

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION, MAHARASHTRA
CIRCUIT BENCH AT NAGPUR
5 TH FLOOR, ADMINISTRATIVE BUILDING NO. 1
CIVIL LINES, NAGPUR-440 001**

First Appeal No. A/01/1426

(Arisen out of Order Dated 24/08/2001 in Case No. 93/2001 of District Forum, Buldhana)

Branch Manager, Malkapur
The New India Assurance Co. Ltd.,
Bharat Kala Road, Malkapur,
Tah. Malkapur, Distt. Buldhana.

..... Appellant(s)

Versus

Raju Dwarkadas Chaudhari,
R/o. Nikhil Automobiles, Malkapur,
Tal. Malkapur, Distt. Buldhana.

..... Respondent(s)

BEFORE:

**Hon'ble Mr.S.M. Shembole PRESIDING MEMBER
HON'BLE SMT.JAYSHREE YENGAL MEMBER
HON'BLE MR.N. ARUMUGAM MEMBER**

**PRESENT: ADV.S.M.PALDHIDAR, Advocate for the Appellant
ADV.S.M.KASTURE, Advocate for the Respondent**

**Judgment
(Delivered on 10/08/2012)**

PER SHRI S.M.SHEMBOLE, HON'BLE PRESIDING MEMBER.

1. This appeal is directed against the judgment and order dated 24/08/2001 passed by the District Consumer Forum, Buldhana in Complaint No.93/2001 allowing the complaint and directing the original opponent/appellant- Insurance Company to pay the amount of Rs.1,40,000/- towards reimbursement of the repairs charges of the vehicle and Rs.40,000/- towards salvage and Rs.500/- more towards the cost of the proceeding. (For the sake of brevity appellant hearinafter is called as "Opponent-Insurance Company" and respondent as "Complainant").

Brief facts giving rise to this appeal are that,

2. Respondent/complainant- Raju Choudhary is the owner of Toyota Bus bearing No. MH-28/B-5148 and the same vehicle was insured with appellant/opponent-

insurance company and it was valid up to 10/11/2000. On 23/04/2000 when the said vehicle was proceeding to Malkapur from Bodhwad, it met with an accident. Mr. Bhimrao Tayade who was driving the said vehicle sustained severe injuries. Immediately after the accident report was given to the Police Station, Bodhwad. Thereafter, intimation about accident was also given to the opponent-insurance company. The surveyor of the insurance company visited the spot and, on inspecting the vehicle, made survey showing damages to the tune of Rs.1,50,000/-. Therefore, on 30/03/2001 the complainant sent letter to the opponent-insurance company and claimed Rs.1,50,000/-. However, his claim is repudiated by the opponent-insurance company on the ground that the driver of the vehicle was not holding valid driving licence i.e. his driving licence was not having "P.S.V. Badge No" endorsement and also that the vehicle met with an accident by giving dash against a tree in which the vehicle was damaged and the driver sustained serious injury and subsequently died. Therefore, the complainant made consumer complaint before the District Consumer Forum, Buldhana claiming damages at Rs.1,50,000/- and Rs.75,000/- towards compensation alleging deficiency in service.

3. In response to the notice the opponent-insurance company appeared before the District Consumer Forum, Buldhana and resisted the complaint by filing written version on the following among other grounds:-

It is not disputed that complainant-Raju Choudhary is the owner of the vehicle and the vehicle was insured as passenger carrying vehicle with the opponent-insurance company and insurance was valid on the date of accident. It is also not disputed that in the accident the vehicle was damaged. The survey report showing damage at Rs.1,50,000/- is also not disputed. However, it is submitted that the insurance claim is rightly repudiated on the ground that at the time of accident the driver was not holding valid driving license for driving passenger carrying vehicle, etc. Further it is submitted that the driver was also not having P.S.V. badge number and, therefore, committed breach of the provision of Motor Vehicle Act and Rules, etc. It is submitted to dismiss the complaint.

