(2003) 07 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

Branch Manager, Oriental Insurance Co. Ltd.	APPELLANT
Vs	
PREMKRISHNA PANNALAL SHUKLA	RESPONDENT

Date of Decision : 14-07-2003

Acts Referred:

Citation : 2003 4 CPJ 547 : 2004 1 CLT 120

Hon'ble Judges : M.S.Rane , R.N.Varhadi J.

Final Decision : Appeal partly allowed

Judgement

1. NONE present on behalf of the appellant. This was the position even in the past when the matter was placed for hearing before us on 30th January, 2003. Appellants were intimated the said date of hearing of the appeal as also the sitting venue of this Commission at Nagpur by notice dated 20th January, 2003 as per our direction dated 29th August, 2002. However, on that date none did appear on behalf of the appellant and matter is adjourned today. Today also the same position.

2. WE are proceeding to dispose of this appeal on perusal of the material made available in this appeal and on hearing of the learned Advocate for the respondent. (For breivity''s sake appellant is referred to as Insurance Company and respondent as complainant). The Insurance Company is the appellant who has taken exception to the order dated 30th December, 1999, whereby District Forum, Bhandara has held the Insurance Company deficient in the matter of settlement of the insurance claim of the complainant for the damages sustained to the vehicle in an accident and in respect of which the insurance coverage was obtained by the complainant.

We notice that Insurance Company justified their repudiation before the District Forum, Bhandara on 2 counts. Firstly, non-intimation of the occurrence of the accident, and secondly claim for inflated amount having made.

3. AS far as first point is concerned the District Forum, Bhandara has not accepted the stand of the Insurance Company and rightly so since it is noticed

that the occurrence of the accident it had engaged services of Surveyor as an expert of Shri M. Hura, who had rendered the report being dated 7th July, 1997 copy of which is in the appeal paper book. It would, therefore, be legitimate to infer that it is only after coming to know of the accident that the Insurance Company has engaged the services of the expert. Now as far as quantum of damages claimed, we notice that the complainant made the claim on the basis of cost for repairs incurred by him and for that purpose Insurance Company would be, up to some extent, justified in not allowing the claim on the basis thereof.

4. FROM the impugned judgment, we notice that the District Forum, Bhandara, however, has allowed the claim on the basis as was claimed. For that matter, although we find the Forum having made reference to the report of the Surveyor referred to earlier in the judgment, has not given proper credence to the same nor indicated as to why it did not think it necessary to consider the same. In this respect we wish to refer to the recent judgment of Hon''ble Supreme Court in the case of Charan Singh v. Healing Touch Hospital, III (2000) CPJ 1 (SC)=VI (2000) SLT 867=(2000) 7 SCC 668, laying down norms and guidelines for adherence by the Forum while settling the claim for damages as one in hand. The Apex Court has posited that quantum of compensation should be determined and awarded by applying well settled principles of law and on the basis of acceptable evidence made available. The said judgment further holds that the principle of Section 73 of Indian Contract Act, will be required to be applied even while assessing the claims for damages by the Consumer Fora. The report of expert Shri M. Hura has quantified the loss for sum of Rs. 32,940/- (-) Rs. 200/- as salvage, we do not find proper reasoning, which persuaded the District Forum, Bhandara not to consider the said report of the expert.

5. WE are of the view that there was evidence in the form of report of the expert the District Forum should have taken cognizance of the same.

6. WE, therefore, partly allowed this appeal and hold that the complainant would be entitled to the compensation of Rs. 32,740/- (Rs. 32,940/- as compensation and Rs. 200/- as salvage recommended by the Surveyor) and we modify the impugned order accordingly. We confirm the order as far as award of compensation of Rs. 5,000/- is concerned but disallow Rs. 2,500/- towards the expenses.

As far as rate of interest is concerned the District Forum, Bhandara has awarded at the rate of 12 per cent per annum and after the order at the rate of 18 per cent per annum. However, Insurance Company being a public body and as such a custodian of public fund, it will not be advisable to saddle the Insurance Company with the burden of payment of interest at such higher rate. In our view the rate of interest at the rate of 9 per cent per annum will be fair and reasonable. 15. Hence, the following order : ORDER Appeal is partly allowed to the extent as under : (i) The amount of compensation of Rs. 53,322/- stands reduced to Rs. 32,740/-. (ii) The amount of compensation of Rs. 5,000/- stands confirmed. (iii) The award of Rs. 2,500/- towards journey stands set aside. (iv)

The rate of interest payable till realisation of the amount of compensation to be read with effect from the date of filing of the claim i.e. 1st September, 1997 till realisation at 9 per cent per annum. (v) As far as this appeal is concerned no orders as to cost. (vi) Copies to be furnished to the parties. (vii) It is clarified that the interest payable till realisation would be 9 per cent per annum on the amount of compensation as awarded. Appeal partly allowed.