

(1993) 04 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

CHAMPAKLAL BHUDARLAL THAKKAR

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD.

RESPONDENT

Date of Decision : 22-04-1993

Acts Referred:

Citation : 1993 2 CPR 423 : 1994 1 CPJ 243

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

Final Decision : Complaint allowed with costs

Judgement

1. THE complainant is a practicing doctor and running Navjeevan Hospital. He is a qualified M.D. and physician. He was owning a Maruti Car No. GBD 95 and had insured the car for Rs.50,000/- with the opponent for the period from 22.1.90 to 21.1.91. THE Insurance Company has accepted the premium and issued the policy and risk has commenced from 22.1.90. It appears that on 23.6.90 the car met with a heavy accident causing serious injury to the complainant doctor who was admitted in the hospital for multiple fractures. THE other two persons travelling with the complainant were also injured and were not in a position to attend the car. He has therefore kept the car near the place of accident at Kalol Petrol Pump.

2. THAT under the terms of the policy, the complainant had to keep the car at a very secured place and since the complainant was admitted in the hospital at Ahmedabad, he requested his friends and relatives to move the car to Sabarmati Petrol Pump where the car can be parked safely, since under condition No. 4 the insured has to take all reasonable steps to safeguard the Motor car from loss or damage and to maintain it in efficient condition and the company shall have at all times free and full access to examine the motor car or any part thereof etc. The complainant thought that if the car is brought to Ahmedabad it will be more convenient to the Insurance Company to inspect the car for the purpose of assessing the damages. It appears from the written statement of the Insurance Company that as a matter of fact, the Insurance Company has sent some surveyor to assess the loss and damages who has given a detailed report thereof

to the Insurance Company. Unfortunately, the Insurance Company has not cared to produce the report of the surveyor. The reason as given by the complainant is that the report is for higher amount and the Insurance Company did not find it convenient to disclose the same obviously because the same might be against the Insurance Company. It appears that while towing the accident car from Kalol to Sabarmati, on account of slippery road, the car fell into a ditch on the road and could not be removed because of night time. However, during the night time, some parts have been stolen for which the complainant has made a further claim of Rs. 12,000/- . It appears that there were some negotiations and at one point of time it is alleged that the complainant has agreed for damages at total loss basis of Rs. 46,000 /- .But thereafter, according to the opponent, the complainant has changed his mind and further negotiations took place where according to the complainant, the Insurance Company offered cash amount of Rs. 31,000/- and in support of the contention the complainant has also filed an affidavit of one Sadhubhai G. Sheth, mechanic who has stated on oath that he was running Kathiawad Motor Garage at Deesa and was conversant with repairing, servicing etc. He had also seen the car of the complainant at Palanpur and, therefore, it was possible to repair the car and to put it in road worthy condition it would cost Rs. 30,000/- . The quotation was taken by the complainant to produce it before the Insurance Company. According to his affidavit in January 1991 there was a talk with Insurance Company and in his presence the Insurance Company agreed to pay Rs. 37,500/- i.e. 75% of Rs. 50,000/- after taking into consideration the survey report of Kirtibhai Patel who had suggested Rs. 46,000/- and 75% would come to Rs. 34,500/- . However, after some discussion Dr. Champaklal, the complainant at our mediation agreed to take Rs. 31,000/- and Mr. Chetanbhai, Manager of New India Assurance Company agreed to pay the said amount and head office was informed accordingly. Thereafter he was informed that the Insurance Company has changed its position because on account of lapse of time the salvage value of the car has increased to Rs. 40,000/- to Rs. 42,000/- and therefore, the company was prepared to pay only Rs. 10,000/- as cash loss.

The affidavit of one Deepak D. Patel is also filed who has towed the car to show that the complainant has taken reasonable care of the damaged car and also to show that the complainant wanted to remove the car from Kalol to Sabarmati for the sake of safety and while towing the car on account of breakage of the towing rope the car had fallen in the ditch.

