(2017) 01 NCDRC CK 0105

In the National Consumer Disputes Redressal Commission

Case No : 627 of 2011

Ashish Kumar Jaiswal APPELLANT

Vs

ICICI Lombard General Insurance Company Ltd. and others RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:

Citation : 2017 1 CPJ 529 : 2017 3 CPR 71

Hon'ble Judges : B.C. Gupta, Prem Narain

Advocate : Alok Shankar, Ranjit Sharma, Shashwata Pandey, Rajan Singh

Judgement

1. This revision petition has been filed against the order dated 22.11.2010 of the State Consumer Disputes Redressal Commission, Jharkhand, (in short ''the State Commission''), passed in FA No. 22 of 2010. 2. The brief facts are that the Petitioner/Complainant had purchased a Bolero Pick Up Van costing Rs. 4,12,343 only. The Complainant paid Rs. 1,40,000 and the remaining amount was financed by Mahindra and Mahindra Financial Service Ltd. (OP No. 2). The vehicle was delivered to the complainant on 5.7.2007 by Nexogen Solution Technology (P) Ltd. (OP No. 3). The said vehicle was insured from 20.7.2007 to 19.7.2008 for IDV sum of Rs. 3,91,687 by the ICICI Lombard General Insurance Company Ltd. (OP No. 1). The vehicle met with an accident for which Barhi PS Case No. 159/07 was registered on 26.7.2007. The police released the vehicle to the complainant who had taken the same for repairs. The repair order was prepared on 24.8.2007 and the claim was lodged with the OP No. 1. The Complainant claimed Rs. 5,52,786 as cost of repairs, but the OP No. 1 was willing to indemnify only to the extent of Rs. 2,29,453, i.e. only to the extent of loss as assessed by the independent surveyor appointed by the OP No. 1. Aggrieved by the act of OP Nos. 1, 2 and 3, a complaint was filed before the District Consumer Disputes Redressal Forum, Hazaribag, (in short ''the District Forum''). 3. The District Forum, vide order dated 22.10.2009 allowed the complaint as under: "17. In the result the present case plaint is allowed. Accordingly, the opposite party No. 1 (ICICI Lombard General Insurance Company Ltd.) is directed to pay Rs. 2,29,453 (Rupees two lacs twenty nine thousand four hundred fifty three) only against

