

(2004) 06 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

Branch Manager, United India Insurance Co. Ltd.

APPELLANT

Vs

J. RAMESH

RESPONDENT

Date of Decision : 23-06-2004

Acts Referred:

Citation : 2004 4 CPJ 492

Hon'ble Judges : A.Raman , R.Vanaroja J.

Final Decision : Appeal partly allowed

Judgement

1. WE are satisfied that the order passed by the lower Forum has to be modified.
2. THE complaint relates to a claim made by the complainant to the Insurance Company following an accident resulting in damage to his vehicle. THE lower Forum had presumed and on the presumptions made by them rejected the report of the Surveyor. Not only that. THE lower Forum appointed a Surveyor and relied upon his report. A reading of pages 6 and 7 of the order would show that the order of the lower Forum abounds in surmises and based upon conclusions without any proof and without any evidence. THE lower Forum has chosen to assess the damage on its own taking upon itself the mantle of an expert. THE lower Forum forgot the fact that the vehicle was 10 years old on the date of accident and, therefore, the depreciation is 50%. THE Surveyor appointed by the Insurance Company assessed the damage in a sum of Rs. 40,300/- which the Insurance Company was willing to pay. THE lower Forum held that the complainant has estimated his damages at Rs. 1,90,000/- and the Commissioner appointed by the lower Forum has estimated it at Rs. 1,05,000/-. THEREfore, the lower Forum has struck a via-media and arrived at a sum of Rs. 1,23,340/-. A reading of the order of the lower Forum would show that the lower Forum has preferred to go by the report of the Surveyor appointed by the lower Forum namely Assistant Engineer, State Transport Corporation, who accordingly inspected the vehicle and gave his report which has been marked as Ex. C1. He has estimated the cost of body-building, material, etc., at Rs. 1,05,000/- another cost totalling to Rs. 1,76,200/-. THE lower Forum erred in allowing a depreciation

of 30% whereas the vehicle being 10 years old, the depreciation would come to 50%. It is clear from the facts that the complainant at the cost of the opposite party is only trying to make a fortune and claim exorbitant amount. THE Insurance Surveyor's estimation at Rs. 40,300/- cannot be termed as low. It is clear from the order of the lower Forum that at the time when the Commissioner appointed by the lower Forum inspected, the opposite party were not present. But, in spite of it in the absence, the Commissioner has chosen to inspect and submit his report. Taking into consideration the above circumstances, we are of the view that neither the estimate given by the complainant nor the figure arrived at by the Commissioner can be accepted in toto. In the circumstances, we would hold that the Commissioner has estimated the cost of body building at Rs. 1,05,000/- and the Surveyor appointed by the opposite party has fixed it at Rs. 40,000/-. THEREfore, we hold that the extent of damage will be only in a sum of Rs. 1,45,000/- out of which 50% has to be taken off by way of depreciation and, therefore, the complainant will be entitled to only in all a sum of Rs. 72,500/- which in the circumstances we would round off to Rs. 75,000/-. THEREfore, in such circumstances, we hold that the complainant will be entitled to only a sum of Rs. 75,000/- in all. Hence the order passed by the lower Forum has to be modified. In the result, this appeal is allowed in part and the order passed by the lower Forum is modified. The opposite party is directed to pay a sum of Rs. 75,000/- to the complainant towards the claim. In the circumstances, the parties are directed to bear their own costs throughout. Appeal partly allowed.