bishnu Deb. Page No.68 of Ext.22 contains photographs of the persons, whom certificates were given. Ext.22(2) is the relevant photograph of Bishnu Deb. Ext.14 is the certificate that was issued to Bishnu Deb from the Drivers' and Conductors' Training School, Betkuchi on 18.1.14. Ext.14(2) is the signature of Dilip Das, the Principal of the said school.

13. The witness has been cross-examined by the insurance company. There is nothing relevant in the cross-examination. Thus, it is proved that Late Bishnu Deb, who was driving the truck No.AS-23-AC-5806 at the time of the accident, had taken training for carrying hazardous goods in his vehicle. At this stage, in my considered opinion, absence of any endorsement in the driving licence of Late Bishnu Deb that he was competent to drive the vehicle carrying hazardous goods is of no value. The driver was issued a certificate for attending training for carrying hazardous goods. Thus, the insurance company was not justified in repudiating the claim of the complainant. This issue is answered accordingly.

Issue No.(ii)

14. In the light of the decision arrived at issue No.(i), the complainant is entitled to compensation of Rs.9,43,500/-. The complainant is also entitled to an amount of Rs.50,000/- being the cost of litigation. This issue is accordingly answered.

O R D E R

15. That being the position, the case of the complainant succeeds. There was deficiency of service while the insurance company repudiated the claim of the complainant. The complainant is entitled to compensation of Rs.9,43,500/- and another sum of Rs.50,000/- being the cost of litigation from the insurance company. In total, the complainant is entitled to compensation of Rs.9,93,500/- (Rupees Nine Lakhs Ninety Three Thousand and Five Hundred) from the O.P. The O.P. is directed to pay the said amount within two months.

Given under my hand & seal of this Forum on this the 25th day of January, 2018.

Dictated & corrected by me.

President
District Consumer Disputes
Redressal Forum, Tinsukia

(P.J. Saikia)
President
District Consumer Disputes
Redressal Forum, Tinsukia

I agree:

Member
District Consumer Disputes
Redressal Forum, Tinsukia