3. NO reply or counter affidavit to deny these facts has been filed by the Insurance Company nor the Manager of Palanpur Branch has been examined who had agreed for the payment of cash amount of Rs. 30,000/- A very important question has arisen in this case. No doubt, at the time when the insurance was taken the value of the car was estimated at Rs. 50,000/- The car met with an accident in June 1990. Ordinarily, the Insurance Company is supposed to make spot survey and there after final survey is made within a period of 4 to 6 weeks. But in this case there is no material produced by the Insurance Company to

shows to whether any spot survey was made. But it appears that some survey appears to have been made but the survey report has not been produced. The Insurance Company has filed its version on 25.2.93 and has filed an affidavit of Mr. P.M. Joseph and nowhere it has been shown that Mr. Joseph was at any time party to any of the negotiations or has written any letter or had any personal knowledge. His affidavit is based only upon the information derived from the records. It may not be forgotten that the accident took place on 23.6.90 and the first letter that has been produced by the Insurance Company to support their version is Annexure-A dated 1.11.91 i.e. written after a year and 5 months which states that they have examined the papers submitted by the claimant to substantiate the claim for damages. They have stated that it was not possible for the Insurance Company to settle the claim either on repair basis or cash loss basis. They have further stated that under the terms of the policy the option for mode of settlement is given to Insurance Company and not to the insured. Therefore, they have requested the complainant to, accept their offer of claim on total loss basis. Para 3 is important which states that "kindly note that while making the payment on total loss basis all the parts of the vehicle should be in the same position/condition as it was at the time of detailed survey after accident and responsibility to preserve the vehicle is imposed on you by way of policy condition". This para itself is an obligation on the claimant that if he wants the claim on total loss basis, he should preserve all the parts which are shown in the detailed survey. But, unfortunately, the Insurance Company has not sent a copy of the survey report and, therefore, this letter which is written after a year and 5 months has no meaning. Secondly, what shall be the total loss has not been shown in the letter. Even no rough estimate has been given. The second letter produced by the Insurance Company is Annexure-B dated 9.1.92 stating that since the complainant has not replied though two months have passed, requested the complainant to send a reply within 7 days and the reply of the complainant dated 15.1.92 is at Annexure-C. Since very long time has passed and as we all are aware that the prices of the cars have gone very high and since there was no firm offer of any amount, the complainant appears to have given a reply that he was not prepared to surrender the car by way of final reply. That he will repair the car and send the bill. The complainant therefore had repaired the car and send all the bills to the Insurance Company. The Insurance Company without waiting for the reparation bill immediately filed the papers and stated that they were unable to settle the claim on repair basis and closed the file as no claim and in this way the complainant has been kept out of the benefits of the policy.

4. A very pertinent question that arises for our consideration is as to whether the Insurance Company has justified in rejecting the claim of the complainant in to without disclosing the offer regarding the amount of total loss or without disclosing the survey report. That whether the condition No. 3 gives such option and whether the Insurance Company has exercised the option within reasonable time i.e. before the rise in prices. It is well-known that Section 1 of the policy

clearly states that the company will indemnify the insured against loss or damage to the motor car and /or its accessories whilst thereon, (a) by accidental external means; (b) by fire external explosion self-ignition or lightening or frost or burglary housebreaking or theft; (c) by malicious Act; (d) whilst in transit by road rail inland waterway lift elevator or air, ,

It is written that in the event of the Motor car being disabled by reason of loss or damage covered under this policy the company will bear the reasonable cost of protection and removal to the nearest repairers and of re-delivery to the insured but not exceeding in all Rs. 300/- in respect of any one accident. It is well known that under the contract of Insurance/the Insurance Company takes the liability to indemnify the insured with regard to the goods as well as injury to the third party's property or person; We are here concerned with the indemnification of insured vehicle; So it is the elementary duty of the Insurance Company to indemnify the insured i.e. to make good the loss. In other words, to make the insured In the same position with regard to his vehicle as it was when the insurance was taken. There are certain conditions which are subsequently sent to every assured after the certificate of insurance is given and payment of premium is recovered. We have, therefore, asked Mr. Chudgar the learned Advocate appearing on behalf of the Insurance Company whether the conditions which have been shown in the policy have been signed by the insured or they are made under the statute i.e. General Insurance Act. Mr. Chudgar is not able to answer our queries. We will therefore assume that these are the conditions which are unilaterally imposed by the Insurance Company. We shall, therefore, have to construe these conditions strictly, particularly when the Insurance Company is a state within the meaning of Article 12 of the Constitution and is holding monopoly business. Whether one likes it or not, one has to take insurance from General Insurance-Corporation through its subsidiaries and one of the subsidiaries is New India Assurance Company.

