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In the National Consumer Disputes Redressal Commission

BAJRANGLAL APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD. RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:
Constitution of India, Article 226 - Power of High Courts to Issue certain writs

Citation : 2016 1 CPJ 497

Hon'ble Judges : V.K. Jain, Dr. B.C. Gupta

Advocate : Rakesh K. Rajwania, Animesh Sinha

Judgement

1. The complainant/petitioner owned a tanker bearing No. RJ 23 GA 1681, which he had got insured with the respondent company. The tanker met with an accident on 03.12.2010. No oil was being carried in the tanker when it met with an accident. The claim lodged by the petitioner / complainant was rejected by the insurance company, primarily on the ground that the driver of the tanker did not possess licence to drive a vehicle carrying hazardous goods. Being aggrieved, the complainant approached the concerned District Forum by way of a complaint. The complaint was resisted by the insurance company primarily on the same ground on which the claim had been rejected. It was further stated in the reply that Shri Prakash I. Trivedi, spot surveyor appointed by the insurance company, on receiving information about the accident of the vehicle, had surveyed the vehicle on 04.12.2010 and submitted his report on 20.12.2010. Thereafter, the claim was evaluated by Mr. Raj Kumar Piti, a Licensed Surveyor appointed by the insurance company. He assessed loss to the complainant at Rs.2,51,703.36 and after deducting the policy excess and salvage charges, the net amount was assessed by him at Rs.2,40,203.36. Thereafter, a

re-inspection survey of the vehicle was carried by Mr. Narendra Kumar Srivastav, who submitted his report on 07.2.2011, reporting that the driver did not carry licence, authorizing him to drive a vehicle carrying hazardous goods and therefore, the claim was repudiated by the insurance company.

2. The District Forum vide its order dated 21.11.2012, dismissed the complaint on the ground that the driver of the vehicle did not possess licence authorizing him to drive a vehicle carrying hazardous goods. Being aggrieved from the order of the District Forum, the petitioner / complainant approached the concerned State commission by way of an appeal. Vide impugned order dated 27.5.2014, the State Commission held that since the vehicle was empty at the time it met with an accident, the driver was not required to possess a licence, permitting him to drive a vehicle carrying hazardous goods. The appeal was accordingly allowed and the respondent company was directed to pay a sum of Rs.2,40,203/- as per the report of the surveyor to the complainant, along with interest on that amount @ 9% per annum from the date of filing of the complainant. The insurance company was also directed to pay a sum of Rs.25,000/- as compensation and other expenses to the complainant. The complainant however, is dissatisfied with the quantum of the compensation awarded to him and is before this Commission by way of this revision petition.

3. Since the insured has not challenged the order passed by the State Commission, the said order has become final as far as the insurer is concerned and consequently, repudiation of the claim cannot be upheld. The only question which arises for consideration in this petition is as to what amount the petitioner/ complainant is entitled from the insurance company. As noted earlier, the surveyor appointed by the insurance company assessed the loss to the complainant at Rs.2,51,703.36 and after deducting policy excess and salvage value arrived at the net loss of Rs.2,40,203.36. The State Commission has already directed payment of the aforesaid amount to the complainant, in addition to the compensation and cost of litigation quantified at Rs.25,000/-. Though, the complainant had claimed a sum of Rs.9,55,000/-, he failed to assail the report of the surveyor before the District Forum. It is settled legal proposition that the report of the surveyor, appointed by the insurance company, who inspects the vehicle and evaluate the loss to the insured, should ordinarily be accepted unless, it is shown to be arbitrary, unreasonable or untenable in law. The complaint contains no ground, assailing the assessment of loss made by the surveyor. In the absence of challenge to the report of the surveyor, the complainant was not entitled to any amount higher than the loss to him, assessed by the surveyor. The State Commission has awarded him not only the amount assessed by the surveyor, but also an additional amount of Rs.25,000/- towards compensation and cost of litigation. He has also awarded interest @ 9% per annum from the date of the complaint. The order passed by the State Commission therefore, does not call for interference by this Commission in exercise of its revisional jurisdiction.

4. The learned counsel for the petitioner has referred to the decision of the Hon''ble Supreme Court in New India Assurance Company Limited Vs. Pradeep Kumar (2009) 7 SCC 787 , where the Hon''ble Supreme Court, inter-alia observed that surveyor''s report is not the last and final words and it is not that sacrosanct that it cannot be departed from. It was further observed that the

report of the surveyor is not conclusive. There is no quarrel with the aforesaid legal proposition, but the complainant is not entitled to any amount higher than the actual loss suffered by him on account of the vehicle having met with an accident. The loss amount having been

assessed by the surveyor at Rs.2,51,703.36 and the complainant / petitioner having not established before the District Forum that he was entitled to a higher amount, no ground for paying a higher compensation to him is made out.

5. The learned counsel for the petitioner has also referred to the decision of this Commission in Branch Manager, Oriental Insurance Company Ltd. Vs. Yashowanta Narayan Dixit (2013) 3 CPR (NC) 734, where this Commission was of the view that the insurer was not, justified in appointing one surveyor after another and a final surveyor without consent of the complainant. In that case, as many as four surveyors were appointed by the insurance company. It was found that the fourth surveyor was appointed without his knowledge and without recording any reasons. This judgment however, is of no help to the complainant as far as quantum of compensation is concerned. The second surveyor appointed by the insurance company had not quantified the loss to the complainant. He had only recommended rejection of the claim on the ground that the driver did not possess the licence to drive a vehicle carrying hazardous goods. Since the State Commission has already rejected the case of the insurance company on this aspect, nothing really turns on the report of the aforesaid surveyor.

6. For the reasons stated hereinabove, we find no merit in the revision petition and the same is accordingly dismissed, with no order as to costs.

