(1993) 03 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

CALCUTTA AHMEDABAD CARRIERS — APPELLANT

Vs

NEW INDIA ASSURANCE CO.LTD — RESPONDENT

Date of Decision : 31-03-1993

Acts Referred:

Citation : 1994 1 CPJ 330

Hon'ble Judges : S.A.Shah , R.K.Shah J.

Final Decision : Complaint allowed with costs

Judgement

1. THE complainant is doing the business of transport and owning several trucks/ vehicles. THEre is no dispute that the truck No. GRX 5857 was owned by the complainant and was insured with the opposite party New India Assurance Company Limited. During the continuance of the insurance policy the truck of the complainant was stolen on 22.10.90. A police complaint was filed on the same day at Calcutta and, therefore, the complainant had filed a claim for full amount with the Insurance Company.

2. ACCORDING to the complainant the truck was found by the police at Sonepur, Dist. Chhapra, Bihar on or about 8.12.90 and the information was sent to the complainant. When the complainant went to Chhapra to take the delivery, he found several parts including tyres missing from the truck. The complainant had, therefore, demanded the claim of Rs. 1,14,452/- for missing parts, reparation etc. Since the claimant preferred a claim for damages, the Insurance Company appears to have sent the Surveyor to assess the damages. The Insurance Company has produced the survey report along with the written statement and again after the filing of the written statement. The Insurance Company has drawn our attention to the survey report dated 5.3.91 prepared by Milan Kumar Ganguly who has thoroughly inspected the vehicle on 25.1.91 and 18.2.91 and has noted the condition of the truck and has assessed the loss of missing parts at Rs. 34,840.80. The remarks in the survey report are important and are reproduced as under : Remark : (a) The loss of the missing parts are due to the theft/malicious damage according to the Insured and this is subject to the Final

Police Report to be submitted by the Insured. (b) The minor damage to the Body was taken into consideration at the time of assessment of Repair.

So our assessment of the loss due to repair mechanical Rs. 10,000/- (Rupees ten thousand only) & Body Rs. 2000/- (Rs. Two thousand only) subject to policy condition, however, the final decision rests upon the Insurer. ACCORDING to the Surveyor, as he found on these two dates, the value of the missing parts was Rs. 34,480.80 and the reparation charges including body repairs has been estimated at Rs. 12,000/- and the total damages, according to the survey report comes to Rs. 46,840.80. Mr. B.B. Shah, the learned advocate appearing on behalf of the complainant submits that his client has suffered higher damages than the damages assessed by the Surveyor but ultimately in order to putan end to the litigation Mr. Shah, on the instruction of his client who is present in the Court agrees that if the damages to his vehicle is assessed in accordance with the survey report, his client will accept the same since he is in much need of money.

We are of the opinion that the complainant is entitled atleast to the damages assessed by the Surveyor. The burden to show that complainant has not suffered the damages as shown in the survey report lies on the Insurance Company. Mr. A.O. Chudgar, the learned Advocate appearing on behalf of the Insurance Company has vehemently contended that the complainant has not submitted the final police report till today and, therefore, the survey report cannot be taken as the basis for awarding damages. We are unable to agree with the contention of Mr. Chudgar. We feel that the complainant has suffered more than what is stated in the survey report. However, we are relieved from assessing the value since Mr. Shah has agreed to take the amount as shown in the survey report since his client is in urgent need of money. The survey report is dated 5.3.91 and normally the Insurance Company takes about two months to make payment. We are, therefore, of the opinion that the Insurance Company is liable to pay interest after 5.5.91. We, therefore, pass the following order : ORDER The Insurance Company shall pay to the complainant an amount of Rs. 46,840.80 with interest at the rate of 12% p.a. from 5.5.91 till the payment is made with cost which is quantified at Rs. 500/-. The amount shall be paid within 4(four) weeks from today. Complaint allowed with costs.