5. THE condition No. 3 reads as under:- THE company may at its own option repair reinstate or replace the motor car or part thereof and/or its accessories or may pay in cash the amount of the loss or damage and the liability of the company shall not exceed the actual value of the parts damaged or lost plus the reasonable cost of fitting and shall in no case exceed the Insured's estimate of the value of the Motor Car (including accessories thereon) as specified in the Schedule or the value of the Motor Car (including accessories thereon) at the time of the loss or damage whichever is the less.

6. MR. Chudgar heavily relies upon this condition which gives option to the Insurance Company either to repair, reinstate or replace the motor car or part thereof or pay in cash the amount of loss or damage and the liability of the Insurance Company shall not exceed the actual value of the parts damaged or lost. It will therefore be seen that the Insurance Company has to decide and inform to the complainant as to whether they are willing to repair the car, replace the motor car or pay cash amount of the loss or damage. Generally, as one has

understood, the Insurance Company pays the amount by way of damages or takes the car for total loss and nobody objects to it. But on account of special circumstance that has been created on account of devaluation of money twice after the insurance was taken the amount of the vehicle has raised to great extent. Again, the Insurance Company has taken more than one year to make the offer. The insured has kept the car without reparation and thereby has suffered great in convenience and damage. Further, the negotiation taken a long time where the complainant hoped that the Insurance Company has offered him cash amount of Rs. 31,000/- and affidavit in support thereof was filed of the person who was present at that time. There is no denial by Insurance Company by way of filing any counter affidavit. Again, the letter of the Insurance Company dated 1.11.91 i.e. after a period of 1 year and 5 months states that it was not possible for the Insurance Company to settle the claim on repairing basis or cash loss basis and requested the complainant to accept the offer of claim on total loss basis. However, while making this offer they have further stated that all the parts of the vehicle should be in the same position/ condition as it was at the time of detailed survey after accident. Curiously, the detailed survey report has not been sent to the complainant nor the same has been produced before us, though we have made query about the detailed survey report. The Insurance Company expects everything under the same conditions and expects the complainant to keep the car in the same condition for a year and half. If such an offer is made after an year, the complainant, to our opinion, was not bound to accept. As we have stated earlier, during this period there was great increase in the value of the car and if the complainant had received Rs. 50,000/- on the date of the accident, he could have purchased the same type of car easily but in the year 1991 with the amount of Rs. 50,000/- he can never purchase this type of car because the prices have increased enormously on account of increase of duty, devaluation of foreign exchange and increase of prices by manufacturers. In other words, in this case the Insurance Company wants to take advantage of their own wrong i.e. the delay made by them without any reasons or rhyme. We are, therefore, of the opinion that in this case the Insurance Company has not acted fairly and to make an offer after a year and half when the prices have increased, without giving copy of the survey report to ask the complainant to accept the claim on total loss basis without giving any figures is definitely a deficiency in service particularly when the value of the salvage have increased enormously even to the extent the company may make profit out of this. We are firmly of the opinion that such a case should be settled atleast after three months from the date of accident because even the Hon'ble National Commission has granted three months time when they have awarded interest on the amount of claim. We are, therefore, of the opinion that this case should be settled on cash loss basis. Considering all the facts and circumstances of the case, we are satisfied that if Rs. 30,000/- is considered as the amount of damages suffered by the complainant, it will serve the interest of justice. The Insurance Company is, therefore, liable to pay Rs. 30,000/- atleast after three months from the date of accident. Having not paid the said amount or

indemnified the claim, they are responsible for interest @ 18% p.a. and cost which we quantify at Rs. 1500/- . It may also be remembered that the complainant had carried out repairs only after the rejection of the claim where he had to spent twice the price for the spare parts. He has also produced the bill for Rs. 56,000-57,000/- . If this claim had been settled earlier, he might have got his car repaired for half this amount. Considering all these circumstances we are of the opinion that the complainant must be paid Rs. 10,000/- for pain and suffering and rise in cost of spare parts. ORDER The Insurance Company shall pay Rs. 30,000/- as cash loss for the damages to the complainant for his car with 18% interest p.a. after three months from the date of accident till the payment is made and will pay Rs. 10,000/- by way of further damages and pain and suffering and Rs. 1500/- as cost. The Insurance Company shall pay these amounts within 4 weeks from the date of receipt of the copy of this order. Complaint allowed with costs.