insurance claim compensation of Rs. 5000 (Rupees five thousand) only and Rs. 1,000 (Rupees one thousand). Cost of litigation to the opposite party No. 2 (M/s. Mahendra and Mahendra Financial Service Ltd., Ranchi) within one month from this order to adjust the amount against loan advanced to the complainant. The opposite party No. 2 is also directed that adjustment of dues remaining amount of any to be refunded to the complainant. In case of failure on the part of opposite party No. 1 total aforesaid awarded amount Rs. 2,35,453 would carry an interest @ 9% per annum from the date of filing of the complaint i.e. 4.9.08 till final payment and the complainant would be entitled for execution of this order through the process of the forces including the steps as provided under Section 27 of the Act." 4. Aggrieved by the said order, the complainant preferred an appeal before the State Commission. The State Commission vide order dated 22.11.2010 dismissed the appeal. 5. Hence the present revision petition. 6. Heard the learned Counsel for the petitioner as well as learned Counsel for respondent No. 1 and respondent No. 2. Respondent No. 3 has been proceeded ex parte. 7. Learned Counsel for the petitioner/complainant stated that the vehicle was insured for an IDV of Rs. 3,91,687. The vehicle was damaged completely in accident. The surveyor appointed by the respondent No. 1, Insurance Company has assessed the loss as Rs. 2,29,036. The State Commission has observed in its order that in case of total loss only 75% IDV is payable. This observation of the State Commission is totally wrong as there is no such condition in the policy. The learned Counsel argued that the State Commission has wrongly interpreted the clause relating to total loss, which says that the insured vehicle will be treated as a CTL if the aggregate cost of retrieval and/or repair of the vehicle, subject to terms and conditions of the policy, exceeds 75% of the IDV of the vehicle. The learned Counsel further mentioned that the estimate of repairs from the authorised dealer of Mahindra & Mahindra Company was for Rs. 5,52,786. The estimate shows about 97 items to be repaired or to be changed. The surveyor appointed by the Insurance Company in his report has only recommended 59 items to be changed or repaired. Thus, many essential items, which were required to be repaired or changed and were actually repaired or changed were not recommended by the surveyor. Both the Fora below have only allowed the claim as per the report of the surveyor, whereas, the actual expenditure on repairs has been much more as per estimate. Learned Counsel for the petitioner further referred to the judgment of New India Assurance Company Limited v. Pradeep Kumar, IX (2009) SLT 17 = IV (2009) CPJ 46 (SC) = JT 2009 (8) SC 111, to support his contention that the surveyor report is not the final word. In this case Hon''ble Supreme Court has observed as under: "In other words although the assessment of loss by the approved surveyor is a pre-requisite for payment or settlement of claim of twenty thousand rupees or more by insurer, but surveyor''s report is not the last and final word. It is not that sacrosanct that it cannot he departed from; it is not conclusive. The approved surveyor''s report may be basis or foundation for settlement of a claim by the insurer in respect of the loss suffered by the insured but surely such report is neither binding upon the insurer nor insured." 8. It has been further argued by the learned Counsel for the petitioner that the State Commission has accepted the total loss of the vehicle and therefore, as per policy, the total IDV Rs. 3,91,637 should have been allowed by the State Commission. Thus, the State Commission has grossly erred in appreciating the legal position involved in the matter. The learned Counsel accordingly prayed for allowing the total repair cost or value of the IDV of the vehicle. 9. The learned Counsel for the respondent No. 1, Insurance Company has stated that it is the general practise that the dealer generally inflates the estimate of repairs for the accidental vehicles to earn more profits. If the estimate was for 97 items, it does not mean that all items were necessary. Surveyors appointed by the Insurance Company are qualified loss assessors, who examine damaged vehicles and then assess which parts are required to be changed or repaired. Moreover, there are certain items like all the rubber casing etc. where 100% value is not allowed and in some items only 25 to 50% value is allowed. Hence, the surveyor''s assessment is the correct estimate of repair. The State Commission has rightly recorded in its order that the surveyor report has not been challenged before the District Forum. Otherwise also, the surveyors are appointed under the Insurance Act, 1938 and there are numerous judgments of the Hon''ble Supreme Court that the surveyor report cannot be brushed aside until there are cogent reasons for doing so. Learned Counsel on behalf of the respondent No. 1 further referred to the following cases to support his argument that the surveyor report is an important document and claims are to be settled on the basis of the surveyor report- "(i) Real Ispat and Power Limited v. Oriental Insurance Company Limited & Ors. (ii) United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal, V (2004) SLT 876 = IV (2004) CPJ 15 (SC) = 2004 (6) ALD 112 (SC). (iii) Mrs. Rubi (Chandra) Dutta v. United India Insurance Co. Ltd., IV (2011) SLT 303 = 11 (2011) CPJ 19 (SC) = 2011 (3) Scale 654." 10. The learned Counsel for the respondent No. 2 stated that the respondent No. 2 supports the case of the complainant as he has to recover his loan that was advanced to the complainant for the purchase of the vehicle. 11. We have carefully examined the record and have considered the arguments advanced by the learned Counsel for the parties. The short question involved in this revision petition is whether the State Commission has committed error by accepting the surveyor''s report and in rejecting the estimate submitted by the authorised dealer of Mahindra & Mahindra Company for repair of the insured vehicle. The contention of the State Commission, while observing that only 75% of the IDV is allowed in case of total loss does not seem to be supported by the terms and conditions of the policy and the reference of 75% is actually in regard to the condition that if the repair estimate exceeds 75% of the IDV, then, that will be considered as a case of total loss. From that angle, the order of the State Commission is not sustainable. However, the fact remains that the District Forum has allowed the claim to be settled on the basis of the surveyor''s report. The State Commission has clearly observed that the complainant has not disputed the report of the surveyor before the District Forum. Even at the revision stage before this Commission, it was specifically asked during arguments from the learned Counsel for the petitioner that what were the shortcomings of the surveyor''s report and whether the petitioner has submitted any representation against the report of the surveyor. The learned Counsel had only replied that the surveyor''s report deals with only 59 items/components, whereas the estimate submitted by Mahindra & Mahindra deals with 97 items/components for repairs. No specific details were submitted by the learned Counsel in this regard and no specific shortcoming of the surveyor report was pointed out. Mentioning only less number of items for repairs cannot be considered as shortcoming in the surveyor''s report. Apart from the judgments relied upon by the respondent No. 1 Insurance Company, we note that the Hon''ble Supreme Court in the case of [" Sri Venkateswara Syndicate v. Oriental Insurance Company Limited and another", II (2010) SLT 664 = II (2010) CPJ 1 (SC) = (2009) 8 SCC 507], has observed that: "31. The assessment of loss, claim settlement and relevance of survey c report depends on various factors. Whenever a loss is reported by insured, a loss adjuster, popularly known as loss surveyor, is deputed who assesses the loss and issues report known as surveyor report which forms the basis for consideration or otherwise of the claim. Surveyors are appointed under the statutory provisions and they are the link between the insurer and the insured when the question of settlement of loss or damage arises, i The report of the surveyor could become the basis for settlement of a claim by the insurer in respect of the loss suffered by the insured. 32. There is no disputing the fact that the surveyor/surveyors are appointed by the Insurance Company under the provisions of the Insurance Act and their reports are to be given due importance and one should have sufficient grounds not to agree with the assessment made by them. We also add, that, under this section the Insurance Company cannot go on appointing surveyors one after another so as to get a tailor-made report to the satisfaction of the officer concerned of the Insurance Company; if for any reason, the report of the surveyors is not acceptable, the insurer has to give valid reason for not accepting the report." 12. Hon''ble Supreme Court in Sikka Papers Limited v. National Insurance Company Limited and Ors., III (2009) CPJ 90 (SC) = (2009) 7 SCC 777, has laid down that- "Insurance Act, 1938 Section 64U MSurveyor/Loss assessor''s report-Weightage to be given-Held, Though not the fast word, yet there must be legitimate reason for departing from report-No infirmity found in surveyor''s report and therefore held, Insurance Company rightly admitted claim as per the report." 13. Relying on the judgment of Hon''ble Supreme Court in " Sri Venkateswara Syndicate v. Oriental Insurance Company Limited & Anr. (supra) and Sikka Papers Limited v. National Insurance Company Limited and Others (supra), we reach to the conclusion that as in the present case no specific shortcoming is pointed out in the surveyor''s report and it has not been specifically challenged before the District Forum or the State Commission, surveyor''s report is only reliable document which is to be considered for settling the insurance claim. We find that the petitioner has failed to put forward any cogent reasons to dispute the surveyor''s report, hence, there is no reason to reject it. Both the Fora below have accepted the surveyor''s report and have allowed the insurance claim on that basis. We find no ground to interfere with the orders of the Fora below. 14. Based on the above examination, we find no merit in the revision petition. Consequently, the revision petition is dismissed with no order as to costs. Revision Petition dismissed.