4. On hearing both the sides and considering the evidence on record, the District consumer Forum, Buldhana held that the opponent-insurance company wrongly repudiated the insurance claim and thereby committed deficiency in service. It is held

that the complainant is entitled to get damages and also compensation as claimed. It is held that though the driver was having driving licence of M.L.V. & M.M.V. and H.M.V., the opponent-insurance company has wrongly repudiated the claim holding that the driver was not holding licence for passenger carrying vehicle. It is also held that M.M.V. included public service vehicle and educational institute Bus, etc. and therefore, driver of vehicle in question was holding valid driving licence at the time of accident. The District Consumer Forum also negated the contention of the opponent-insurance company that as the driver of the vehicle was not having P.S.V. Badge number, the driving licence can not be considered to be valid, etc.

5. In keeping with these findings the District Consumer Forum allowed the complaint, directing the opponent-insurance company as mentioned above.

6. Feeling aggrieved by the said judgment and order the opponent-insurance company has filed this appeal.

7. We heard counsel for both the sides at length, perused the copy of impugned judgment and order, copies of other documents and written notes of arguments submitted by both the sides.

8. Very short point which arises for our determination is, as to whether the driver of the vehicle was having the valid driving licence at the time of accident and what is the effect of none possessing the P.S.V. Badge number.

9. Mr. Paldhikar, Ld. Counsel for the opponent-insurance company vehemently argued that though the driver of the vehicle was holding valid driving licence for driving M.M.V., H.M.V., M.L.V., he was not having driving licence for driving Medium Passenger carrying vehicle though the vehicle in question was registered with the R.T.O. as passenger carrying vehicle. He has also tried to support this contention by relying on the authority of Hon'ble Supreme Court in the case of Oriental Insurance Co. Ltd. Vs. Zaharulnisha and other 2008 (2) T.A.C. 801 (SC) in which it is held that the respondent committed breach of terms and condition of the policy by driving the scooter with holding licence for H.M.V. but in our view this authority of Hon'ble Supreme Court can not be applicable to the present case, because in the present case the driver who was driving the vehicle in question was holding driving licence for driving

L.M.V., H.M.V., M.M.V. which is category of the medium passenger motor vehicle as contemplated under sub section 224 of Section 2 of the Motor Vehicle Act, 1988. Accordingly, the District Consumer Forum has rightly held. Hence, this argument advance by Mr. Paldhikar, Ld. Counsel for the opponent-insurance company can not be sustained.

10. As far as the second contention of the opponent-insurance company that the driver was not holding P.S.V. Badge number is concerned, Mr. Kasture, Ld Counsel for the complainant submitted that merely because the driver was not having such badge does not invalidates the driving licence. The rule prescribing for badge must be taken to be regulatory measures for identity of the driver only. He has also supported this contention by relying on the decision of High Court, Orissa in the case of National Insurance Co. Ltd. Vs. Raisa Bibi and others, AIR 1999 Orissa 78 in which it is observed by his Lordship of the Orissa High Court that the provision in the rules prescribing for badges and uniform must be taken to be regulatory measures for identity and administrative convenience as a sine qua non for a valid driving licence authorising a person to drive a transport vehicle. In view of this legal position and object of the legislator for making such rules about P.S.V. badge as observed by the Lordship, Orissa High Court, we find much force in this submission of Mr. Kasture, Ld. Counsel for the complainant. Therefore, the contention of the opponent-insurance company that the driver of the vehicle in question has committed breach of terms and condition of insurance policy, can not be sustained.

11. Thus it is obvious that the opponent-insurance company has committed error in repudiating the insurance claim and thereby committed deficiency in service. Accordingly, the District Consumer Forum has rightly held and allowed the insurance claim as well as compensation.

12. For the forgoing reasons we find no infirmity or illegality in the impugned judgment and order. Hence, no interference is warranted.

13. In the result, the appeal is being devoid of any merit, deserves to be dismissed. Hence, the following order.

ORDER

1. Appeal is dismissed.
2. Opponent/appellant – Insurance Company shall pay to the complainant/respondent Rs.2000/- towards cost and bear its own cost.

Dated:- 10/08/2012.

**[Hon'ble Mr.S.M. Shembole]
PRESIDING MEMBER**

**[HON'BLE SMT.JAYSHREE YENGAL]
MEMBER**

**[HON'BLE MR.N. ARUMUGAM]
MEMBER**

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