
(2015) 06 NCDRC CK 0056

In the National Consumer Disputes Redressal Commission

Case No : 4161 of 2012

**BAJAJ ALLIANZ GENERAL INSURANCE CO.?LTD Vs BHAVINENI MADHAVI
& ANR**

Date of Decision : 30-06-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21, Section 19, Section 15, Section 17 - Jurisdiction of the National Commission - Appeals - Appeal - Jurisdiction

Citation : (2015) 06 NCDRC CK 0056

Hon'ble Judges : Ajit Bharihoke, Rekha Gupta

Advocate : K L Nandwani, D Bharat Kumar

Judgement

1. This revision is directed against the order of the State Commission Haryana dated 26.07.2012 in Appeal no.577/2011 whereby the State Commission concurred with the finding of the District Forum and dismissed the appeal.

2. Briefly stated facts relevant for the disposal of this case are that complainant purchased Swift Maruti car from respondent no.2 on 21.1.2010 for a sum of Rs.5,24,774/-. On the same day, complainant obtained insurance cover for the car for a sum of Rs.4,99,010/- effective w.e.f. 21.1.2010 to midnight 20.1.2011. The car met with an accident on 30.09.2010 resulting in excessive damage. Intimation was given to the insurance company. The complainant obtained estimate for repair of the car from respondent no.2 who estimated the damage to the extent of

Rs.5,29,063/-. It is the case of the complainant that since the estimate was more than the value of the IDV of the car, the damaged vehicle needs replacement. The opposite party, however, vide its letter dated 10.11.2010 claimed that as per the survey done by their surveyor, the estimate cost for repair of the vehicle after adjustment of depreciation etc was Rs.2,79,316/- and sought the consent of the complainant for repair of the car and called her to submit the bills of repair for further processing of claim. According to the complainant, since it is a case of total loss, the insurance company is required to replace the car. Thus, being

aggrieved of the stand taken by the petitioner, the complainant preferred a complaint in the District Forum.

3. The petitioner opposite party no.1 resisted the complaint. It was pleaded that on the receipt of information of accident, a surveyor was appointed, who inspected the car and assessed the loss at Rs.2,79,316/-. Since the loss was less than 75% of IDV, a letter was written by the respondent no.1 to the complainant to get the vehicle repaired and submit the bills for processing of claim, as such there is deficiency in service.

4. The District Forum relied upon the estimate of repairs prepared by respondent no.2 i.e. authorised dealer of Maruti and concluded that it was a case of total loss. The District Forum, thus, directed the petitioner to pay to the respondent a sum of Rs.4,74,000/- after deducting 5% of depreciation with 9% interest thereon from 21.12.2010 till the date of realisation besides cost of Rs.2000/-.

5. Being aggrieved of the order of the District Forum, the petitioner preferred an appeal. The State Commission agreed with the order of the District Forum and dismissed the appeal.

6. Mr. K L Nandwani, Advocate for the petitioner has contended that impugned order of the foras below are not sustainable for the reason that both the foras below have relied upon the estimate of repairs prepared by respondent no.2, to which the petitioner was not a party. It is contended that as against the said estimate, as per the report of independent surveyor, AVSC Bose, the net damage has been assessed to the extent of Rs.2,79,315.95, which report ought to have been relied. Learned counsel has thus urged us to set aside the impugned order.

7. Mr. D Bharat Kumar, Advocate for the respondent on the contrary has argued in support of the impugned order and prays for dismissal of the revision petition.

8. The only question which needs consideration in this revision petition is whether or not this is a case of total loss or not?

9. Undisputedly, the subject car was purchased by the respondent complainant on 21.01.2010 and it met with an accident in the same year on 30.09.2010. The petitioner is heavily relying upon the survey report of independent surveyor dated 21.01.2011. On perusal of the survey report, we find that the surveyor found that 90 spare parts of the subject vehicle were beyond repairs and needed replacement. The surveyor has assessed the net loss based on cost of repairs to the tune of Rs.2,28,551/- and assessed the labour charges for repair of the car to the tune of Rs.62,264/-. It is not clear from the report on what basis he has assessed the value of the spare parts. Therefore, we find it difficult to rely upon the survey report. Under these circumstances, taking into consideration that 90 spare parts of the car including major parts were found damaged beyond repairs it can be safely inferred that the insured car was damaged beyond repairs and it is a case

of total loss. Our aforesaid conclusion is strengthened from the fact that

respondent no.2 who is authorised dealer of maruti has estimated the cost of repair of the car to the tune of Rs.5,29,063/-.

Thus, in our view the impugned order of the foras below cannot be faulted.

10. In view of the discussion above, we are of the view that petitioner has failed to show any jurisdictional error or material irregularity in the concurrent findings of the foras below which may call for interference in exercise of revisional jurisdiction. Revision petition is, therefore, dismissed. Petitioner is directed to comply with the order of the District Forum within four weeks.